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September 30, 2013

Hand Delivered

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

Re: Response to email 9/5/13 from Jim Moore re: 177 Frustuck -

Dear Mr. Moore,

The main issue we are dealing with in this application is fairness. The Town has not treated us fairly in the past, and we are not being treated fairly with our current application. I will address each of your points as briefly as possible.

1. The Memorandum of Understanding – If your intention is that Staff be void of responsibility for their over the counter opinions, or interpretations in the Staff Report, then the MOU would have to be given in advance of any over the counter advice, and wording of Staff's non- responsibility would need to be part of the Planning Application Documents. It simply does not apply when approximately 60 days after we paid \$3680 to submit our planning application you produced a document for us to sign and believe it can absolve your department of responsibility. The document does not apply after the fact, and by its very wording only applies to preliminary information before the application is submitted.

2. I disagree with the Staff Report, and I believe it to be fabricated and biased to yet again derail our second unit application. I will produce independent documentation to support my opinions, and I believe I have the right to challenge the Staff Report directly to you the Director of Planning and Building Services. My opinions of inaccuracies and fabrication in the Staff Report are certainly supported by Ms Neal' s past efforts to derail our projects to improve our property, despite the eventual approval of those projects.

We received a letter from Ms. Neal, dated March 20, 2008, stating that our Planning application for a garage and second unit were incomplete. The letter asked for eighteen items to be corrected (basically an outright effort to make it impossible to pursue our garage). After months of wasted time it was determined that twelve of the items were not required by Town Code and were eliminated as requirements. The two most significant items of the eighteen requests were for a height variance and a Hillside Residential Development Permit. These were not required and eliminated. The garage was eventually approved without any special requirements or variances. This was only after the Town Attorney had recommended in public meetings not to pursue the attached/detached issue which required the height variance due to the Town not having any code to support Ms. Neal's theory.

In August 2008, we applied to construct a patio on the lower part of our property. We applied for a building permit over the counter with engineered plans. Ms. Neal became involved and viewed the patio as a "retaining wall with a fence on top" and stating that we would need to go before the Planning Commission for a variance. After months of wrangling, the correct Town Code was upheld (by Anne Welsh, Planning Director, Larry Kennings, interim Planning Director, and Mark Lockaby, Building Official). We built a landscape accessory structure (patio) with a 42" guardrail permitted over the counter by the Building Official with no variance.

Ms. Neal also wrote the motion to deny the previous application for our second unit approved by the Town Council on 8/5/2009. I wrote to the Town stating that most of the items in that motion never happened, and were not on the audio tapes. Council Member Brandborg stated the same opinion at the 8/5/2009 Council meeting as the motion to deny was being approved, and her remarks were ignored.

The prior evidenced items do not reflect a good track record in support of your statement "We stand by the staff report, and with all respect it's staff's not yours". I have challenged many written items in the past and I have always been correct. This process is a huge waste of my time and taxpayer's money.

Again, I am stating that going before the Planning Commission is not the venue to discuss the inaccuracies in the Staff Report. They are volunteers, and they rely heavily on the Staff report which takes 30 days to produce, and I would have 3 minutes to plead my case to a group of volunteers. We have not been treated fairly by the Planning Commission in the past. I am convinced this is not the forum to make the necessary corrections to the Staff report.

Examples of past problems with the Planning Commission:

June 2004: The Ross Valley Reporter made allegations of cronyism at the Planning Commission stemming from the meeting when our fully conforming 2095 sq. ft. house was first denied by the Planning Commission. Two Commissioners left the podium while the meeting was still in progress to congratulate our neighbor and major opponent ex-Council Member Niccolo Caldararo.

Subsequently a Planning Commissioner had the minutes altered to show a recess had been called. Commissioner Madsen complained to the Council about the altering of the minutes and cronyism. It was agreed at the Council Meeting that no recess was called, and the minutes were reset. Commissioner Hailer complained of cronyism at the same Council meeting.

October 2008: Our attorney Alan Mayer asked Commissioner Meigs to recuse herself from the upcoming October 16th Planning Commission Meeting stemming from the Caldararo incident. Ms. Meigs then recused herself from the meeting leaving the podium. She then returned to the podium at the chairman's insistence and re-entered the meeting without any comment, spoke negatively about the project, and subsequently cast a majority vote against the project - after she officially recused herself. Ms. Meigs was also cast a majority vote against us at the Feb. 19, 2009 meeting.

November 4 2008: Attorney Alan Mayer wrote to the Planning Director in regards to Commissioner Goyan supplying services in Town without a business license, and possibly working on projects without building permits. Mr. Goyan is still working in Town without a business license, and without a Contractors License. He also cast a majority vote against at the October 16, 2008 meeting, and February 19, 2009 meeting.

At the February 19, 2009 Planning Commission meeting, Commissioner Laques said that he had been into our house that very afternoon. During his presentation I expressed great concern that he may have trespassed into our home with our teenage daughter home alone. He continued to insist he had been in our house. It turned out he went into someone else's house without their permission. He went to the wrong address. And still he had the audacity to cast a majority vote against our project when it was obvious he was unable to read plans, or locate a house with the required 4" high street numbers in three locations around our driveway.

Given the evidenced track record to date, I do not believe the Planning Commission volunteers can give a fair and impartial review of the errors and inaccuracies that exist in the 8/15/13 Staff Report. It is not part of their written duties.

3. Your suggestion that I am playing a “shell game” with the parking is not correct. The parking layout on our plans was created in 2008, at an over the counter meeting with Ms. Neal. Anne Welsh, the Planning Director at the time, was delighted when I proposed a second unit under the existing house. She recommended I work out the details with Ms. Neal. Ms. Neal recommended the compact space in the side-yard setback, and she was fully aware it would need a side-yard setback variance. Ms. Neal and Staff recommended this parking layout at three public meetings in 2009. It does not fly in the Face of the Town Code. It is consistent with similar parking spaces and variances already approved in the Town. The interpretations of the code and the implied precedents are false in the 8/15/09 Staff report.

4. This is also about Fairness. As Planning Director at the Town since 2009, you have been responsible for the production of the 2010 Adopted Housing Element (currently approved version, not the proposed amended version). The Town has stated unachievable goals in regards to producing affordable housing and second units. The Town has been deficient in producing any programs to create second units within the 2009 to 2014 timelines. The Town simply is choosing to ignore that this proposed sustainable energy efficient second unit meets and exceeds the written goals, and the written promise of exceptions should the quota not be attained.

“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.

“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.”

Four years have passed since our last application. The 2010 adopted Housing Element further reinforces that our unit meets the Town goals, and the exceptions the Town says they are willing to make. The 2014 deadline of 172 housing units is fast approaching. There is a real need for affordable housing in Fairfax. In 2009 we submitted a petition from 126 workers & residents in Fairfax in support of the unit. All of our surrounding neighbors were in full support of the unit (except one council member, and one ex-council member).

5. It is only in Fairfax that a house like ours is classified as existing three stories. In other cities in Marin County, the State of California, and the rest of the United States, it would be classified as two existing stories. The Town changed the code that is used everywhere else in 2003 or 2004. This is actually the "infill" sustainable development of an existing space. It is not the building of a fourth story. It is a vacant space that already exists under the house. Great exceptions have already been made for at least three second units. The Town Council even waived the need for fire sprinklers for the legalizing of existing second units in 2010 against the objections of the Fire Marshall.

"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."

In the 2006 Housing Element, the Town stated that there are only a handful of building lots left in Fairfax. There could not be a run of applicants for this type of housing. Approval of this unit could only improve the housing situation in Fairfax. If there is any precedent to be set it would be to encourage energy efficient infill development with adequate off-street parking.

Respectfully, I do believe Staff is acting contrary to the Town Code and the approved Housing Element. The "Owens versus The Town of Fairfax stand-off" began in 2003, when we placed an existing building lot within Town into escrow with the intention of building a sustainable reasonably sized house for our family. The battle of egos has continued, and it has nothing to do with precedents, or codes, or more importantly the dire need for affordable housing units in Fairfax.

Again, I am asking that the inaccuracies and incorrect statements in the Staff Report be corrected so that our application can proceed. I am including multiple photographs of existing parking in the side-yard setbacks and the Town right of way that Ms. Neal states firmly in the Staff Report would set a precedent in the Town. I counted 32 examples of such parking on Cascade Drive alone. This is one street in Fairfax. Must I perform a survey of all parking spaces in Fairfax to prove your Staff Report is wrong, and that you are only delaying our project?

We look forward to your prompt response.

Best regards, John Owens & Diana Dullaghan

Enclosures: Photos of parking in side-yard setbacks and town right of way in Fairfax

This is the true parking situation in Fairfax. Cars parked in the Town Right of Way between every tree on Cascade Drive. Most streets look like this at night with cars on the dirt at the side of the road. The Town needs valuable off street parking. There cannot be a precedent for our proposed parking space. I counted 32 situations on this one street alone with parking, and driveways in the sideyard setback and the Town right of way.



213 Cascade – three spaces in Town right of way, one also in side yard set back



217 Cascade Town right of way, and sideyard setback



345 Cascade Town right of way, sideyard setback



349 Cascade Driveway and Parking in T.r.o.w. and sideyard setback



360 Cascade Driveway, Parking, and Garage in sideyard setback

Driveway and one parking spot town right of way, sideyard setback

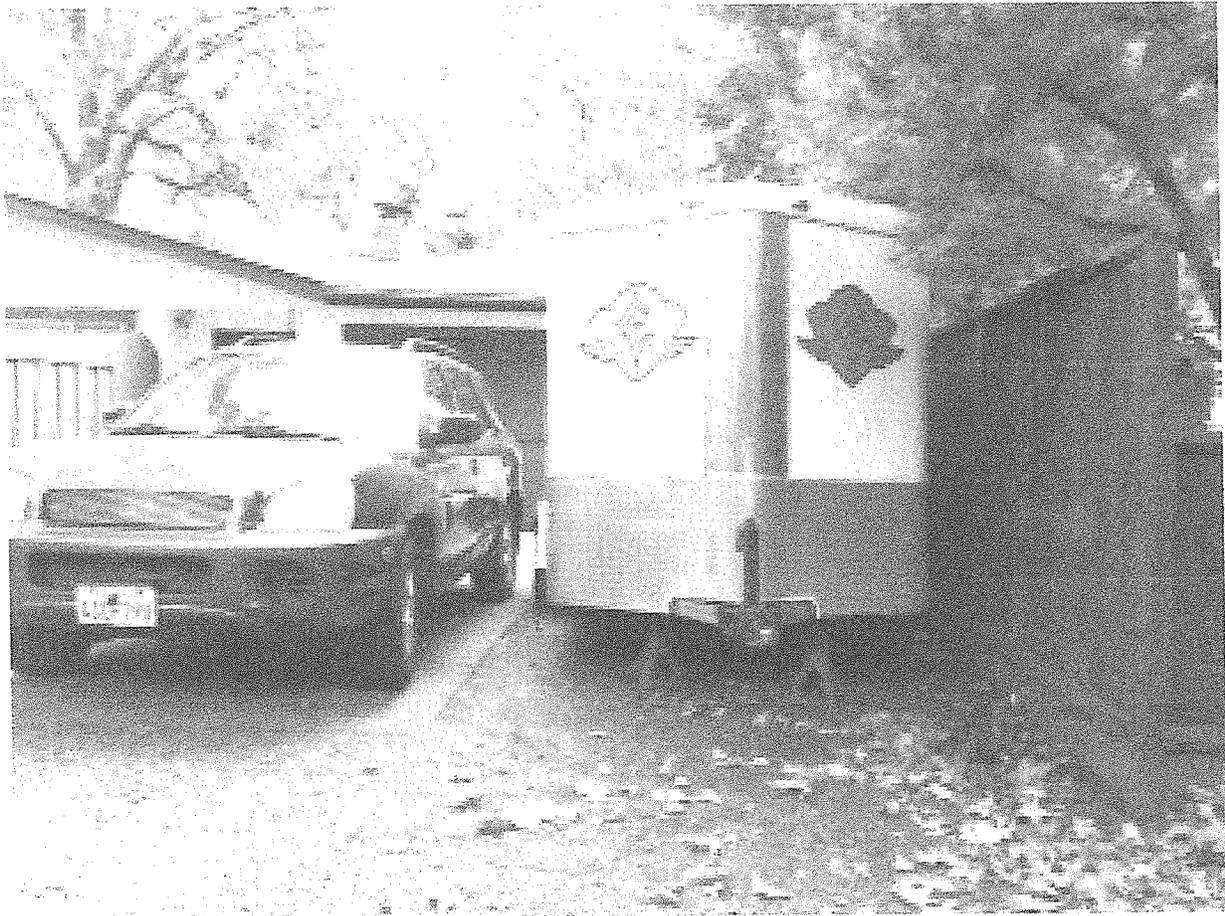


362 Cascade Driveway, Parking, Garage in and sideyard setback

Driveway and parking in T.r.ow. and sideyard setback



415 Cascade Parking and Drive T.r.o.w. and sideyard setback



428 Cascade Four spaces T.r.o.w.

Driveway and two spaces Tr.o.w. and sideyard setback



444 Drive, Parking, in T.r.o.w. and side yard setback



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September 5 , 2013

Parking Code Fairfax

§ 17.052.010 GENERAL REQUIREMENTS.

(A) Except as otherwise required by variance, every building or use hereafter created or established shall be provided with minimum off-street parking and loading spaces.

(B) No off-street parking spaces or garage, carport or other accessory structure for parking use, required or additional thereto, shall be located in a required side yard setback.

(C) (1) No garage, carport or other accessory structure for parking use shall be located in the front yard setback except as set forth in § 17.052.020.

(2) Uncovered parking spaces may be created in the portion of the required front yard setback not included in the side yard.

(D) At least one of the off-street parking spaces for a residential unit must be covered, except as set forth in § 17.052.020.

(Prior Code, § 17.28.010) (Ord. 352, passed --1973; Am. Ord. 486, passed --1981; Am. Ord. 490, passed --1982)

§ 17.052.020 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.

(B) In RM, SF-RMP and PDD zones, one guest parking space shall be provided for each five dwelling units. Available curb parking along the property's street frontage may be credited toward the required guest parking where found appropriate and as part of the design review or variance procedure.

(C) On lots which have a slope greater than 15 percent on the general plan slope map or on a topographic map prepared by a licensed land surveyor and which are downslope lots, uncovered parking decks which have a finished elevation equal to or less than the elevation of the town right-of-way may be constructed in the front yard setback. Decks of this type may exceed the height requirement for accessory buildings.

(D) Lots which have a slope greater than 15 percent on the general plan slope map or on a topographic map prepared by a licensed land surveyor, and which are downslope lots, are exempted from the covered parking requirement set forth in § 17.052.010(D).

(Prior Code, § 17.28.020) (Ord. 352, passed --1973; Am. Ord. 486, passed --1981; Am. Ord. 490, passed --1982)

§ 17.052.030 REQUIRED PARKING SPACES.

Off-street parking spaces shall be provided according to the following schedule, and where a parcel includes two or more uses, the parking requirements shall be the aggregate of the requirement for the various uses:

- (A) (1) Dwellings, including one-family and two-family dwellings, apartments and mobile homes:
 - (a) Studio units without separate bedrooms: one space.
 - (b) One-bedroom units: two spaces.
 - (c) Two-bedroom units: two spaces.
 - (d) Units with three or more bedrooms: two spaces.

§ 17.052.040 STANDARDS FOR PARKING SPACES.

(A) Parking facilities shall be designed to provide for safe circulation of vehicular and pedestrian traffic within the parking area and in relation to adjacent streets. Direct backing into or out of parking from a public street shall not be permitted, except for one-family and two-family dwellings.

(B) Minimum dimensions of parking spaces shall be as follows:

(1) Width: nine feet, excluding any interfering structure.

(2) Length: 19 feet, or 22 feet if abutting and parallel to a curb, wall or other obstruction.

(C) In all zones except RS-7.5, RS-6 and RD 5.5-7, 25 percent of the assigned spaces may have a minimum size of 8 feet by 16 feet.

(D) Width of parking aisles shall be according to the schedule in Appendix A to this chapter.

(E) No tandem parking stall shall be allowed, except for a guest space in tandem with required parking for the principal residence. Tandem parking shall not be used in conjunction with a parking space required for a residential second unit.

SECOND UNIT

(D) *On-site parking.* The site must be able to accommodate a legal on-site parking space for the second unit in addition to the parking required for the principal residence on private property and as further prescribed by Chapter 17.052 of this title. The parking space for the second unit shall not be in tandem with the spaces for the main residence and must be located in an area of the site where it is accessible at all times. A record of survey including the site topography is required to demonstrate the location of the all the required parking for the main residence and second unit.

HEIGHT LIMIT RS6 ZONE

§ 17.080.060 HEIGHT REGULATIONS.

Height regulations in the RS-6 zone are as follows:

(A) Except as otherwise permitted by variance, no building or structure occupied by a principal use on a lot having a slope of ten percent or less shall exceed a height of 28.5 feet nor contain more than two stories. On lots having a slope in excess of ten percent, no building or structure

occupied by a principal use and situated on the downhill side of the street upon which it has its primary frontage shall exceed 35 feet in height, and if situated on the uphill side of the street shall not exceed 28.5 feet in height nor contain more than three stories.

DEFINITION OF A STORY

STORY. The portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a **STORY** for the purpose of height measurement if subdivided and used for dwelling or business purposes.

Best regards,

John Owens & Diana Dullaghan



Sept. 30 letter

2 messages

Jim Moore <jmoore@townoffairfax.org>

Tue, Oct 1, 2013 at 11:16 AM

To: John Owens <johnowensservices@gmail.com>

Cc: Linda Neal <lneal@townoffairfax.org>

Hello John,

We are in receipt of your September 30th letter and have read it thoroughly. Nothing therein has changed our interpretation of the Town Code, with regards to your pending application, as reflected in our 8/15/13 staff report and/or the process going forward with your application – should you decide to move forward.

Please let us know if you decide to proceed and we will schedule you on a Planning Commission agenda.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

42 Bolinas Road

Fairfax, CA 94930