

## Council Meeting March 6 - 80 Crest Road Appeal

Bob Zillion <bobzillion@gmail.com>

Wed 3/6/2024 11:07 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

March 6, 2024

Town Council of Fairfax, CA

Subject: 80 Crest Road Appeal – Comments

My name is Bob Castle and I have lived at 42 Crest Road since 1975. I am an engineer and familiar with building codes and construction. I first met Marne Sorgen in 1975 and I am familiar with her home at 80 Crest Road completed in 1973.

In the roughly 50 years since it was built, I have never heard about a single complaint about this house. 50 years and zero complaints except by the town planner who seems to have framed the issue to inflict the maximum damage possible.

### **My Simple Solution for the Fairfax Council**

Staff inflates the issue of building height by calling the house 4 stories and that none have ever been built before in Fairfax. **80 Crest Road is 3 stories not 4.** On page 25 of Council Packet the dimensions of the small loft can be easily seen. It is less than 16 x 16 feet inside the great room. This area is much much smaller than the room it is in, and hardly constitutes a “story”.

I looked up various building code definitions of loft versus story. Here they are quoted:

*There really isn't a specific height, a story will tend to be ten feet total, a bit over eight feet of actual head room. A loft could be a raised sleeping platform in 12 foot high room, definitely not a story.*

*What is the difference between a loft and a second story? The loft is accessed via a staircase (as in a two-story home). The difference is it utilizes the roof space so you get the extra living area you need without adding an entire second floor.*

*Unlike attics, lofts are often open to the floor below. As long as they have ceilings that are 7 feet high and meet other IRC guidelines, they will be considered in the overall square footage of the home, but won't be considered an extra story.*

*California Building Code 2022 (Vol 1 & 2)*

*505.2 Mezzanines*

*A mezzanine or mezzanines in compliance with Section 505.2 shall be considered a portion of the story below. Such mezzanines shall not contribute to either the building area or number of stories as regulated by Section 503.1.*

**Unless staff can show a specific building code in effect in 1973 that defines a loft as a story, staff's representation of 80 Crest Road as 4 stories is misleading and false.**

**Staff Proposed Mitigations Do Not Serve the General Public**

Staff wishes to impose severe and expensive changes to remove construction done without permits. It should be noted that the exterior height of the house will not change. The overall height of the house was approved in 1973 and passed final inspections. The expensive mitigation only moves the point of measuring height upslope. I won't see any change and no others will too. But it will make town staff happy.

As an engineer familiar with construction for earthquake safety, I found the town engineers dismissal of the concern about reduction of shear strength dubious. Here is the "sniff test" for shear strength in houses: If some if good – more is better. Were this my house, I would fight to keep it. There simply is no benefit to the community by removing the lower wall.

### **Fairfax Council Should Make This Finding**

Fairfax staff typically requires owners to pay triple fees for work performed without permits. And most homes in Fairfax have a "legal – nonconforming" designation. That's the simplest solution for 80 Crest Road.

### **Enough Already**

Town of Fairfax has spent a huge amount of time and money with lawyers, engineers, and town staff. And it does not seem to benefit the general public. Just town staff.

I hope each of the Town Council takes the time to drive up to 80 Crest Road. It is a most attractive house and does not impact anyone else in the area. And I hope Council members will notice the mud, potholes, and erosion of the road. When I learned Fairfax had budgeted \$150,000 for annual road repairs my head almost exploded. Fix my damn road please.

Sincerely,

Bob Castle  
42 Crest Road  
Fairfax

## 80 Crest Road Appeal

CAM <camullaly@sbcglobal.net>

Mon 3/4/2024 9:49 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

Hi. I'm Claudia Mullaly and live at 104 Crest Rd.

I'm aware that the residents at 80 Crest Rd are appealing a Planning Commission recommendation that they demolish the lowest floor on the downhill side of their house so that the house complies with current building codes.

The house was built in 1973 and I'm told that the height of the house was legal according to the building code at the time.

The proposed demolition will not affect how the house appears from the road or from a distance and will not serve any purpose that I can see.

The folks at 80 Crest keep their house in impeccable condition. Why this punitive recommendation when it will serve no benefit to the neighborhood?

Thanks for your attention.  
Claudia Mullaly

## 80 Crest Rd Appeal

Daniel Gottsegen <dan@gottsegen.org>

Tue 3/5/2024 8:44 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

Town Council,

My name is Dan Gottsegen. I live at 90 Crest Rd. Our direct neighbors at 80 Crest Rd let us know that the Town Council is hearing their appeal this Wednesday. I'd like to express my opinion as a neighbor that presumably would be impacted by this situation, and as a long time Fairfax resident.

I understand that they did some unpermitted work years ago and some six years ago approached the city to get the work permitted after the fact, assuming they would owe fees and/or penalties. Apparently the council is requiring they tear out the work and address the height of their home. Presumably this ruling would be for the benefit of the neighbors and affect the look or height of their home. As their next door neighbor, I see no benefit in the Town Council taking this approach. It will do nothing to affect the profile or look of the home in any way from our perspective, and frankly it just seems more punitive than useful. I know you all have a difficult job, and I hope that hearing directly from those who would be affected by this might make your job a little easier.

Thanks,

Dan Gottsegen

Sent from my phone

## Letter re Agenda Item 4 (80 Crest Road)

Ellis F. Raskin <ERaskin@hansonbridgett.com>

Wed 3/6/2024 2:55 PM

To: Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>; Barbara Coler <bcoler@townoffairfax.org>; Lisel Blash <LBlash@townoffairfax.org>; Bruce Ackerman <backerman@townoffairfax.org>; Chance Cutrano <ccutrano@townoffairfax.org>; Stephanie Hellman <shellman@townoffairfax.org>  
Cc: Janet Coleson <Janet.Coleson@bbklaw.com>; Linda Neal <lneal@townoffairfax.org>

 1 attachments (12 MB)

2024-03-06 Letter re Agenda Item 4 (80 Crest Road).pdf;

Dear Hon. Mayor Coler and Hon. Members of the Town Council:

On behalf of the owners of 80 Crest Road, please find attached our letter regarding Agenda Item 4. We respectfully urge the Town Council to continue this matter to a future meeting to allow additional time for Town staff to address the legal issues identified in this letter and to allow additional time for the parties to (hopefully) reach an amicable resolution to this matter.

If you have any questions, please do not hesitate to contact me.

Best,  
Ellis Raskin

**Ellis F. Raskin**

**Partner**



[ERaskin@hansonbridgett.com](mailto:ERaskin@hansonbridgett.com)

Direct: [\(415\) 995-5835](tel:(415)995-5835)

**Hanson Bridgett LLP**

777 S. Figueroa Street, Suite 4200

Los Angeles, CA, 90017

[Website](#) | [LinkedIn](#)

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ELLIS F. RASKIN  
PARTNER  
DIRECT DIAL (415) 995-5835  
DIRECT FAX (415) 995-3456  
E-MAIL [eraskin@hansonbridgett.com](mailto:eraskin@hansonbridgett.com)



March 6, 2024

VIA E-MAIL [fairfaxtowncouncil@townoffairfax.org](mailto:fairfaxtowncouncil@townoffairfax.org)

Barbara Coler, Mayor  
Town of Fairfax  
Town Council  
142 Bolinas Road  
Fairfax, CA 94930

Re: Agenda Item 4 (80 Crest Road; Assessor's Parcel No. 002-152-32)

Dear Hon. Mayor Coler and Hon. Councilmembers:

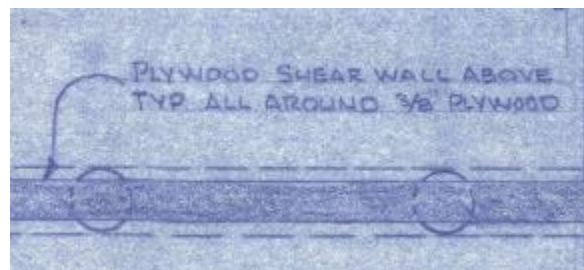
My office represents Verle and Marene Sorgen, who are the owners of the property that is the subject of this appeal (located at 80 Crest Road). For the reasons set forth in this letter, the existing structure at 80 Crest Road does not require any discretionary entitlements (including, inter alia, a conditional use permit or a variance). However, even if it did require a conditional use permit or a variance, it satisfies all criteria for both a conditional use permit and a variance.<sup>1</sup>

We hope that you will take this opportunity to continue this hearing to take the time necessary to review the evidence and legal arguments presented in this letter. If the Town does not approve the 80 Crest Road project, my clients intend to seek all available legal and equitable remedies in the Superior Court.

### 1. Background:

There are a number of historical facts in the staff report for this item that need to be corrected. Preliminarily, my clients have confirmed that the ground floor has existed since the house was first constructed (with the exception of the westernmost portion of the ground floor, which was added at a later time). Marene Sorgen has lived in the house continuously, and she has personal, first-hand knowledge of these facts. Her personal observations carry far greater weight than any post-hoc inferences that the Town now attempts to make from building records that were, by its own admission, poorly maintained in the 1970s (see Evid. Code, § 412.)

In any event, contemporaneous records show that the ground floor existed when the house was first constructed. The original foundation plan (attached as Exhibit 1) shows that the area that

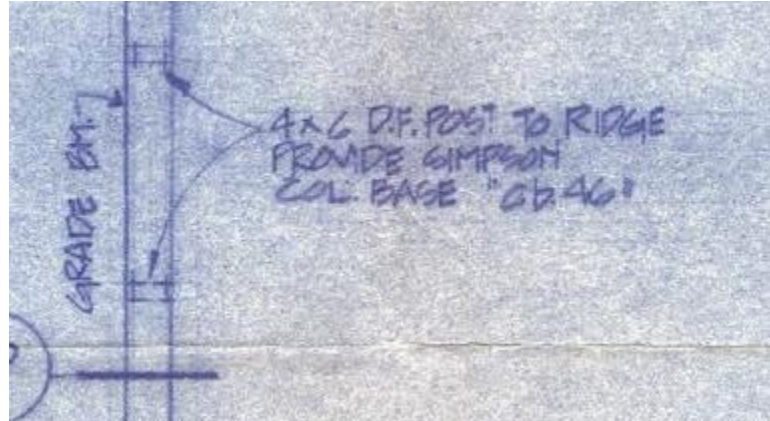


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<sup>1</sup> We hereby incorporate by reference prior comments submitted by my clients and their legal counsel, as well as all evidence in the administrative record.

now comprises the ground floor (except for the westernmost portion) was enclosed by a "plywood shear wall" in 1973 (see enlargement to the right). Your staff report also includes a photograph from 1973 that shows the ground floor existed at that time.

The original foundation plan also shows that original Simpson column bases were installed at the base of the staircase that connects the bedroom level to the lower level. A contemporaneous work order (attached as Exhibit 2) also shows that the staircase was constructed contemporaneously with the original structure. Photographs from the ground level also show that original air ducts run through the ground floor level; these would not have been placed in an area that would have been exposed to the elements in the original building (see photograph in Exhibit 3).



The fact that the original plans did not show the ground floor is not surprising. The building was constructed using a template set of plans from a company that produces manufactured homes. The 80 Crest Road project deviated from the standard plans by including a lower level (i.e., the "ground floor" level).

It also bears emphasis that the house complied with all applicable height regulations when it was constructed. As noted by the staff report, the property was subject to Ordinance 230 (in effect from 10/11/61 to 3/13/73) when it was approved and constructed. A copy of Ordinance 230 is attached here for reference as Exhibit 4. Section 5.40 of that ordinance limited height of residential structures to 30 feet, based on the "mean height." Of critical importance is the fact that, at the time, "mean height" was measured as "[t]he Vertical Distance from the average finished ground level of the site to the highest point of the structure." (*Id.* at § 2.07.) The term "ground level" was not defined in Ordinance 230, but contemporaneous historical records show that the understanding at the time was to measure height from the average point of a grade on a sloped hillside lot. Using that point of reference, the house was under the 30-foot limit (and remains under that limit).<sup>2</sup> (See Exhibit 5.)

For these reasons, because the house complied with applicable height standards when it was constructed, and because it is no taller today, it does not require a height variance. (See e.g.,

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<sup>2</sup> This understanding was further evidenced by the definition of "height" in the 1973 zoning code updates in Ordinance 352, which defined "height" as follows: "the vertical distance from the **grade** to the highest point of the coping of a flat roof or to the deck tine of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, and gambrel roofs." (Emphasis added.)

*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1097; *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 646.)<sup>3</sup>

## **2. The Doctrine of Equitable Estoppel Bars to Town of Fairfax from Requiring Any New Discretionary Entitlements:**

Even if a height variance (or conditional use permit) were required, the Town is equitably estopped from demanding that my clients obtain any new discretionary entitlements for the 80 Crest Road house. (E.g., *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657, 661 [allowing home constructed in violation of residential setback ordinance].) The doctrine was explained in *City of Goleta v. Superior Court* (2006) 40 Cal.4th 270 [52 Cal.Rptr.3d 114, 147 P.3d 1037]: "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citation.]' [Citations.] [¶] Equitable estoppel `will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy.'" (*Id.* at p. 279; see also *HPT IHG-2 Properties Trust v. City of Anaheim* (2015) 243 Cal.App.4th 188, 201.) All these elements are satisfied in this case.

The 80 Crest Road house has existed in its current configuration for decades. It has had the ground floor level (and connecting staircase) since it was first constructed. The Town inspected the property when it was first constructed. My clients have relied upon the understanding that the Town was aware of the height and configuration of the building, and on that basis, they have incurred substantial costs and liabilities maintaining and improving the property as is. Removing the lowest (ground floor level) and/or the staircase connection would be highly injurious and unnecessarily costly for my clients. The interior staircase provides access to crucial utility shutoffs in the ground floor level, and there will be no feasible method of accessing the shutoffs if interior stairway access is cut off.

The Turbin engineering analysis attached to your staff report further substantiates that it would be wasteful and inequitable to require any portion of the ground floor of the structure to be removed. That portion of the building is necessary for the structural integrity of the entire home. Equity weights in favor of maintaining the home as a safe and habitable structure (indeed, this is also required by new California housing laws, including the "no net loss" law codified at Government Code Section 65863, which prohibit local governments from taking action that reduced the total number of habitable dwelling units in their jurisdiction). My clients have repeatedly asked the Town for a copy of the Town Engineers findings for this matter, but they have not been given access to the Town Engineer's report. Unless the report is presented in full to the Council, it bears little evidentiary weight.

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<sup>3</sup> We do not concede that the 80 Crest Road house consists of four stories. As explained elsewhere in the administrative record, there are reasons why both the loft and the ground floor levels should be excluded from the definition of a "floor" or "level."



### 3. The 80 Crest Road Property Satisfies All Criteria for a Variance:

The overwhelming evidence in the record supports a finding that the 80 Crest Road property satisfies all required variance findings. Accordingly, any decision to deny a variance would be arbitrary and capricious, as well as a prejudicial abuse of discretion. In other words, a court would be required to overturn a decision to deny a variance. (See Code Civ. Proc., § 1094.5.)

The 80 Crest Road house complies with all of the following criteria:

- **Because of special circumstances applicable to the property, including size, shape, topography, location of surroundings, the strict application of this title will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification:** Here, the Turbin Engineering Report shows that site-specific conditions necessitate the need for an additional level underneath the remainder of the structure to stabilize the building. This circumstance distinguishes the property from other similarly-situated properties and homes in the Town. Moreover, the unique history of this site (including my clients' decades'-long understanding that the Town was aware of the configuration of the structure) qualify as special circumstances that make strict application of development standards (should they apply) both inequitable and impossible.
- **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:** The facts described above under the first criterion also support an affirmative finding for the second criterion. As noted above, the property was constructed in accordance with standards in effect at the time, and no special privilege will be granted here.
- **The strict application of this title would result in excessive or unreasonable hardship:** The facts described above under the first criterion also support an affirmative finding for the third criterion.
- **The granting of the variance or adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated:** Ample testimony in the record shows that no other properties or Town residents will be adversely affected.

### 4. The Town's Strict Enforcement of a Variance Requirement Violates Equal Protection Laws:

The Fourteenth Amendment to the federal Constitution provides that “No State shall ... deny to any person within its jurisdiction the equal protection of the laws.’ The California Constitution likewise prohibits the denial of equal protection.” (*Kimco Staffing Services, Inc. v. State of California* (2015) 236 Cal.App.4th 875, 884; *Molar v. Gates* (1979) 98 Cal.App.3d 1, 12 [observing both that the equal protection provisions of our state may demand a different analysis from one conducted only under the Fourteenth Amendment and that California’s equal protection laws possess an independent validity from the Fourteenth Amendment].)

"As its name suggests, equal protection of the laws assures that people who are ' "similarly situated for purposes of [a] law' " are generally treated similarly by the law." (*Vergara v. State of California* (2016) 246 Cal.App.4th 619, 644.) Here, however, my clients have been unfairly and inequitably singled-out. They came to the Town in a good-faith attempt to ensure that their property had all necessary approvals, but they now are subject to burdensome, unfair, and unnecessary enforcement proceedings. Other similarly-situated Town residents who own non-conforming structures are not treated similarly. Accordingly, the Town's actions violate equal protection laws.

5. Conclusion:

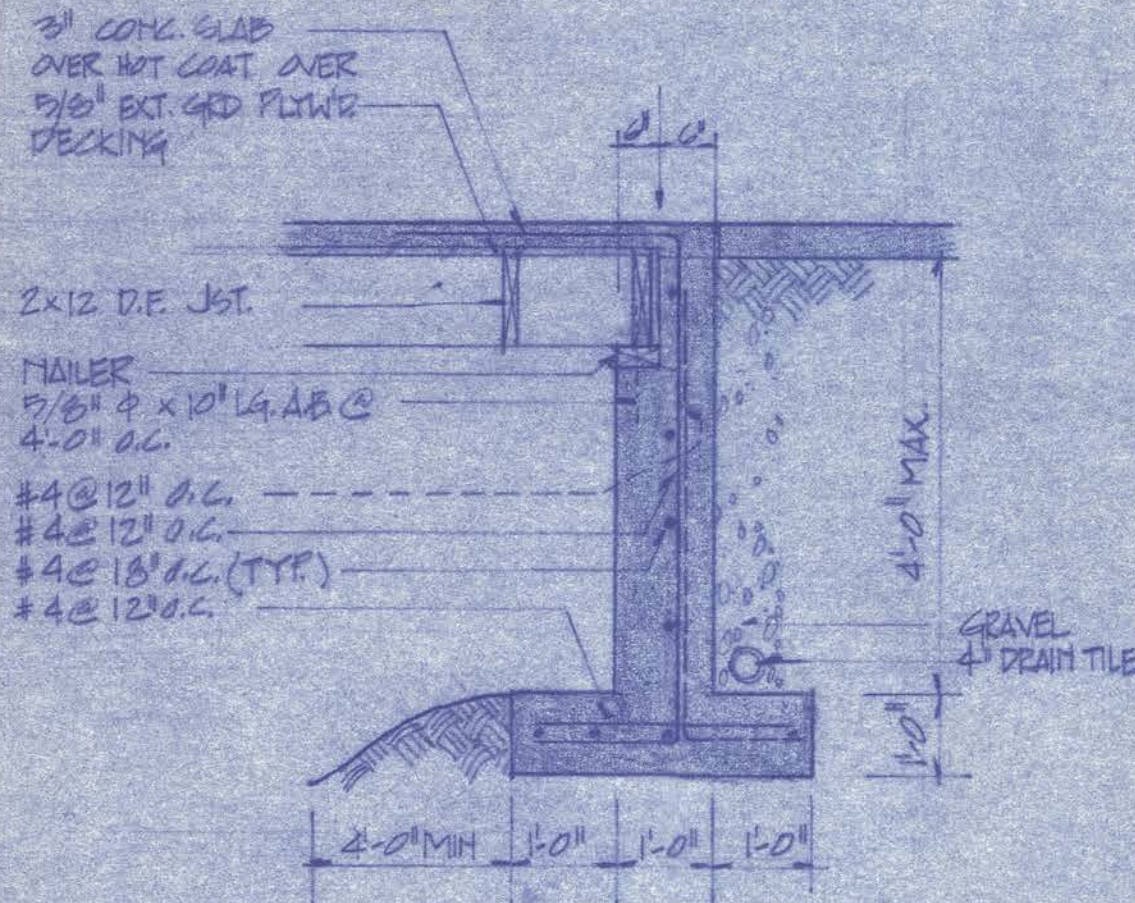
For the foregoing reasons, we respectfully urge the Town Council to continue tonight's hearing to allow sufficient time to address the legal issues identified in this letter.

Very truly yours,

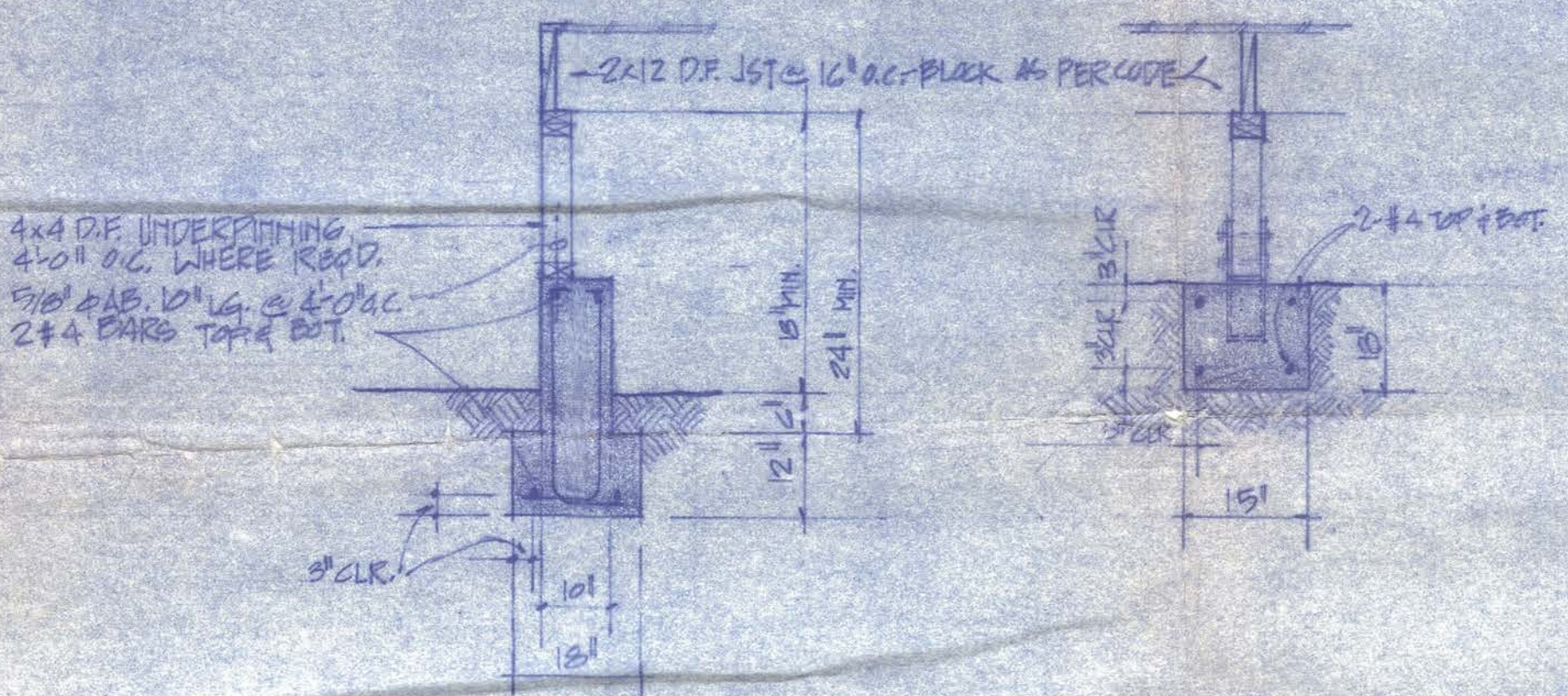
A handwritten signature in cursive script that reads "Ellis F. Raskin". The signature is written in dark ink and is positioned above the typed name.

Ellis F. Raskin  
Partner

# **EXHIBIT 1**

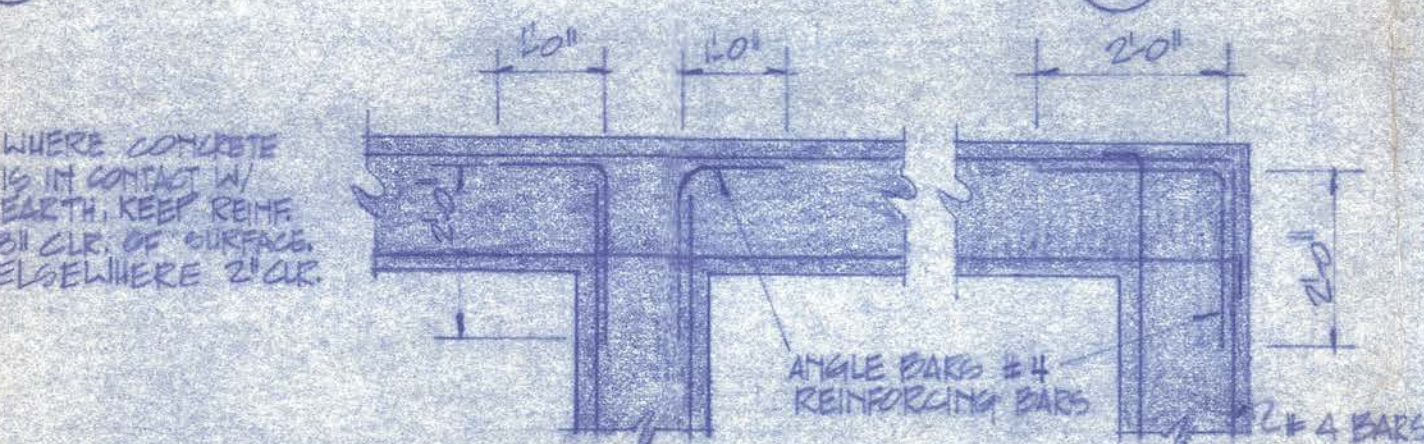


1 HEADWALL DETAIL AT GARAGE

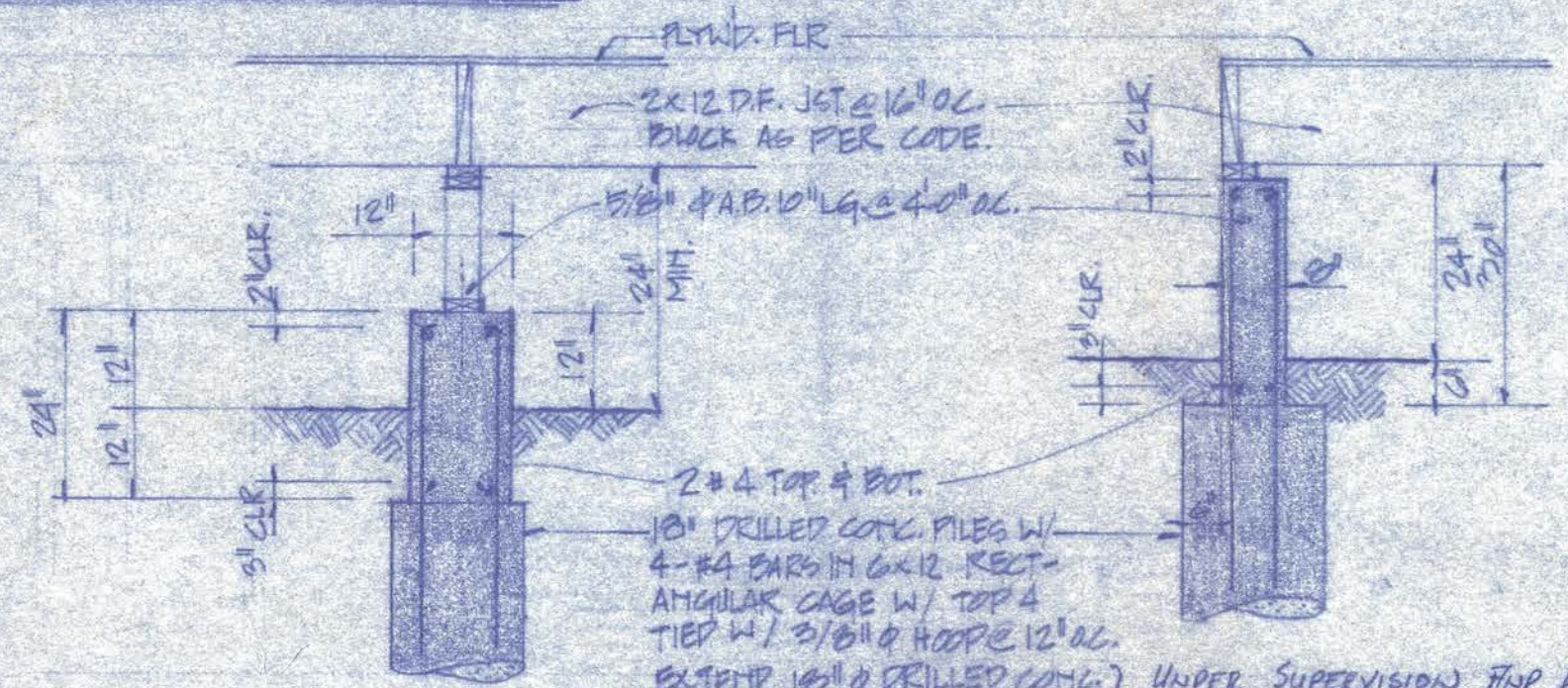


2 TYPICAL FOUNDATION WALL DETAIL

3 GRADE BEAM DETAIL

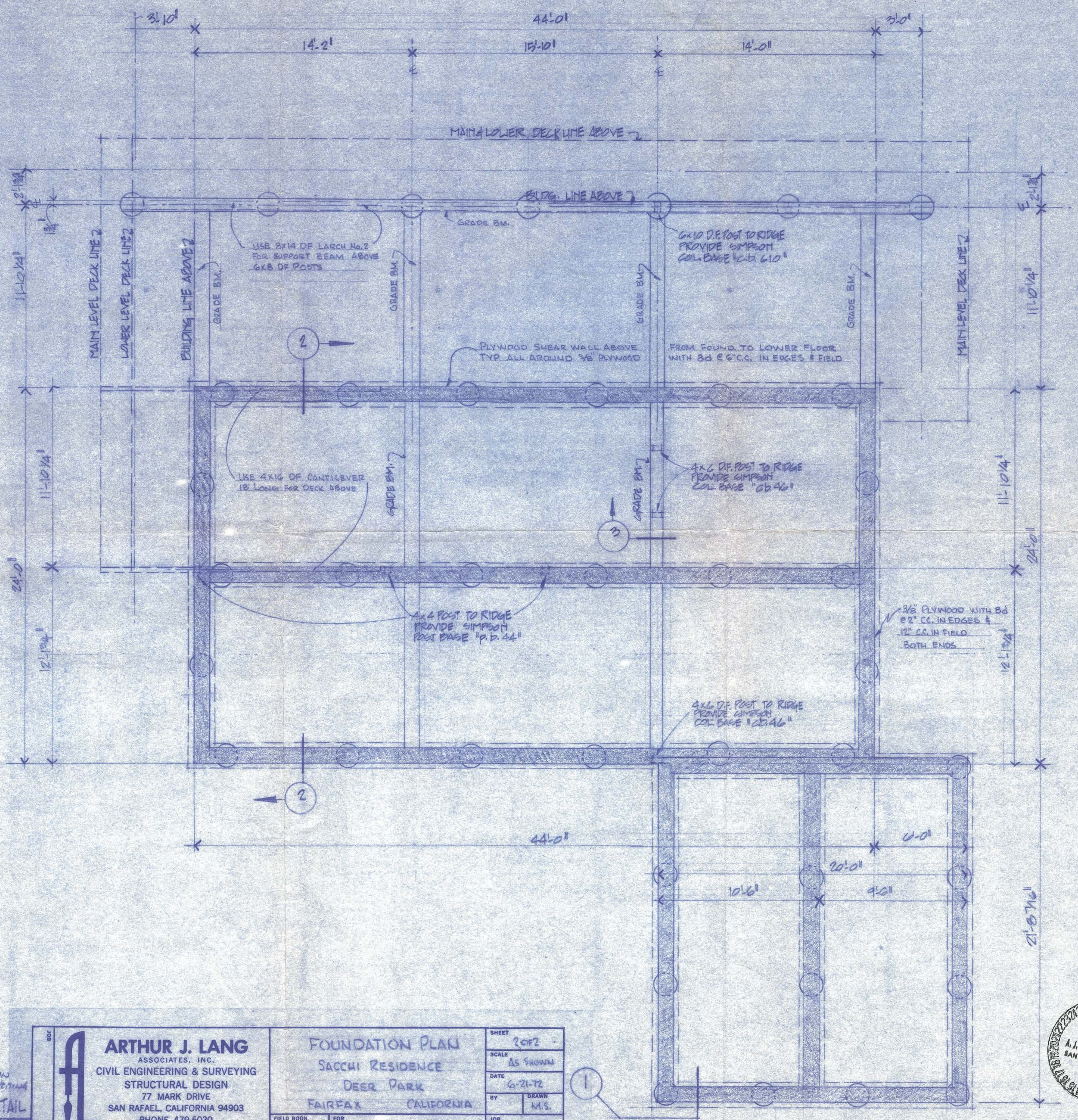


4 REINFORCING PLAN



5 ALTERNATE INTERIOR PIER DETAIL

ALTERNATE EXTERIOR PIER DETAIL



<p><b>ARTHUR J. LANG</b> ASSOCIATES, INC. CIVIL ENGINEERING &amp; SURVEYING STRUCTURAL DESIGN 77 MARK DRIVE SAN RAFAEL, CALIFORNIA 94903 PHONE 479-5020</p>	<p><b>FOUNDATION PLAN</b> SACCHI RESIDENCE DEER PARK FAIRFAX CALIFORNIA</p>		<p>SHEET 2 OF 2</p>
	<p>SCALE AS SHOWN</p>		<p>DATE 6-21-72</p>
	<p>BY M.S.</p>		<p>DRAWN M.S.</p>
	<p>FOR</p>		<p>JOB 72-2658</p>
	<p>FIELD BOOK</p>		



# **EXHIBIT 2**

# ADDITIONAL WORK AUTHORIZATION

**JOSEPH E. BARONE**  
General Building Contractor  
P. O. Box 327 Fairlee, Calif. 94636  
Phone 453-7668

OWNER'S NAME: <i>Mr. J. Crochi</i>		PHONE:	DATE:
STREET: <i>114 - 1/2 Hillside Ave</i>		JOB NAME:	JOB NUMBER:
CITY: <i>Fairlee</i>	STATE: <i>Calif</i>	STREET:	
EXISTING CONTRACT NO.:	DATE OF EXISTING CONTRACT:	CITY:	STATE:

You are hereby authorized to perform the following specifically described additional work:

*Strip to wire roller and painting and building for stone  
manufactured room below \$ 701.50*

ADDITIONAL CHARGE FOR ABOVE WORK IS: \$ 701.50

PAYMENT WILL BE MADE AS FOLLOWS: \_\_\_\_\_

ABOVE ADDITIONAL WORK TO BE PERFORMED UNDER SAME CONDITIONS AS SPECIFIED IN ORIGINAL CONTRACT UNLESS OTHERWISE STIPULATED.

Date \_\_\_\_\_ 19 \_\_\_\_ Authorizing Signature \_\_\_\_\_  
(OWNER SIGNS HERE)

WE HEREBY AGREE TO FURNISH LABOR AND MATERIALS - COMPLETE IN ACCORDANCE WITH THE ABOVE SPECIFICATIONS, AT ABOVE STATED PRICE.

Authorized Signature \_\_\_\_\_ Date 4/13/75 19 \_\_\_\_  
(CONTRACTOR SIGNS HERE)

THIS IS CHANGE ORDER NO. 1

NOTE: This Revision becomes part of, and in conformance with, the existing contract.

# **EXHIBIT 3**





# **EXHIBIT 4**

AN ORDINANCE ESTABLISHING LAND USE DISTRICTS OR ZONES; REGULATING THE USES OF LAND AND BUILDINGS; THE HEIGHTS OF BUILDINGS, THE OPEN SPACES ABOUT BUILDINGS AND SET-BACK LINES ALONG STREETS; REQUIRING PERMITS FOR CERTAIN BUILDINGS AND USES; DEFINING TERMS USED HEREIN; SPECIFYING THE PROCEDURE FOR THE AMENDMENT AND ADMINISTRATION AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ANY OF THE PROVISIONS HEREOF; REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

The City Council of the Town of Fairfax does ordain as follows:

ARTICLE I. PURPOSE.

Section 1.00 - GENERAL PURPOSE.

Pursuant to the provisions of Section 65800 of the Government Code, an official Land Use Zoning Ordinance for the Town of Fairfax is hereby adopted and established to serve the public health, safety, comfort, convenience and general welfare, and to provide the economic and social advantages resulting from an orderly planned use of land resources, and to encourage, guide and provide a definite plan for the future growth and development of the Town of Fairfax.

ARTICLE II. DEFINITIONS.

Section 2.00 - DEFINITIONS.

Unless the context requires otherwise, the following definitions shall be used in the interpretation and construction of this ordinance: Words used in the present tense include the future; the singular number shall include the plural, and the plural, the singular; the masculine includes the feminine; the word "building" shall include the word "structure"; the word "used" shall include "arranged, designed, constructed, altered, converted, rented, leased, or intended to be used"; the word "shall" is mandatory and not directory.

2.01 - ACCESSORY USE OR STRUCTURE.

A use or structure subordinate to the principal use of a building on the same lot, and serving a purpose customarily incidental to the use of the principal building.

2.02 - APARTMENT HOTEL.

A building, or portion thereof, designed for or containing both individual guest rooms, or suites of rooms, and dwelling units.

2.03 - APARTMENT HOUSE.

A building, or portion thereof, designed for, or occupied by three (3) or more families living independently of each other.

2.04 - AUTOMOBILE SERVICE STATION.

A filling station to supply fuels and lubricants to motor vehicles and to provide minor servicing and sales of motor vehicle accessories.

2.05 - BOARDING OR LODGING HOUSE.

A dwelling or part thereof where meals or lodging are provided for five (5) or more persons, not transients, for compensation in money, services, or other thing of value.

2.06 - BUILDING.

Any structure having a roof supported by columns or walls, used, or intended to be used, for the shelter or enclosure of persons, animals, or property.

2.07 - BUILDING HEIGHT.

The vertical distance from the average finished ground level of the site to the highest point of the structure.

2.08 - BUILDING SITE.

The ground area of a building, or group of buildings, together with all open spaces as required by this ordinance.

2.09 - COMMISSION.

The Planning Commission of the Town of Fairfax.

2.10 - COUNCIL.

The City Council of the Town of Fairfax.

2.11 - DWELLING.

A building, or portion thereof, designed for, or occupied for, residential purposes, including one-family, two-family, and multiple dwellings, but not including hotels, boarding or lodging houses or trailers.

2.12 - DWELLING, ONE-FAMILY.

A detached building designed for, or occupied exclusively by, one (1) family.

2.13 - DWELLING, TWO-FAMILY.

A detached building designed for, or occupied exclusively by, two (2) families living independently of each other and sometimes referred to as a "duplex".

2.14 - DWELLING, GROUP.

A combination or arrangement of dwellings on one (1) building site.

2.15 - DWELLING, MULTIPLE FAMILY.

A building, or portion thereof, designed for, or occupied by three (3) or more families living independently of each other.

2.16 - DWELLING UNIT.

One (1) or more rooms in a dwelling, apartment house, or apartment hotel designed for, or occupied by, one (1) family for living or sleeping purposes, equipped with sanitary facilities, and having not more than one (1) kitchen.

2.17 - FAMILY.

An individual, or two (2) or more persons, related by blood or marriage, or a group of not to exceed five (5) persons, excluding domestic servants, living together as a single domestic housekeeping unit in a dwelling unit.

2.18 - HOME OCCUPATION.

Any use conducted entirely within a dwelling carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and which does not change the character thereof, nor adversely affect the uses permitted in the residential district of which it is a part; which creates no additional traffic; requires no additional parking space; there is no indoor or outdoor storage of materials, equipment, or supplies other than that necessary for domestic purposes.

2.19 - LOT.

A piece or parcel of land occupied, or intended to be occupied, by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as required by this ordinance.

2.19-1 - LOT - CORNER.

A lot abutting upon two (2) or more streets at their intersection, or upon two (2) parts of the same street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five (135) degrees. The point of intersection of the street right-of-way lines is the "corner".

2.19-2 - LOT - INTERIOR.

A lot other than a corner lot.

2.19-3 - LOT DEPTH.

The mean horizontal distance between the front and the rear lot line.

2.19-4 - LOT LINES.

The property lines bounding the lot:

- (1) Lot line front. The line separating the lot from the street.
- (2) Lot line rear. The lot line opposite and most distant from the front line.
- (3) Lot line side. Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line.
- (4) Lot line street or alley. A lot line separating the lot from a street or alley.

2.19-5 - LOT WIDTH.

The mean width of the lot measured at right angles to its depth.

2.19-6 - LOT AREA.

The computed area contained within the lot lines.

2.20 - NON-CONFORMING USE.

A building, structure or premise legally existing or used at the time of the adoption of this ordinance, or any amendment thereto, and which does not conform with the use regulations of the district in which located.

2.21 - OCCUPIED.

Includes and means arranged, designed, built, altered, converted, rented, or leased, or intended to be occupied.

2.22 - PERSON.

Means any individual, firm, copartnership, joint venture, association, club, fraternal organization, corporation, syndicate, city, county, municipality, district or other political subdivision, or any other group or combination acting as a unit.

2.23 - PUBLIC UTILITY EQUIPMENT BUILDING.

A building housing electrical or mechanical equipment necessary for the conduct of a public utility business.

2.24 - EDUCATIONAL INSTITUTIONS.

An institution of learning which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California, and other educational institutions, subject to obtaining Use permit.

2.25 - SET BACK.

The minimum allowable horizontal distance from a given point or line of reference such as a street right-of-way to the nearest vertical wall or other element of a building or structure as defined herein.

2.26 - USE.

The purpose for which land or building is designed, arranged or intended, or for which either is or may be occupied or maintained.

2.27 - YARD.

An open space, other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this ordinance.

2.28 - YARD - FRONT.

An open space extending the full width of the lot between a building and the front lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this ordinance.

2.29 - YARD - REAR.

An open space extending the full width of the lot between a building and the rear lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this ordinance.

2.30 - YARD - SIDE.

An open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward except as specified elsewhere in this ordinance.

2.31 - ZONING MAP.

The map of all of the property of the Town of Fairfax kept in the office of the City Clerk as otherwise provided in this ordinance showing the district classification or zone of each parcel or lot of property in the Town of Fairfax.



2.32 - ZONING PERMIT.

A document issued by the Building Inspector of the Town of Fairfax authorizing buildings, structures or uses consistent with the terms of this ordinance and for the purpose of carrying out and enforcing its provisions.

ARTICLE III. ESTABLISHMENT OF ZONES OR DISTRICTS.

Section 3.00 - ESTABLISHMENT OF ZONES OR DISTRICTS.

In order to classify, regulate, restrict and segregate the uses of land and buildings; to regulate and restrict the height and bulk of buildings; to regulate the area of yards and other open spaces about buildings; and to regulate the percentage of a lot which may be occupied by a building or structure, six (6) classes of Land Use Zones are hereby established to be known and designated as:

- (1) R-1 or First Residential District
- (2) R-2 or Second Residential District
- (3) R-3 or Multiple Dwelling District
- (4) LC or Limited Commercial District
- (5) C or Commercial District
- (6) I or Industrial District

Section 3.01 - ZONING MAP.

The zones aforesaid and the boundaries of such zones shall be shown and designated upon a certain map to be known as the "Zoning Map", which said Zoning Map shall be kept and maintained to currently show District Classifications of all property in the Town of Fairfax and during all business hours shall be available to the general public in the office of the City Clerk of the Town of Fairfax.

**Section 3.02 - AREA OF ZONES OR DISTRICTS.**

Each of the hereinabove described zones or districts shall have included within it the area specified as being included within each zone or zones.

**3.02-1 - R-1 or First Residential District.**

There is hereby included within the R-1 or First Residential District the following property:

All property in the Town of Fairfax not included within the boundaries of any other zone or district.

**3.02-2 - R-2 or Second Residential District.**

There is hereby included within the R-2 or Second Residential District all that certain real property in the Town of Fairfax described as follows:

**PARCEL 1:**

All that certain real property shown and designated upon the Assessor's Block Books dated 1954, on file in the office of the County Assessor of the County of Marin, State of California, and more particularly designated as follows:

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
08, 09, 10, 11, 12, 13, 14, 15	2	21	211
12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22	2	21	213
All parcels	2	21	214
All parcels	2	21	215
All parcels	2	21	212
All parcels	2	20	201
All parcels	2	12	125
All parcels	2	12	126
All parcels except 13, 14, 15, 16, 17 and 33	2	12	123
03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 01, 02, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24	2	12	122
11, 12, 13, 14, 15, and 19	2	10	104
01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13	2	10	105
01, 03, 04, 05, 06, 07, 08, 09, 10, 11	2	02	023
01, 02, 03, 04, 05, 06, 07, 21, 20, 19, 18, 17, 16, 15	2	02	025
All parcels	2	02	024
All parcels	2	03	037
All parcels	2	03	035
All parcels	2	03	033
All parcels	2	03	036

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
All parcels	2	03	034
All parcels	2	04	042
All parcels	2	07	078
All parcels	2	16	061
All parcels	2	08	082
All parcels	2	09	091
All parcels	2	01	012
All parcels	1	14	141
All parcels	1	14	143
All parcels	1	14	146
All parcels	1	14	149
All parcels except 47	1	13	131
All parcels	1	13	132
All parcels	1	13	133
All parcels	1	11	113
All parcels	1	12	122
All parcels except 12	1	10	104
All parcels	1	10	105
All parcels	1	10	102
01, 02, 03, 04, 06, 07, 08	1	07	075
All parcels	1	19	191
All parcels	1	19	192
All parcels	1	19	193
All parcels	1	20	202
All parcels	1	20	203
All parcels	1	20	204
All parcels	1	23	231
All parcels	1	23	232
All parcels	1	23	234
All parcels except those parcels zoned commercial	1	22	225
All parcels except those parcels zoned commercial	1	22	223
01, 02, 03, 04, 05, 07, 08, 09, 10, 22, 23	2	04	041
06, 07, 10, 14	1	09	092
14, 15	1	09	093
All parcels	1	20	205
All parcels	1	20	201

3.02-3 - R-3 of MULTIPLE DWELLING DISTRICT.

There is hereby included within the R-3 of Multiple Dwelling District all that certain real property in the Town of Fairfax described as follows:

PARCEL 11

All that certain real property shown and designated upon the Assessor's Block Books dated 1954, on file in the office of the County Assessor of the County of Marin, State of California, and were particularly designated as follows:

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
02, 03, 04, 05, 06, 07, 08, 09	2	10	101
02, 03, 10 and 12	2	11	112
04, 05, 06, 07, 08	2	11	111
01, 02, 03, 04, 05	1	14	148
All parcels	1	14	144
02 and 01	1	25	251
01, 02, 07	1	15	150
All parcels	1	14	147

PARCEL 2:

All that certain real property in the Town of Fairfax more particularly described as follows, to-wit:

Beginning at a point North 54° 38' 30" West 679.239 feet and South 61° 18' West 100.0 feet from the most Northerly corner of the parcel of land described in the Deed from Adalbert Von Rots, et ux to Ray E. Nolan et ux, recorded July 13, 1955 in volume 955 of Official Records at page 398, Marin County Records; running thence North 61° 18' East 100.0 feet to the Southwesterly line of the parcel of land described in the deed from Adalbert Von Rots, et ux to the County of Marin, recorded October 16, 1951, in Volume \_\_\_\_\_ of Official Records, at page 221, Marin County Records; running thence along said Southwesterly line North 54° 38' 30" West 166.491 feet; thence on a curve to the right whose center bears North 35° 21' 30" East, radius 761.813 feet, for a distance of 493.843 feet; thence North 18° 27' West 150.521 feet; thence leaving said last mentioned line South 65° 17' West 365.0 feet more or less to the Northwesterly line of the County Road leading from San Rafael to Olema (old Sir Francis Drake Highway); thence Southeasterly along said Road line to a point that bears South 34° 20' West from the point of beginning; thence North 34° 20' East 150.0 feet more or less to the point of beginning.

PARCEL 3:

All that certain real property in the Town of Fairfax more particularly described as follows, to-wit:

Beginning at the Northeast corner of the lands conveyed by Robert W. Bogh and Virginia S. Lober to the Fairfax School District by deed recorded August 6, 1941 in Liber 694 of Official records at page 415, Marin County Records; running thence from said point of beginning along the south easterly line of said school district parcel South 92° 11' West 142 feet; thence leaving said line south 57° 49' East 295 feet; thence North 32° 11' East 232 feet; thence North 57° 49' West 47 feet; thence North 32° 11' East 145 feet; thence North 57° 49' West 326.55 feet; and South 43° 52' West 239.97 feet to a point in the Northeastly line of the aforesaid School District Parcel; running thence along said line South 57° 49' East 167.15 feet to the point of beginning.

3.02-4 - LC or LIMITED COMMERCIAL DISTRICT.

There is hereby included within the LC or Limited Commercial District all that certain real property in the Town of Fairfax described as follows:

All that certain real property shown and designated upon the Assessor's Block Books dated 1954, on file in the office of the County Assessor of the County of Marin, State of California, and more particularly designated as follows:

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
18	2	04	041
47	1	13	131
12	1	10	104

3.02-5 - C or COMMERCIAL DISTRICT

There is hereby included within the C or Commercial District all that certain real property in the Town of Fairfax described as follows:

All that certain real property shown and designated upon the Assessor's Block Books dated 1954, on file in the office of the County Assessor of the County of Marin, State of California, and more particularly designated as follows:

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
All parcels	3	12	124
08, 09, 10	1	23	235
48, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and Lots 164, 165, 166, 167, 168, 169 and 170 of Parcel 02	1	23	233
36, 35, 34, 33 and 32	1	22	226
19, 18, 11, 10, 09	1	22	225
12	1	22	221
05, 04, 10, 11, 12, 13, and 08	1	18	183
01	1	18	181
01 and 02	1	18	182
07	2	11	113
01, 02, 03, 04, 05, 06, 07, 20, 09, 10, 11, 12, 13, 14, 15, 16, 17	2	11	118
01	2	11	116

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
13	2	10	101
14, 03, 04, 05, 06, 07, 08 and 10	2	10	104
12, 13, 14, 15, 16, 27, 28, 29, 29, 29 and 29	2	03	023
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 37 and 01	2	12	122
01, 02, 03, 04, 05, 06, 07, 10, 10, 11 and 19	2	12	121
01 and 02	2	13	131
01, 02, 03, 04, 05, 06 and 07	2	21	211
23, 03, 04, 05, 06, 07, 08, 09, 10 and 11	2	21	213
16	1	27	271

3.02-6 I OF INDUSTRIAL DISTRICT

There is hereby included within the I or Industrial all that certain real property in the Town of Fairfax, described as follows:

All that certain real property shown and designated upon the Assessor's Block Books dated 1954, on file in the office of the County Assessor of the County of Marin, State of California, and more particularly designated as follows:

<u>Parcel</u>	<u>Book</u>	<u>Page</u>	<u>Block</u>
06, 10 and 11	1	14	148

ARTICLE IV. USES PERMITTED AND REGULATIONS IN ZONES

Section 4.00 - USES PERMITTED AND REGULATIONS IN ZONES.

All real property in the Town of Fairfax shall be used only as provided for in this Ordinance, and all owners of property shall observe all regulations prescribed for the District or Zone in which property is located.

4.01 - EXCEPT AS HEREINAFTER OTHERWISE PROVIDED:

4.01-1 - No building or part thereof, or other structure, shall be erected, and no existing building shall be moved, altered, added to or enlarged, nor shall any land, building, structure or premises be used, designated, or intended to be used for any purpose, or in a manner, other than is included among the uses hereinafter listed as permitted in the district in which said building, land, or premises is located.

4.01-2 - No building or part thereof or structure shall be erected, and no existing building shall be moved, altered, reconstructed or structurally changed to exceed in height the limit hereinafter designated for the district in which said building is located.

4.01-3 - No building or part thereof or structure shall be erected, or shall any existing building be moved, altered, enlarged, or rebuilt, nor shall any open space be encroached upon or reduced in any manner except in conformity to the yard, building site area, and building location regulations hereinafter designated for the district in which said building or open space is located.

4.01-4 - No yard or other open space provided about any building for the purpose of complying with the provisions of this ordinance shall be considered as providing a yard or open space for any other building, and no yard or other open space on one building site shall be considered as providing a yard or open space for a building on any other building site.

ARTICLE V. - PERMITTED USES AND REGULATIONS FOR  
R-1 OR FIRST RESIDENTIAL DISTRICT.

Section 5.00 - The hereinafter stated uses and regulations set forth in Article V shall apply to all property in the R-1 or First Residential District.

5.01 - PRINCIPAL PERMITTED USES.

5.01-1 - SINGLE FAMILY DETACHED DWELLINGS.

5.20 - ACCESSORY USES.

5.21 - Guest houses not containing cooking facilities, and not rented or otherwise conducted as a business.

5.22 - Home occupations and professional offices, including the following:

Dressmaking, millinery, small handcraft and art work, office of a musician, tutor, writer, artist, architect, physician, dentist, attorney, insurance agent or broker, licensed contractor.

5.23 - Private garages and parking spaces.

5.24 - Private swimming pools exclusively for use of residents and guests.

5.25 - Small announcement or professional signs subject to the provisions of Section 11.31.

5.26 - Cabanas, greenhouses, patios, lath houses, trellises, play houses, barbecue pits, fences, walkways and hedges.

5.30 - CONDITIONAL USES

5.31 - Agricultural uses, including crop and tree farming and viticulture, but not including the raising of animals or fowl for commercial purposes, or the sale of any products on the premises.



5.32 - Public and quasi-public buildings and uses of an education, religious, cultural, or public service type, not including corporation yards, storage or repair yards, warehouses or similar uses.

5.33 - Temporary tract offices and tract signs.

5.34 - Public and private non-commercial recreation areas and facilities, such as country clubs, golf courses and swimming pools.

5.35 - Private stables and corrals.

5.36 - Public utility equipment buildings.

5.37 - Other uses and buildings customarily appurtenant to a permitted use, subject to requirements of Section 14.50.

5.38 - Living quarters of persons regularly employed on the premises.

5.39 - Other activities which are determined by the Planning Commission to be of the same general character.

5.40 - HEIGHT REGULATIONS.

No building shall exceed thirty (30) feet in height, and no accessory building shall exceed twenty (20) feet in height, provided, however, that chimneys or spires may be permitted to exceed said height limitation upon granting of a use permit by Commission. "Height", as used herein, shall refer to the mean height of the building.

5.50 - AREA, LOT WIDTH AND YARD REQUIREMENTS.

Lot area, lot width, and yard requirements shall conform to the provisions of Section 11.20.

5.60 - FIRE PROTECTION.

No building or structure shall be erected in the R-1 District, and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection. The plans for such fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

5.70 - OTHER REQUIRED CONDITIONS.

5.71 - Side plan and architectural approval are required of all conditional uses as provided in Section 14.50.

5.72 - Off street parking required for all uses - as provided in Section 11.40 and 11.41.

5.73 - All regulations required in R-1 Districts shall apply to R-1 uses in any District.

ARTICLE VI - PERMITTED USES AND REGULATIONS FOR R-2 OR SECOND RESIDENTIAL DISTRICT.

Section 6.00 -

All of the property in R-2 or Second Residential District may be used for any of the purposes specified in ARTICLE V of this Ordinance, and in addition thereto, all of the hereinafter stated uses and regulations set forth in ARTICLE VI shall apply to all property in the R-2 or Second Residential District.

6.01 - PRINCIPAL PERMITTED USES

6.01-1 - Two family dwellings

6.01-2 - Boarding or lodging house not to exceed six guests.

**6.20 - ACCESSORY USES**

Same as Section 5.20.

**6.30 - CONDITIONAL USES**

Same as Section 5.30.

**6.40 - HEIGHT REGULATIONS**

Same as Section 5.40.

**6.50 - AREA, LOT WIDTH AND YARD REQUIREMENTS.**

Lot area, lot width, and yard requirements shall conform to the provisions of Section 11.20.

**6.60 - FIRE PROTECTION.**

No building or structure shall be erected in the R-2 District, and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection. The plans for such fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

**6.70 - OTHER REQUIRED CONDITION**

All regulations required in R-2 Districts shall apply to R-2 uses in any District.

ARTICLE VII - PERMITTED USES AND REGULATIONS FOR  
R-3 OR MULTIPLE DWELLING DISTRICT.

Section 7.00 -

All of the property in R-3 or Multiple Dwelling District may be used for any of the purposes specified in Articles V and VI of this Ordinance, and, in addition thereto, all of the hereinafter stated uses and regulations set forth in Article VII shall apply to all property in the R-3 or Multiple Dwelling District.

7.01 - PRINCIPAL PERMITTED USES

7.01-1 - Multiple Dwellings

7.01-2 - Nurseries, truck gardens, greenhouses, but not including any sales room or other buildings used for the sale of products grown thereon.

7.01-3 - Professional office buildings.

7.20 - ACCESSORY USES

Same as Section 5.20.

7.30 - CONDITIONAL USES

Same as Section 5.30.

7.40 - HEIGHT REGULATIONS

No building shall exceed thirty-four (34) feet in height, and no accessory building shall exceed twenty (20) feet in height, provided however that chimneys or spires may be permitted to exceed said height limitation upon granting of a use permit by Commission.

7.50 - AREA, LOT WIDTH AND YARD REQUIREMENTS

Lot area, lot width, and yard requirements shall conform to the provisions of Section 11.20.

**7.60 - FIRE PROTECTION**

No building or structure shall be erected in the R-3 District and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection, the plans for which fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

**7.70 -**

All regulations required in R-3 District shall apply to R-3 uses in any District.

**ARTICLE VIII - PERMITTED USES AND REGULATIONS FOR L-C OR LIMITED COMMERCIAL DISTRICT.**

**Section 8.00 -**

All of the property in L-C or Limited Commercial District may be used for any of the purposes specified in Articles V and VI of this Ordinance, and in addition thereto, all of the hereinafter stated uses and regulations set forth in Article VIII shall apply to all property in the L-C or Limited Commercial District.

**8.01 - PRINCIPAL PERMITTED USES**

8.01-1 - Restaurants

**8.20 - ACCESSORY USES**

Same as Section 5.20.

**8.30 - CONDITIONAL USES**

Same as Section 5.30.

**8.40 - HEIGHT REGULATIONS**

No building shall exceed thirty-four (34) feet in height, and no accessory building shall exceed twenty (20) feet in height, provided however that chimneys or spires may be permitted to exceed said height limitation upon granting of a use permit by Commission.

**8.50 - FIRE PROTECTION**

No building or structure shall be erected in the L-C District and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection, the plans for which fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

**8.60 - OTHER REQUIRED CONDITIONS**

Curbs, gutters and sidewalks must be installed if none are already provided.

8.70 - All regulations required in L-C or Limited Commercial Districts shall apply on limited commercial uses in any District.

**ARTICLE IX - PERMITTED USES AND REGULATIONS  
FOR C OR COMMERCIAL DISTRICT.**

**Section 9.00 -**

All of the property in C or Commercial District may be used for any of the purposes specified in ARTICLES VII and VIII of this Ordinance, and, in addition thereto, all of the hereinafter stated uses and regulations set forth in ARTICLE IX shall apply to all property in the C or Commercial District.

9.01 - PRINCIPAL PERMITTED USES

- 9.01-1 - All wholesale and retail sales of personal property businesses.
- 9.01-2 - All service shops.
- 9.01-3 - Hotels and motels.
- 9.01-4 - Hospitals, sanitariums and rest homes.
- 9.01-5 - Outdoor advertising structures or signs pertaining to businesses on premises only as provided for in Section 11.30.
- 9.01-6 - Licensed professional activities.
- 9.01-7 - Commercial recreational facilities.
- 9.01-8 - Office buildings, including public utility equipment buildings.
- 9.01-9 - Business schools.

9.20 - ACCESSORY USES

- 9.20-1 - Storage facilities.

9.30 - CONDITIONAL USES

- 9.30-1 - Public garages, auto repair shops, and automobile service stations.
- 9.30-2 - Light manufacturing incidental to any permitted use on premises.
- 9.30-3 - All uses permitted under ARTICLES V AND VI hereinabove set forth.
- 9.30-4 - Drive-in businesses.
- 9.30-5 - Public utility service yards and buildings located thereon.

9.40 - All regulations required in C or Commercial Districts shall apply on commercial uses in any District.

9.50 - OTHER REQUIRED CONDITIONS

Curbs, gutters and sidewalks must be installed if none are already provided.

9.60 - FIRE PROTECTION

No building or structure shall be erected in the C or Commercial District and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection, the plans for which fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

ARTICLE X - PERMITTED USES AND REGULATIONS FOR I OR INDUSTRIAL DISTRICT.

Section 10.00 -

All of the property in I or Industrial District may be used for any of the purposes specified in Sections 9.01 to and including 9.30-5 of ARTICLE IX of this Ordinance, and, in addition thereto, all of the hereinafter stated uses and regulations set forth in this ARTICLE X shall apply to all property in the I or Industrial District.

10.01 - PRINCIPAL PERMITTED USES

10.01-1-Planing Mill

10.01-2 - Lumber Yard

10.20 - ACCESSORY USES

10.01-1 - Storage facilities



**10.30 - CONDITIONAL USES**

10.30-1 - Public garages, auto repair shops, and automobile service stations.

10.30-2 - Light manufacturing incidental to any permitted use on premises.

10.30-3 - All uses permitted under ARTICLES V, VI and VII hereinabove set forth.

**10.40 OTHER REQUIRED CONDITIONS**

Curbs, gutters and sidewalks must be installed if none are already provided.

**10.50 - FIRE PROTECTION**

No building or structure shall be erected in the Industrial District and no permit therefor shall be issued, until the owner of said property has provided for adequate water supply for fire protection, the plans for which fire protection must be approved by the Chief of the Fire Department of the Town of Fairfax.

**ARTICLE XI - MULTIPLE DISTRICT REGULATIONS**

**Section 11.00 - TOTAL BUILDING COVERAGE**

In Districts R-1, R-2 and R-3, no permit shall be granted for the erection or construction of any building or structure where the total area of all existing or proposed buildings, structures or accessory uses exceed sixty (60) percent of the total lot area, save and except that a swimming pool shall not be computed as a part of said percentage.

#### 11.10 - SET BACK LINES

Save and except as provided in this Ordinance, no structure or building shall be placed in any yard area between the lot line and the set-back line herein established. In Zones R-1, R-2 and R-3, set-back lines are established as follows:

- (1) Front yard set-back: 10 feet
- (2) Rear yard set-back: 10 feet, except accessory uses under Sections 5.25 and 5.26; minimum 5 feet to vertical wall, no part of structure less than 3 feet.
- (3) Side yard set-back: 5 feet, provided, however, that if a lot shall be of an average width less than 50 feet, then the set-back line shall be 10 percent (10%) of said average width, but in no event less than 3 feet.
- (4) On all corner lots, all street frontage of any said corner lot shall have a yard set-back of 10 feet.

#### 11.15 -

In the Commercial, Limited Commercial, or Industrial Districts there shall be a minimum front yard set-back of seven (7) feet, for sidewalks if no sidewalk is provided for in public right-of-way.

#### 11.20 - MINIMUM RESIDENTIAL LOT REQUIREMENTS

- (1) No lot may be used in the R-1 District unless the same shall have 5000 square feet.
- (2) No lot shall be used in the R-2 District unless the same shall have 6000 square feet.
- (3) No lot shall be used in the R-3 District unless the same shall have 6000 square feet, or 1500 square feet for each unit to be built, whichever is greater.

11.30 - OUTDOOR ADVERTISING

No outdoor advertising signs or structures, commonly referred to as "signs", shall be used or permitted in the Town of Fairfax save and except under circumstances permitted by City Ordinance.

11.40 - PARKING SPACE REQUIREMENTS

Every building hereafter erected, reconstructed or structurally altered, shall be provided with the minimum parking space and facilities hereinafter required, which parking space shall be continuously available and maintained, with access suitable for vehicles to and from a public street or alley; in no event shall a parking space be less than 8 feet by 20 feet in dimensions.

11.41 -

The number of off-street parking spaces required for different uses shall be not less than as follows:

<u>USE</u>	<u>PARKING SPACE REQUIRED</u>
1. Single family dwelling	Two
2. Two-family dwelling	Four
3. Multiple dwelling	Two for each family unit up to and including eight units; one and one-half (1½) parking spaces for each family unit over eight.
4. Boarding or lodging house	Two, plus one for each room rented.
5. Commercial enterprises, including Industrial and Limited Commercial activities, schools, club houses, Churches, school auditoriums, theaters, buildings of public assembly.	Parking areas shall not be less than three (3) parking spaces for the first 500 square feet and one (1) space for every additional 500 square feet, or fraction thereof, of gross floor area in any said Commercial enterprise. One (1) parking space for every 10 seats in a school auditorium, club house, church, theater, or buildings of public assembly.

11.50 - FENCES, WALLS, HEDGES, AND BULKHEADS

A fence, wall, hedge or bulkhead, maintained so as not to exceed six (6) feet in height, may be located along side and rear lot lines, provided that fences, walls, hedges or bulkheads may be maintained at higher heights only after obtaining a Conditional Use Permit from the Commission.

11.60 - ALL BUSINESSES MUST BE CONDUCTED FROM BUILDINGS.

No business shall be conducted upon any premises in the Town of Fairfax, save and except from a building with four walls and a roof constructed under the provisions of the Building Code of the Town of Fairfax, provided, however, that the businesses conducted outside may be operated after first obtaining a Conditional Use Permit from the Commission, as provided in Section 14.50.

ARTICLE XII - GENERAL PROVISIONS

Section 12.00 - CONTINUING EXISTING USES

Except as hereinafter specified, any use, building, or structure, existing at the time of the enactment of this Ordinance may be continued, even though such use, building or structure may not conform with the provisions of this Ordinance for the District in which it is located; provided, however that this section does not apply to any use, building, or structure established in violation of any zoning ordinance previously in effect in Fairfax unless said use, building, or structure now conforms with this Ordinance.

**12.20 - CONDITIONAL USES**

Any use existing on the effective date of this Ordinance which is listed as a conditional use in the District where it is located, shall be and remain a non-conforming use until a conditional use permit is obtained as provided in this Ordinance.

**12.24 - NON-CONFORMING USE OF BUILDINGS**

No existing building or premise devoted to a use not permitted by this Ordinance in the District in which said building or premise is located, except when required to do so by law or order, shall be enlarged, extended, or reconstructed, substituted or structurally altered unless the use thereof is changed to a use permitted in the District in which said building or premise is located, except as follows:

**12.31 - SUBSTITUTION OR EXTENSION**

- 12.31-1 - When authorized by the Commission in accordance with the provisions of Section 14.50, the substitution for a non-conforming use of another non-conforming use or an extension of a non-conforming use may be made.
- 12.31-2 - Whenever a non-conforming use has been changed to a conforming use, such use shall not thereafter be changed to a non-conforming use.
- 12.31-3 - When authorized by the Commission in accordance with the provisions of Section 14.50, an enlargement or completion of a building devoted to a non-conforming use upon a lot occupied by such building where such extension is necessary and incidental to the existing use of such building, may be made.

12.31-4 - When authorized by the Commission, in accordance with the provisions of Section 14.50, a non-conforming use may be extended throughout those parts of the building which were manifestly designed or arranged for such use prior to the date when such use of such building became non-conforming, if no structural alterations, except those required by law, are made therein.

12.32 - CESSATION OF USE OF BUILDING DESIGNED FOR NON-CONFORMING USE.

No building or structure which was originally designed for a non-conforming use, where such use has ceased twelve (12) months or more, shall again be put to a non-conforming use.

12.33 - CESSATION OF USE OF BUILDING NOT DESIGNED FOR NON-CONFORMING USE.

No building or structure which was not originally designed as a non-conforming use, which such non-conforming use has ceased for six (6) months or more shall again be put to a non-conforming use.

12.34 - CESSATION OF USE OF NON-CONFORMING USE OF LAND

No non-conforming use of land not involving any building or structure except minor structures such as fences, signs, and buildings less than 400 feet square in area, where such use has ceased for ninety (90) days or more, shall again be put to a non-conforming use.

12.35 - CONSTRUCTION APPROVED PRIOR TO ORDINANCE

Nothing herein contained shall require any change in the overall layout plans, construction, size or designated use of any development, building structure or part thereof where the official approvals and required building permits have been granted prior to the enactment of this ordinance,

or any amendment thereof, the construction of which, conforming with such plans, shall have been started prior to the effective date of this Ordinance and completion thereof carried on in normal manner within the subsequent six (6) months' period, and not discontinued until completion for reasons beyond the builder's control.

12.36 - UNSAFE BUILDING REPAIR

Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition of any part of any building for structure declared unsafe by proper authority.

12.37 - REPLACEMENT OF DAMAGED OR DESTROYED NON-CONFORMING USES

Any non-conforming building or structure damaged more than sixty (60%) percent of its then appraised value for tax purposes, exclusive of the foundation at the time of damage by fire, flood, explosion, wind, earthquake, war, riot, or other calamity or act of God shall not be restored or reconstructed and used as before such happening; but if less than sixty percent damaged above the foundation, it may be restored, reconstructed, or used as before, provided it be substantially completed within six (6) months of such happening.

12.38 - REPAIRS TO NON-CONFORMING USES, LIMITATIONS

Such repairs and maintenance work as required to keep it in sound condition may be made to a non-conforming building or structure, providing no structural alterations shall be made except such as required by law or ordinance

or authorization by the Commission. Except as otherwise provided elsewhere in this Ordinance, the total structural repairs and alterations that may be made in a non-conforming building or structure shall not, during its life subsequent to the date of it becoming a non-conforming use, exceed fifty percent (50%) of its then market value as appraised for tax purpose at such time, unless such building or structure is changed to a conforming use.

#### ARTICLE XIII - EXCEPTIONS AND MODIFICATIONS

##### Section 13.00 -

The requirements and regulations specified hereinbefore in this Ordinance shall be subject to the following modifications and interpretation:

##### 13.01 - PUBLIC UTILITIES

Public utility distribution and transmission lines, both overhead and underground, shall be permitted in all districts without limitation as to height and without the necessity of first obtaining Use, Conditional Zoning, or Building Permits, provided, however, that the routes of proposed electric transmission lines shall be submitted to the Planning Commission for recommendation prior to acquisition of rights of way therefor.



13.02 - EXISTING LOTS OF RECORD

In any district where single family dwellings are permitted, a one-family detached building may be erected on any lot irrespective of its area or width where each and all of the following conditions and circumstances are present:

- (1) Said lot was of official record in the office of the County Recorder of the County of Marin at the effective date of this ordinance and Ordinance No. 102 of the Town of Fairfax.
- (2) That the owner of said lot does not own any contiguous property.

All property under one ownership shall be considered to be one lot or parcel regardless of recorded lots.

While any owner may transfer any lot which meets all of the foregoing conditions and circumstances at the effective date of this ordinance, it shall be unlawful for any person to transfer a portion of his property where the grantee in such transfer receives a lot of less size than provided for in this ordinance.

### 13.03 - HEIGHT LIMITS

Height limitations stipulated elsewhere in this Ordinance shall not apply:

To church spires, chimneys, belfries, cupolas, domes, monuments, water towers, fire and hose towers, observation towers, distribution and transmission towers, lines and poles, windmills, smokestacks, flag poles, radio towers, masts and aeriels, ventilators, air conditioning equipment, elevator houses, and parapets.

### 13.04 - YARD EXCEPTIONS AND MODIFICATIONS

Where topography of lot or character of neighborhood makes front or rear requirements difficult, impracticable or impossible, variance may be granted by the Commission.

### 13.05 - PROJECTION INTO REQUIRED YARDS

Certain architectural features may project into required yards or courts as follows:

- (a) Cornices, canopies, or eaves may project a distance not exceeding 2 feet;
- (b) Bay windows, balconies, decks and chimneys may project a distance not exceeding 2 feet;

provided, however, that any such projection shall not come closer than three (3) feet to the property line.

13.06 - Fences, walls and hedges may be located in required yards as follows:

- (a) If not exceeding at any point four feet in height above the elevation of the surface of the ground at such point, they may be located in any yard or court.
- (b) If not exceeding at any point six (6) feet in height above the elevation of the surface of the ground at such point, they may be located at any point to the rear of the front set-back line.

ARTICLE XIV - ADMINISTRATIVE PROCEDURES AND  
REQUIRED PERMITS

Section 14.00 - ZONING PERMITS

The purpose of a Zoning Permit is to determine compliance with the provisions of this Ordinance. No owner shall use, or permit the use of, any land, structure or building, or part thereof, hereafter created, erected, changed, converted, or enlarged wholly or partly, until a zoning permit has been issued by the Building Inspector; provided, however, that no zoning permit shall be required for the growing of field, garden or tree crops.

14.01 - Land or buildings may be occupied and used only for the use for which the zoning permit is issued. Said zoning permit shall be displayed on site.

14.02 - It shall be the duty of the Building Inspector to issue a building permit, provided he is satisfied that the structure, building or premises, and proposed use thereof, conform with all the requirements of this Ordinance and that all other reviews and actions, if any, called for in this Ordinance have been complied with and all necessary approvals secured therefor.

14.03 - In any case where zoning permit has not been used within six months after the date of granting thereof, then without further action the permit granted shall be null and void.

#### 14.50 - CONDITIONAL ZONING PERMITS

The purpose of the Conditional Zoning Permit is to allow the proper integration into Fairfax of uses which may be suitable only in certain locations in the City, or zoning district, or only if such uses are designed or laid out on the site in a particular manner. In addition to the zoning permit required by Section 14.00 of this Ordinance, a Conditional Zoning Permit shall be required for all uses listed as Conditional Uses in the District regulations. In considering an application for a conditional use the Commission shall give due regard to the nature and condition of all the adjacent uses and structures. The Commission may deny an application for conditional use; in authorizing a conditional use the Commission may impose such requirements and conditions with respect to location, construction, maintenance, and operation in addition to those expressly stipulated in the Ordinance for the particular use, as said Commission may deem necessary for the protection of adjacent property and the public interest. Verified application for conditional zoning permit, revocable, conditional, or valid for a term, may be issued by the Commission for any of the uses or purposes for which such permits are required or permitted by the terms of this Ordinance. Granting of a conditional zoning permit does not exempt applicant from complying with the requirements of the Building Codes or other ordinances.

#### 14.51 - APPLICATION.

A verified application for a conditional zoning permit shall be made by the property owner or his agent on a form prescribed by the Commission and the fee for filing said application shall be in the sum of THREE

DOLLARS \$3.00), no part of which shall be refundable. The application shall be accompanied by drawings required by the Building Code, and, in addition, by a plot plan showing the lot lines and dimensions and location of the improvements with dimensions and other data necessary to show that yard requirements and all other provisions of this Ordinance are fulfilled.

14.52 - No public hearing need be held, provided, however, that a public hearing may be held by the Commission when the Planning Commission shall deem such hearing to be necessary in the public interest.

14.53 - Any such hearing shall be held not more than thirty (30) days from date of application.

14.54 - Should the Commission be satisfied that the proposed structure used conforms to the requirements in the terms of the Ordinance; that any additional conditions stipulated by the Commission deemed necessary to the public interest have been met; that such use will not under the circumstances of the particular case constitute a nuisance or be detrimental to the public welfare of the community, the Commission shall issue a conditional zoning permit therefor.

14.55 - Following the issuance of a conditional zoning permit by the Commission, the Building Inspector shall issue a zoning permit and shall determine that development is undertaken and completed in compliance with said permit.

14.56 - In any case where a conditional zoning permit has not been used within six months after date of granting

thereof, then without further action, the permit shall be null and void.

#### ARTICLE XV - VARIANCES

##### Section 15.00 -

The purpose of the variance is to allow variation from the strict application of the term of this Ordinance where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific piece of property on the effective date of this Ordinance, or by reason of exceptional topographic conditions or other extraordinary situations or conditions of such piece of property, or of the use or development of the property immediately adjoining the piece of property in question, the literal enforcement of the requirements of this Ordinance would involve practical difficulties or would cause undue hardship unnecessary to carry out the spirit and purpose of this Ordinance. In no case shall a variance be granted to permit a use other than a use permitted in any District.

##### 15.01 - APPLICATION

Verified application shall be made by the property owner to the Commission on a form prescribed by the Commission and a fee of \$3.00 shall be charged for the filing thereof, no part of which shall be refundable.

15.02 - ACCOMPANYING MAPS AND DRAWINGS REQUIRED. Maps and drawings required to demonstrate that conditions set forth in Section 15.00 apply to subject property, together with any other data required.

15.03 - HEARING

No public hearing need be held, provided, however, that a hearing may be held when the Commission shall deem such hearing to be necessary in the public interest.

15.04 - TIME OF HEARING

Any such hearing shall be held not more than thirty (30) days from date of application.

15.05 - WHEN VARIANCE GRANTED

The Commission shall grant a variance only when the following conditions are found:

15.06 - When such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and the same vicinity.

15.07 - That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purpose of this Ordinance, or the public interest.

15.08 - No grant of a variance shall be authorized unless the Commission specifically finds that the conditions or situation of the specific piece of property, or the intended use of said property, for such variances as sought, or one or the other in combination, is not so general or recurrent a nature as to make reasonably practicable the formulation of general regulation for such condition or situation.

15.09 - The Commission shall act upon any application within forty-five (45) days and may approve said variance or may grant said variance subject to specific conditions. The Commission shall notify the applicant forthwith of the action taken.

15.10 - Following the issuance of a variance by the Commission, the Building Inspector shall issue a zoning permit as provided in Section 14.00 of this Ordinance.

15.11 - Unless specified otherwise at the time the variance is granted, the variance applies to subject property for an indefinite time and is transferable to any future owner of subject property.

#### ARTICLE XVI - APPEALS

##### Section 16. 00 -

The purpose of appeal procedure is to provide recourse in case it is alleged that there is error in any order, requirement, permit, decision or determination made by an administrative official, advisory body or Commission in the administration or enforcement of this Ordinance.

16.01 - Any person aggrieved by the action of an administrative official, advisory body or the Commission, in the administration or enforcement of this Ordinance may make verified application to the City Clerk in the manner prescribed by the City Council within ten (10) days of action that is appealed to the City Council.



16.02 - The application shall stay all proceedings and furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify that a stay would, in his opinion, cause imminent peril to life and property.

16.03 - Notice of the time, place and purpose of the hearing shall be given to the applicant and as may be specifically required by any other Section of this Ordinance.

16.04 - A full record in writing shall be submitted by the officer or body whose action is appealed, setting forth the reasons for action taken.

16.05 - A council may within the terms of this Ordinance affirm, reverse, or modify the action appealed as it deems just and equitable and exercise all rights of any other officer or Commission.

16.06 - Action of the City Council may be reviewed by courts having jurisdiction.

ARTICLE XVII - REVOCATION AND MODIFICATION  
OF PERMITS AND VARIANCES

Section 17.00 - AUTHORITY TO REVOKE OR MODIFY

The Commission may revoke or modify any zoning permit, conditional zoning permit, other permit, or variance, on any one or more of the grounds hereinafter named, after a hearing held and conducted as provided in ARTICLE XIX.

17.01 - GROUNDS FOR REVOCATION

A. The grounds for such revocation shall be any of the following:

- (1) That approval was obtained by means of fraud or misrepresentation of a material fact;
- (2) That the permittee or holder of the variance has failed to undertake the use in question for an unreasonable period of time;
- (3) That the use in question has ceased to exist; or has been suspended for one (1) year or more;
- (4) That there is or has been a violation of or failure to observe the terms or conditions of the permit or variance, or the use has been conducted in violation of the provisions of this ordinance, or any other ordinance, law or regulation;
- (5) That the use to which the permit or variance applies has been conducted in a manner detrimental to the public safety, health and welfare, or so as to be a nuisance.

17.02 - GROUNDS FOR MODIFICATION

A. The grounds for modification shall be any of the following:

- (1) That the grounds which would otherwise justify a revocation of the permit or variance can be corrected or cured by a modification imposing new or additional conditions;
- (2) That improvement of methods or technological advances permit conduct of the use with adequate safeguards under the proposed modification;

(3) That one or more of the original conditions of the permit or variance is unworkable, impractical, or otherwise fails to accomplish the original aims.

17.03 - INITIATION OF PROCEEDINGS AND HEARINGS

A. Proceedings for such revocation or modification may be initiated, and shall be set for hearing, noticed, heard, and determined in substantially the same manner as provided in ARTICLE XIX.

17.04 - HEARING OF APPEALS

A. All decisions of the Commission in proceedings for such revocation or modification may be appealed and reviewed in substantially the same manner as provided for in ARTICLE XVI of this Ordinance.

ARTICLE XVIII - BOARD OF ZONING ADJUSTMENT

Section 18.00 - BOARD OF ZONING ADJUSTMENT CREATED; APPOINTMENT; TERM OF OFFICE.

18.01 - There is hereby created a Board of Zoning Adjustment for the Town of Fairfax, hereinafter referred to in this article as "Board".

18.02 - The Board shall consist of three members who shall be appointed from the membership of the Commission of the City of Fairfax by resolution of said Commission.

18.03 - Prior to the adoption of the resolution appointing the first members to said Board, the Commission as a whole shall constitute said Board, with all the powers and duties thereof.

18.04 - The term of office of the members of said Board shall be one (1) year, provided that the first members appointed shall serve as follows: one for six months, one for one year, and one for eighteen months.

18.05 - In the event of a permanent vacancy on said Board, such vacancy shall be filled by the Commission for the unexpired term.

Section 18.10 - MATTERS CONSIDERED BY BOARD

18.11 - The Board shall hear and decide the following matters:

1. Applications for variances;
2. Applications for conditional zoning permits.

Section 18.20 - RULES OF BOARD

18.21 - The Board may adopt from time to time such rules and procedures necessary or convenient for the conduct of its business as are not in conflict with the general rules adopted for that purpose by the Planning Commission.

18.22 - The majority in number of the total voting membership of the Board shall constitute a legal quorum. The concurrence of at least a majority of members present shall be necessary for action on any matter.

Section 18.30 - WHERE BOARD MEMBER UNABLE TO ATTEND

18.31 - In the event any member of the Board is unable to attend a meeting of said Board, the Chairman of the Commission may designate any other member of the Commission to serve in his stead and with full voting rights at such meeting.

18.32 - All members of the Commission are hereby constituted as ex-officio members of the Board for the foregoing purpose.

18.33 - Upon and after creation of Board, as provided in this Article, the term "Board" shall be included within the term "Commission", wherever used in Articles XIV and XV of this Ordinance.

ARTICLE XIX - AMENDMENTS

Section 19.00 - INITIATION OF AMENDMENTS TO THIS ORDINANCE; SETTING FOR HEARING

19.01 - Amendment to this ordinance may be initiated in one of the following manners:

- (1) By verified application of any interested person or persons;
- (2) By resolution of intention adopted by the Commission;
- (3) By resolution of intention adopted by the Council, which resolution shall be referred to the Commission for hearing.

19.02 - Upon filing with or adoption by the Commission of any such application or resolution, the Commission shall hold a public hearing thereon, and such additional public hearings as the Commission deems necessary.

19.03 - The Commission or its Secretary shall set the time and place for such hearing, which shall be held within forty (40) days following the filing with the Commission of such application or resolution.

19.10 - NOTICE OF HEARINGS

19.11 - (1) For the purpose of this section, any amendment of this Ordinance which is for the purpose of changing particular property from one zone to another or changing the boundary of any particular zone shall be referred to as a "zone change amendment", and all other amendments to this ordinance shall be referred to as a "general amendment".

(2) Any amendment which is exclusively a zone change amendment shall be noticed in the manner provided in Section 19.13 of this Article. Any general amendment which does not involve a zone change amendment shall be noticed in the manner provided in Section 19.12 of this Article. Any amendment which involves both a zone change amendment and a general amendment shall be noticed in the manner provided in both Sections 19.12 and 19.13.

19.12 - NOTICE OF GENERAL AMENDMENT

Notice of the time and place of any public hearing on the matter of any general amendment to this ordinance shall be given by the Commission or its Secretary by at

least one publication in a newspaper of general circulation in the Town of Fairfax, at least ten (10) days before the hearing, and by such other means as the Commission may deem necessary.

19.13 - NOTICE OF ZONE CHANGE AMENDMENT.

(1) Notice of the time and place of any public hearing on the matter of a zone change amendment to this ordinance shall be given by the Commission or its Secretary by mailing in the United States mail a written notice thereof, not less than ten (10) days prior to such hearing, to every person whose name and address appears on the latest available assessment roll as an owner of any property within the territory covered by such proposed change and within three hundred (300) feet of the outer boundaries thereof.

(2) Such notice shall also be given by posting a written notice on the territory covered by such proposed change, at a point designated by the Commission or its Secretary, not less than ten (10) days prior to such hearing, and such additional notices as the Commission may determine, provided however that failure to so post or maintain any such notice shall not be construed so as to invalidate or void any subsequent proceedings.

19.20 - HEARINGS BY PLANNING COMMISSION ON AMENDMENTS

19.21 - The public hearing shall be held at the time and place for which set and noticed.

19.22 - CONTINUANCE

Any hearing may be continued by the majority of members present at any hearing, who may fix a time and place to which such hearing may be continued, even in the absence of a quorum, in which case the presiding officer at such hearing shall publicly announce prior to the conclusion of the hearing the time and place to which the hearing is to be continued, and no further notice shall be required.

19.23 - QUORUM

A majority in number of the total voting membership of the Commission shall constitute a legal quorum for the purpose of conducting such hearing.

19.24 - VOTING

The recommendation of any amendment to this Ordinance shall be by resolution of the Commission; carried by the affirmative vote of not less than two-thirds of its total voting membership.

19.25 - RULES OF PROCEDURE

The Commission shall have authority to establish any reasonable rules of procedure for the conduct of such hearings. The Commission may require any person who is to testify before it to be placed under oath, in which case the member presiding at such hearing shall be empowered to administer such oath.

19.26 - INVESTIGATIONS

The Commission may cause such investigations to be made as it deems necessary and in the public interest in



any matter to be heard by it. Such investigation may be made by one or more members of the Commission or by members of its staff or its agents or employees. The facts established by such investigation may be submitted to the Commission in writing, to be filed with the records of the matter, or may be presented in testimony before the Commission, and may be considered by the Commission in making its decision.

19.27 - RECORD OF HEARING

The Commission shall cause a written summary of all pertinent testimony heard at such public hearing, together with a record of the names and addresses of all persons testifying, to be prepared and filed with the papers relating to such matter.

19.30 - DECISION OF PLANNING COMMISSION ON AMENDMENTS

19.31 - Within forty (40) days after conclusion of a public hearing, the Commission shall by resolution make its findings, decision and recommendations in the matter.

19.32 - In matters initiated by application, failure of the Commission to adopt such a resolution within such forty (40) day period shall be deemed to constitute a denial of the application.

19.33 - In matters initiated by resolution of the Council, failure of the Commission to adopt such a resolution within such forty (40) day period shall be deemed to constitute approval of the proposed amendment.

19.34 - In matters initiated by application, the Commission shall cause a copy of its resolution to be mailed to the applicant within ten (10) days from the date of adoption thereof.

19.35 - In all matters, if the recommendation of the Commission is to approve the proposed action, it shall cause to be forwarded to the Council within ten (10) days from the date of its action, a copy of such resolution, a copy of the written summary of the testimony, and a copy of any recommended amendment.

1936 - In matters initiated by resolution of the Council, if the recommendation of the Commission is to disapprove the proposed action, its resolution and other papers shall be forwarded to the Council as provided in the preceding Section 19.35.

19.40 - HEARINGS BY COUNCIL ON AMENDMENTS

19.41 - SETTING

Upon receipt of the resolution and other papers above mentioned, the Council, or the City Clerk, when so authorized by the Council, shall set a time and place for a hearing on the matter, which shall be held within forty (40) days following such receipt; provided that in matters initiated by resolution of the Council upon which the recommendation or report of the Commission has been unfavorable, the Council may determine to take no further action.

19.42 - NOTICE

Notice of the time and place of said hearing shall be given by at least one (1) publication in a newspaper of general circulation in the Town of Fairfax at least ten (10) days before the hearing.

19.43 - DECISION

Within forty (40) days after the conclusion of the public hearing thereon, the Council shall by resolution make its findings and determination whether or not to adopt the amendment. In matters initiated by application, failure of the Council to adopt such a resolution within such forty (40) day period shall be deemed to constitute a denial.

19.44 - EFFECT

The action of the Council on such matters shall be final; provided that no change shall be made in any amendment proposed by the Commission until the proposed change has been referred to the Commission for a report and a copy of the report has been filed with the Council, provided that failure of the Commission to report within forty (40) days shall be deemed to be approval of the proposed change.

ARTICLE XX - INTERPRETATION, CONSTITUTIONALITY, VIOLATIONS, AND PENALTY

Section 20.00 - INTERPRETATION

20.01 - In interpreting and applying the provisions of this ordinance, the same shall be construed to be the minimum requirement for the promotion of the public health, safety, comfort, convenience and general welfare.

20.02 - This ordinance shall not be so construed as to interfere with, abrogate or annul any easement, covenant or other agreement.

20.03 - Where this ordinance imposes more stringent restrictions on the use of land or buildings, or upon the height of buildings, or requires larger open spaces around or different location of buildings than may be imposed or required by any other ordinance, rule or regulation or by any easement, covenant or agreement, then the provision of this ordinance shall control.

20.10 - CONSTITUTIONALITY OR INVALIDITY; SEVERABILITY

20.11 - If any section, sub-section, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by any court, such shall not be construed to affect the validity of the remaining portions of this Ordinance, and it is hereby declared that such remaining portions of this Ordinance would have been adopted, notwithstanding that any part or portion is thus held to be invalid or unconstitutional.

Section 20.20 - VIOLATIONS DECLARED A NUISANCE; ABATEMENT PROCEEDINGS

20.21 - Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this ordinance, and any use of any land, building or premises established, conducted, operated, or maintained contrary to the provisions of this ordinance, shall be and the same is hereby declared to be unlawful and a public nuisance.

20.22 - Any act or condition in this section declared to be unlawful and a public nuisance shall, upon order of the Council, by appropriate proceedings begun by the City

Attorney, be abated, removed or enjoined in the manner prescribed by law.

20.23 - The remedies mentioned in this section shall be cumulative and not exclusive.

Section 20.30 - PENALTY

20.31 - Any person, firm or corporation, violating any of the provisions of this ordinance shall be deemed guilty of misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment.

20.32 - Each day that violation of this Ordinance continues shall be considered a separate offense.

ARTICLE XXI - REPEAL - ENACTMENT

Section 21.00 - REPEAL

(A) Ordinance No. 102 of the Town of Fairfax, and all ordinances amending said Ordinance No. 102, shall, concurrently with the effective date of this Ordinance, be repealed, provided:

(1) All presently existing and valid permits, variances, and other proceedings issued or taken under said Ordinance No. 102, as amended, shall continue in full force and

effect, and shall be subject to such proceedings, modifications, or revocation, as though issued under the provisions of this Ordinance.

(2) All non-conforming uses or non-conforming buildings lawfully existing or maintained under the provisions of Ordinance No. 102 immediately prior to the repeal thereof shall be deemed to be non-conforming uses or non-conforming buildings lawfully existing at the time of the adoption of this Ordinance, subject, however, to all provisions herein mentioned relating to them.

21.10 - ENACTMENT

Copies of this Ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three (3) public places in the Town of Fairfax, which said places are hereby designated as follows:

- (a) One copy on the Bulletin Board, Fairfax Post Office;
- (b) One copy on the Bulletin Board, Council Chambers;
- (c) One copy on the Bulletin Board in Fairfax City Office, City Hall, Fairfax,

and shall take effect and be in full force and effect thirty (30) days after its final passage and adoption.

- - - - -

The foregoing ordinance was introduced at a regular meeting of the City Council of the Town of Fairfax, held on

the 6 day of September 1960, and thereafter  
regularly passed at a regular meeting of the City Council  
held on the 11 day of September 1961, by the  
following vote, to-wit:

AYES:	COUNCILMEN	O'Rourke - Pasche - Welsey - Edger
NOES:	COUNCILMEN	None
ABSENT:	COUNCILMEN	Mr. Kinney

K. Edger  
MAYOR

ATTEST:

Alvin Leonard  
CITY CLERK

SINGLE FAMILY DWELLING

Accessory uses-----Section 5:20  
 Conditional uses-----Section 5:30  
 Height-----Section 5:40  
 Minimum lot requirements-----Section 11:20 and 13:02  
 Off Street Parking-----Section 11:40  
 Building coverage-----Section 11:00  
 Set back lines-----Section 11:10

R 2 REGULATIONS

Permitted uses-----Section 6:01  
 Accessory uses-----Section 5:20  
 Conditional uses-----Section 5:30  
 Height-----Section 5:40  
 Lot requirements-----Section 11:20  
 Parking-----Section 11:40 and 11:41  
 Building coverage-----Section 11:00  
 Set back lines-----Section 11:10

B 3 or MULTIPLE

Permitted uses-----Section 7:01  
 Accessory uses-----Section 5:20  
 Conditional uses-----Section 5:30  
 Height regulations-----Section 7:40  
 Lot requirements-----Section 11:20  
 Building coverage-----Section 11:00  
 Set back lines-----Section 11:10  
 Parking-----Section 11:40 and 11:41

L C OR LIMITED COMMERCIAL

Principal uses-----Section 8:01  
 Accessory uses-----Section 5:20  
 Conditional uses-----Section 5:30  
 Height regulations-----Section 8:40  
 Curbs, etc-----Section 8:60  
 Front yard set back-----Section 11:15  
 Parking-----Section 11:40 and 11:41

C OR COMMERCIAL

PERMITTED USES-----Section 9:01  
 Accessory uses-----Section 9:20  
 Conditional uses-----Section 9:30  
 Curbs, etc-----Section 9:50 - 11:15  
 Front yard set back-----Section 11:15  
 Parking-----Section 11:40 and 11:41  
*height* *Section 8:40*

INDUSTRIAL

Permitted uses-----Section 10:00 and 10:01  
 Accessory uses-----Section 10:20  
 Conditional uses-----Section 10:30  
 Curbs, etc-----Section 10:40  
 Front yard set back-----Section 11:15  
 Parking-----Section 11:40 and 11:41



# **EXHIBIT 5**

# gspo planning advisory service

**AMERICAN SOCIETY OF PLANNING OFFICIALS**

**1313 EAST 60th STREET — CHICAGO 37, ILLINOIS**

Report No. 237

August 1968

## **HEIGHT REGULATION IN RESIDENTIAL DISTRICTS**

This report suggests a system of height regulations more closely related to public purposes than are many current limitations. Application of this system on hillsides, to which urban development is increasingly driven, may be particularly helpful. Emphasis is on residential uses, but elements of the approach could be used elsewhere.

Every zoning ordinance regulates height. Many do it very simply and very badly. Common practice starts from a definition like this:

Height of a building. The vertical distance to a flat roof, or in the case of a pitched roof to the mean level between the eaves and the highest point of the roof, measured from the average graded ground level at all sides of the building.

Starting from this definition, which runs into trouble on slopes as will be seen later, limitations usually cover height and number of stories.

Why number of stories? Height sets a relatively close limit on this. Why the lily-gilding, with its embroidering definitions of story, half-story, attic, basement, cellar, and so on? Enabling legislation usually authorizes regulation of number of stories, but this is not a requirement. In residential districts, it is sometimes suggested that limiting number of stories is a way to regulate population density. But there are far more effective means.

In single-family districts, maximum potential number of families is controlled by number of lots, not number of stories in residences. In multiple-family districts, requirements on lot area per dwelling unit or control of floor area

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ratio establish maximum potential for each lot which can be translated into total potential for the district if anyone wants to engage in this relatively meaningless exercise.

(Even in single-family districts, population rarely approaches the maximum limits allowable under zoning, and in multifamily districts, usually liberally sprinkled with one- and two-family dwellings, neither existing nor probable future population is likely to come to half the total allowed.)

Unless some useful purpose can be found for the control, why not scrap regulation of number of stories and all the involved definitions which go with it?

Next consider what height regulations as such do (or don't do) as generally now written. Usual practice is to set a 35-foot ceiling over vast areas of single-family detached housing. The height envelope is a rectangular box 35 feet high fitting the buildable area of the lot. Its maximum vertical dimension was set (apparently) by mansions still fairly widely extant when zoning was gestating, and in a substantial number of ordinances this prenatal influence still shows its effect, regardless of lot size or side yard requirements. The height limit is the same on a 50-foot lot with 5-foot side yards as on two-acre lots with 25-foot side yards, apparently on the theory that the well-to-do require more light and air than the rest of the population.

The 35-foot height box causes little administrative difficulty because practically no one now wants to build a one- or two-family house higher than that. But it doesn't do what regulations are intended to do on small lots, and it gets ridiculous on large lots in hilly country.

The man with two acres in the hills may be able to go to one part of his lot and build a house 35 feet high "measured from the average graded ground level at all sides of the building" which may be out of sight of the neighbors. Or he may be able to go to a ridge or knoll on the same lot and make the same house loom over the neighbors, with its foundation above the maximum elevation permitted for the roof if the house is built in the lower part of the same lot.

In multifamily height controls we have shown the same regulatory ineptitude, using arbitrarily selected figures without any clear relation to specific purpose. But where one- and two-family height limits give little trouble because the ceiling was so high no one was likely to want to build through it, the situation is different with multifamily. Growing interest in high-rise means that height limits with no demonstrable relation to purpose are likely to be challenged.

Take this situation. District regulations permit 100 feet maximum height. An applicant has 10 acres. Height is the only issue. Number of units is set by lot area per unit, maximum ground coverage by per cent of lot that may be occupied by buildings. The tract, 435 feet wide, slopes down from a highway at a grade of about one foot drop in four to a river 1,000 feet away. A required 50-foot front yard is to be provided next to the highway.

The applicant wants to build a structure 100 feet high "from the average graded ground level at all sides of the building" and 60 feet in width, with its long axis parallel to the highway and set back from it the required 50 feet. On this there is no problem. But he also wants to build a much higher building down near the river. This is denied, and after the board of adjustment finds

there is no way it can permit a variance, he goes to court, claiming that as applied to his land, the ordinance is arbitrary and unreasonable. In support, he states that what he proposes to do is in line with the public purposes of zoning, and that ordinance provisions prohibiting what he proposes to do defeat such purposes.

His major reasons for seeking greater height at the river site are to reduce ground coverage in order to preserve established forest, to improve the view of building occupants, and to avoid impeding view from other structures on his own and adjoining properties by making the building slender and tall rather than massive.

Ignoring his other persuasive reasons, consider height alone. Using 0 as the elevation at the buildable area boundary by the river, the upper buildable area boundary is at 225 feet. At the upper boundary, the roof of the highest building permitted would be at elevation 325, the base 125 feet above the roof of the highest building permissible at the river boundary.

How would the court be likely to decide on his plea that the lower building be allowed to go to 175 feet (still 50 feet below the base of the upper building)?

With this as background, what can be done to make height regulations more meaningful?

### **Some Basic Assumptions**

Height regulations have these principal purposes:

(1) Protection from fire hazards. Height above capability of normal fire fighting equipment should require certification by fire officials that specialized construction and facilities in the building will be an adequate supplement.

(2) Protection against aviation accidents. Proposed buildings with location or height constituting potential hazards to aviation should be controlled by special zoning or cleared by the FAA.

(3) Protection of view. This is a sticky problem, partly because it is a matter of degree. Public interest is not considered involved where a low building cuts off a major part of the view of the neighbors. How much of what kind of view must be blocked for how many people before public action is justified? Some special techniques will be suggested later. (Also, see View Protection Regulations, PAS Report No. 213, August 1966.)

(4) Protection of the character of the neighborhood. This subjective matter is likely to involve heated emotions and extensive nonlogical reasoning. In one case, large-lot, single-family detached types from an area three miles away rose in embattled ranks to fight a proposed high rise -- which none of them could have seen -- because it would be out of character in their neighborhood -- or, to dig a little deeper, because people who live in high-rise buildings might be different. Never mind the logic -- the argument prevailed. "Character of the neighborhood" is likely to be an important issue where high buildings are proposed in locations surrounded by low buildings, and regulation requires very careful handling.

(5) Protection of light and air is familiar ground. Present regulatory patterns are not only crude but almost dishonest if protection of light and air is of equal importance for everyone, and if this is a principal purpose of height and yard combinations. Only if character of the neighborhood is added into the combination does it make sense to say that a 35-foot height requires a 15-foot side yard in one district, but only five feet in another.

### **Beginning with the Lot**

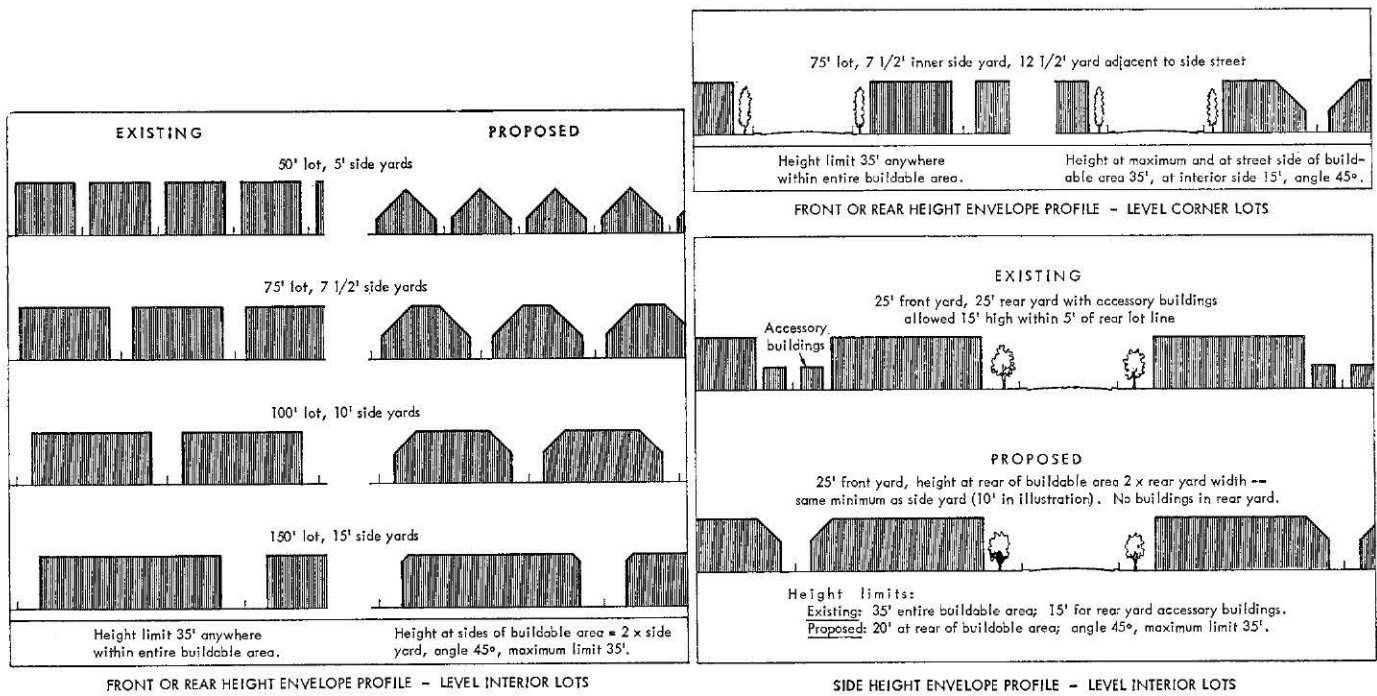
Starting with the lot, principal public concern is with parts of residential buildings closest to those on adjacent lots. This is usually at the inner edges of side yards, which becomes one critical point in providing light and air between buildings. Height here should be kept low.

If an approach now gaining wide acceptance is used, the rear yard dimension will be the same as that of the side yard and subject to the same limitations as to structures. This gives a larger buildable area, allowing flexibility in design. Lot coverage limitations prevent overbuilding. Thus the inner edge of the rear yard may also be a critical area in providing light and air, and again height should be kept low.

At the front, light and air for relatively low buildings is adequately provided by the front yard and the street. Except as influenced by limitations at the sides, it seems logical that full height should be allowed at the buildable area boundary adjacent to the front yard. For very high buildings, as the street and front yard dimensions become inadequate to provide sufficient light and air in lower stories, further adjustments may be necessary.

Emerging from this is a height envelope different in form from the rectangular box now commonly used, and better adapted to public purposes. The proposed approach includes three variables, heights at outer edges of the buildable area, height limiting planes leaning inward over the lot from the upper edges of the buildable area planes, and maximum height (if set) over portions of the lot not otherwise enclosed. On level lots, planes leaning inward from lot boundaries could be used, but because it is desirable in many places to have regulations adaptable to either level or sloping land, the buildable area limits are preferable, for reasons which will appear later.

At side and rear edges of the buildable area, height limits in areas with low detached residential structures should probably be considerably lower than general limits now in use, and should be directly related to the minimum dimension of side and rear yards. Using twice the required minimum width of these yards (as an example), and allowing this for height at the inner edges of the yards (outer edges of the buildable area boundary), the result would be a height limiting plane, or light plane, at a 45 degree angle. If this makes sense in terms of light and air, it would be used to run inward over the buildable area. Given a 5-foot yard requirement, then, the first element in the control would be a 10-foot limit at buildable area boundaries near side and rear lot lines. The second element would be the 45 degree plane leaning inward from the 10-foot height thus established. And if an absolute ceiling is established for the district, it would take effect when it intersects the light planes as they slope inward over the lot.



The diagrams above compare conventional height limits and their effects with the suggested method. It should be noted that the outlines indicated are merely envelopes within which portions of buildings could be erected, and are not proposed building forms.

To vary the pattern, height at edges of buildable areas, light plane, or maximum height over any portion of the lot could be changed. As an added refinement, length of building might be considered in setting side-yard requirements. This is a technique used by FHA in controlling yard width requirements for multifamily structures. Where a building is very long, the effect on light and air in adjacent yards is such that FHA suggests adding one foot to the yard for each 15 feet of run of the wall.

### Lots Which Are Not Level

Having established certain principles for height regulations on level lots, the next problem is to adapt them to lots which aren't level. In hill country, lots can have a bewildering variety of cross sections, particularly when large lots are required. The larger the lot, the greater the variation between its high and low points, and the greater the probability that it will not be a simple sloping plane.

In the hills, application of regulations intended for level lots leads to complications, as indicated by the examples given earlier. Slopes, high spots, and low spots blindly impose penalties and award bonuses with total disregard of public purposes, and larger lots in rough country multiply possibilities for too much or too little limitation. Potentials of natural topography may be magnified or reduced if height regulations are based on "the average graded ground level at all sides of the building." The average may be difficult to determine with irregularly shaped buildings or irregularly graded sites, and in any event has no fixed or determinable relation to what may be built on adjacent lots.

The problem is to come as close as possible to equating regulations for lots which aren't level with those for lots which are.

On level land, the light plane seems to be a central feature in the kind of height regulations applying to most residential areas. There is no practical way to protect many distant views in the flatlands -- a one- or two-story building blocks off views of the distance from other one- and two-story buildings or from ground level just as effectively as a 10-story building.

In hill country, in addition to protecting light and air, it is possible to give some protection to view and at the same time add flexibility in building form which may be helpful in overcoming terrain problems. In locations where development costs are high (as they are likely to be in rough terrain), this by-product is likely to be of considerable importance. The same regulatory devices are used as on level lots, and the same specific heights and angles may be used, but they are applied in a manner adapted to hilly locations.

From the front or rear, the diagrams on the next page indicate the elements in regulation and how they apply on sloping lots. In the illustration marked "Detail," Plane I is the ground level, shown here as conveniently regular. What to do about irregular ground is discussed later. To establish principles, this is a smooth plane with a 15 per cent slope. At the edges of the buildable area, the lines D-F and E-G represent heights of 20 feet, twice the width of the required side yard.

Plane II, the dashed line running from D-E, is not a height-limiting element, but is used to construct the 45 degree light planes 1 and 2. On level ground, Plane II would be horizontal. Here it is parallel to the slope.

Plane III, establishing ceiling height over the part of the lot between B and C (where the ceiling plane intersects the light planes) is constructed as a horizontal line from point A, 35 feet above F. The "view line" running through A-C is the level at which a building built to Plane III would obstruct horizontal view from an uphill building.

Why set the 35-foot height plateau on the basis of the highest buildable area boundary? With the slope indicated, this places actual height above ground at B at about 38 feet, at C at 44 feet. On a level lot, the ceiling is a flat 35 feet. Aren't the greater heights inequitable? To some extent yes, but not in the way which might be anticipated. Height limitation is a means for relating heights on adjoining lots as well as for controlling height on one lot. To be "equitable" in the sense of permitting the same absolute heights on adjoining lots, either the height limit on the down-slope lot would have to be raised or that on the up-slope lot would have to be lowered.

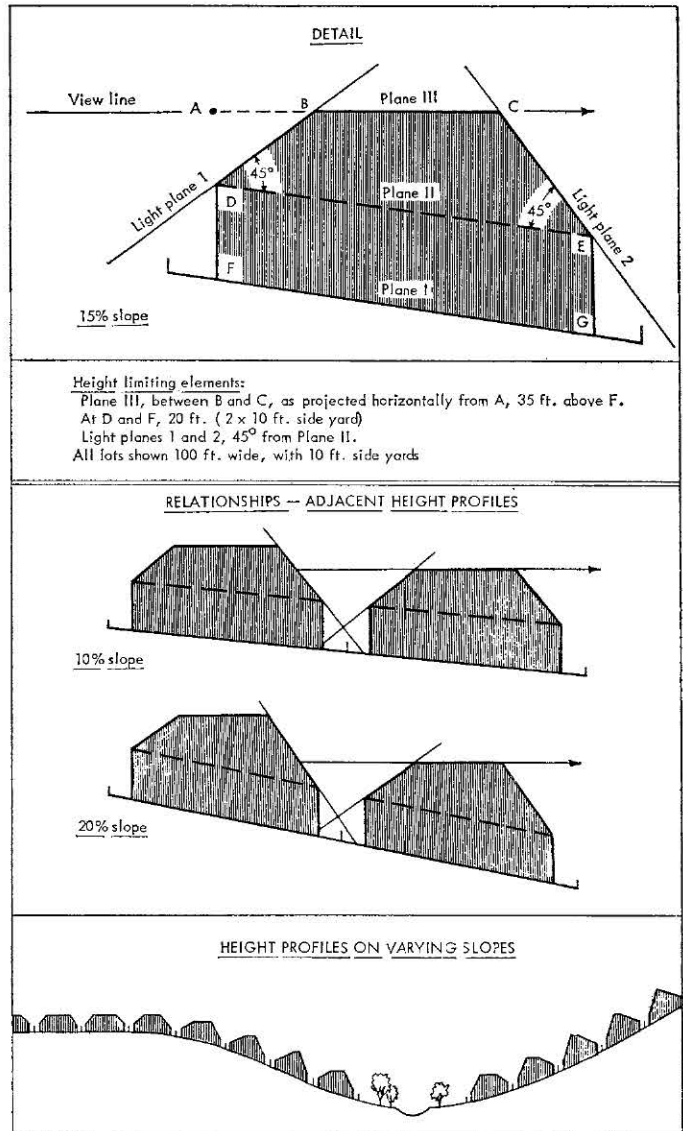
As the diagrams on relationships indicate, the ceiling heights down-slope will always be lower than those up-slope. This is important in preserving at least residual views, since principal views from hillsides are generally downhill, and greater height of structures uphill is not a substantially adverse influence.

The proposal checks out as reasonable in another way. Under the "average graded ground level at all sides of the building" approach, there would be nothing to prevent terracing to allow at least as great a height as is allowed here. If height were sought by this means (as it might be where view is in-

volved) the effect would be major disturbance of terrain, which should be avoided, not encouraged.

Making the light plane run 45 degrees from Plane II instead of 45 degrees from the horizontal moves the higher parts of the building farther from the uphill line, nearer to the downhill, and doesn't have substantial adverse effect on light at ground level. Considering the probable location of the most important views, the effect of perspective, and the difficulties in achieving the unattainable, this seems the best way to handle the detail. The farther a high point is from the observer, the less horizon it blocks; hence, moving B farther from the uphill buildable area line is desirable. Lowering height at C, or moving C back toward the center of the lot, will not improve the view uphill, which will remain a view of a building, not a landscape, even if the building is only 20 feet high.

As indicated in the upper diagram on relationships, the light plane for the lower building intersects a wall for an upper building a short distance above its base -- but not high enough to affect light at window level. The gain in view protection seems to off-set the minor difference in light.



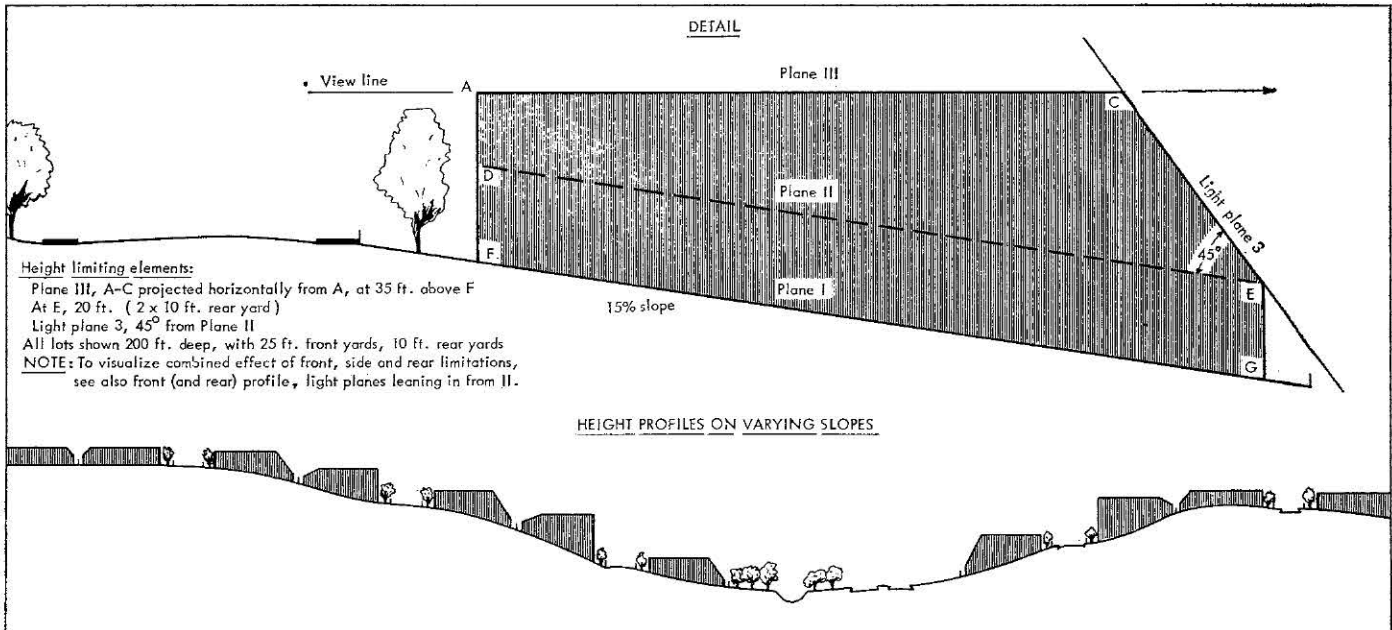
PROPOSED FRONT (OR REAR) HEIGHT ENVELOPE PROFILES - SLOPING LOTS

The bottom sketch in the diagram shows front or rear height envelope profiles on a variety of slopes (without implying endorsement of streets at the grades indicated). Even across the short dimensions of the lots, buildings on most could be shaped so that portions might take advantage of views. Since buildings would not occupy the entire envelopes outlined, actual views would be better than those indicated here.

From the side. On the lengthwise exposure of lots, with streets and front yards making the light plane unnecessary at the front of buildings, the rear applies the plane because relationship to adjoining sites is potentially the same as at the sides. Because of the length of run involved, the difference between height at the upper and lower buildable area boundaries is considerably greater when the slope runs down the lot than when the slope runs across it.

In the diagram on side height envelope profiles, the detail illustration at the top indicates a 20-foot difference between the 35-foot height limit at A





PROPOSED SIDE HEIGHT ENVELOPE PROFILES - SLOPING LOTS

over F and the 55-foot height which would be allowed at C. Height profiles on varying slopes as diagrammed indicate some of the possibilities for retaining views. The uphill end of the profile from the front or rear is a truncated pyramid on a relatively low base. There are spacings between buildings as set by yard requirements. Few buildings will fill the entire height envelope. With good site planning related to important vistas and to the kind of height regulation proposed, it should be possible to design for view.

One interesting effect of the application of the proposed techniques appears at the top of the hills. Buildings on hilltops are kept low, so that they do not protrude against the skyline.

### **Application in Districts with Mixed Housing Types**

These techniques are well adapted for districts permitting mixtures of residential types, both in conventional lot-by-lot zoning and planned developments. According to terrain potential and lot shapes and sizes, there will be areas suitable for single-family detached residences, town houses, and garden and other apartments even where the height at the top end of the buildable area is kept at 35 feet. On long lots, maximum height allowed at the lower end might rise to 55-60 feet or more because of the way the envelope is constructed. Design of hillside apartments would permit walk-in, walk-up, or walk-down apartments in multistoried structures without entrances at various levels.

If high-rise buildings which could not be built within these limits are to be permitted, special regulations will be necessary, trading extra height for reduced land coverage and increased control of impediment of principal views. This can be a very good bargain for the public. Added setback from property lines reduces the arc of total view obstructed, and the extra open space is a bonus if properly landscaped and protected against sea-of-cars appearance.

## REGULATORY LANGUAGE

Moving from theory to practice, here is some regulatory language along the lines indicated by the previous discussion, taken from a zoning ordinance proposed for the City and County of Honolulu:

### 410. Height of buildings and other structures.

410.1. Intent. It is the intent of these height regulations to secure safety, to provide adequate light and air, and to protect the character of districts and the interests of the general public in important views. To accomplish these purposes:

### 410.2. Fire and safety requirements.

410.2.1. Fire protection. No building exceeding 40 feet in height above grade shall be erected without certification from the Fire Chief that such building, as proposed to be located, constructed and equipped, and particularly occupants of upper stories, can be properly protected in case of fire. In the case of structures other than buildings exceeding 40 feet in height, the Planning Director may require such certification where he finds that there is substantial fire danger to surrounding property.

410.2.2. Aviation hazards. No building or other structure shall be located in a manner or built to a height which constitutes a hazard to aerial navigation. Where a structure is proposed in a location or to be built to a height which the Planning Director believes may be hazardous to air traffic, such structure shall not be erected without certification from the Federal Aviation Agency that as proposed to be located, constructed and equipped, it will not constitute a hazard to air traffic.

These provisions go directly to the point on the elements covered. The 40-foot figure in the fire protection section is lower than might be used in many jurisdictions. "Height above grade" is appropriate here because it relates to use of fire equipment. On both fire and aviation details, the planning director (who is administrative official in charge of zoning also) is charged with making referrals to appropriate experts in the circumstances indicated.

410.3. Height limits for buildings and other structures are hereby established generally by height envelopes, for which formulas in the schedule of district regulations prescribe maximum height at outer limits of buildable areas, inclination of light planes leaning inward over the lot, and in some districts maximum height over the central portion of the lot. No portion of any building or other structure shall extend through any portion of such height envelopes except residential chimneys, residential radio or television antennas, spires, flagpoles, or monuments otherwise approved

for erection, provided however that smokestacks, water tanks, radio and television transmitting towers, relay towers and the like may protrude through such height envelopes if they do not exceed in height the distance to the nearest lot line, except where property borders permanent open space other than streets and such space is not likely to be occupied by substantial numbers of persons.

The next provision includes a method for computing a base plane for height measurement. The base plane can be readily determined and applied, with a little practice, and works equitably on level land and on minor or steep slopes with or without irregularities. It encourages use of natural terrain without excessive grading, allowing greater heights in low areas and holding height down on natural high points within the buildable area. Thus if height permitted at a particular point is 45 feet above the base plane and the actual level of the ground is five feet below it, actual permitted height of a portion of a building at that point would be 50 feet.

On large tracts, application of the technique sometimes doesn't work out as well as might be hoped. Hence provision is made here for construction of envelopes on lots with one acre or less, and at 410.5 for breaking down larger tracts into workable components.

410.4. Construction of height envelopes for lots containing one acre or less shall be as follows:

410.4.1. Base plane. Establish a base plane (Plane I) for the buildable area. Where the ground surface is a regular plane, it shall be considered the base plane. Where the ground surface is irregular, the base plane shall be constructed as follows:

- (a) Establish a straight base line from the highest existing point to the lowest existing point on the buildable area boundaries. If such points are abrupt irregularities, such as sharp ridges or ravines, average elevations along buildable area boundaries within 50 feet of actual highs or lows shall be used, and the Planning Director shall select point of beginning or termination of the base line within the portion of the buildable area boundary used for averaging.
- (b) To locate elevations of the base plane at any point within buildable area boundaries, extend horizontal lines at right angles to the base line (projected as necessary beyond buildable area limits to permit computations for the entire buildable area).

The computation involved in step (b) is a simple matter of proportion. If the base line is 400 feet long and drops 40 feet from the highest to the lowest point, a right-angle line intersecting it 100 feet from the top would be considered to intersect points 10 feet below the point of beginning elevation on the upper buildable area boundary, or 30 feet above the lower point of beginning.

410.4.2. Establish a second plane (Plane II) parallel to Plane I and at such distance above it (measured 90° from the horizontal) as is indicated in the schedule of district regulations for maximum height at outer lines of buildable areas. For some districts, this height is stated directly as the Plane II height. In others, height is related to width of the adjoining street.

410.4.3. Light planes. Establish light planes leaning inward over the buildable area at angles specified in the schedule of district regulations, beginning from lines established by vertical projection of buildable area boundaries to intersect with Plane II. Base lines from which the angles of such planes shall be computed shall lie within Plane II and extend at right angles from the vertical projection of the buildable area boundaries. Such light planes shall extend inward only from buildable area boundaries as specified below:

- (a) In P-1, AG, R, A, and H districts, from Plane II above side and rear buildable area boundaries other than those adjacent to streets or permanent open space 50 feet or more in width.
- (b) In B-1 districts, no light plane is established and full height is permitted over the entire buildable area.
- (c) In B-2, B-3, B-4 and I districts, the light plane is established for portions of lots adjacent to streets at angles established from center lines of adjacent streets.
- (d) In all B or I districts, lots at the edges of such districts are affected by light planes established for certain adjoining districts as specified in the schedule of district regulations.

Light planes so required shall extend inward over the lot until they meet over the lot, extend through vertical projections of buildable area boundaries not involving light planes of their own, or reach Plane III, described below, with height within the envelope controlled by the lowest of the heights enclosed by such planes.

Detailed provisions above indicate a wide range of possibilities. In preservation, agricultural, residential, apartment, and hotel districts, light planes start from above side and rear buildable area boundaries, in B-1 districts there is no light plane limit, in B-2, B-3, and B-4 the only light plane involved starts from the center line of the street, and in B and I districts, a combination of the provision here and others in the schedule provide for transitional height control along certain district boundaries. As another variable which might escape notice without comment, in some districts there is no maximum height limit except that established by the light planes as they intersect over the buildable area, allowing height to be related to lot dimensions.

410.4.4. Establish Plane III (in districts in which a maximum height limit is set) running horizontally over the lot and beginning from such elevation above the high point used in establishing the base line as is specified in the schedule of district regulations for Plane III, or for maximum height in the district.

410.5. Construction of height envelopes for lots containing more than one acre shall be as above, provided, however, that where by reason of extent or terrain it is impracticable to apply the rules above to the lot or tract as a whole, the Planning Director, for administrative purposes, may divide the total area of the lot or tract into portions adaptable to the rules above. In so doing, lines other than property lines bounding portions into which the lot or tract is administratively divided shall be treated as boundaries of buildable areas in establishing Planes I and III for each of such portions of the lot or tract, but Plane II and the inclined portion of the height envelope shall not be established with respect to the administrative boundaries unless the Planning Director shall find that public purposes like those prevailing at buildable area boundaries along the perimeter of the lot or tract, and particularly maintenance of principal views, require the application of such height limitations.

#### **Lot Coverage as Related to Slope**

As a miscellaneous detail related to height control on hillsides -- and useful for other purposes -- the Honolulu ordinance relates per cent of the lot which may be covered by buildings to the slope of the base line. Thus in the very low density agricultural areas, maximum lot coverage on slopes less than 20 per cent is 20 per cent, with a declining scale dropping to 2 per cent lot coverage on slopes of 40 per cent and over. Ranges for residential and hotel districts are from 30 per cent to 50 per cent lot coverage on base line slopes under 20 per cent with coverage on slopes of 40 per cent or over held to 5 per cent in any such district.

The effect here is to push for reduction of land occupancy (and disturbance of natural terrain and vegetation) on steep slopes. The limitation dovetails with height controls allowing higher buildings in portions of steep-slope lots.

(As a concluding note, with regulations like those suggested here, the applicant who wanted to build the 175-foot high rise in the riverfront portion of his sloping lot would be able to do so without going to court about it.)

## 80 Crest Rd. Appeal

Hannah Gottsegen <hannahgottsegen@gmail.com>

Sun 3/3/2024 11:46 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

Hi there,

My name is Hannah. I live next door to the above address. I wanted to share that I am fine with the height of their home. It does not disturb us as is.

Thanks so much

## 80 Crest Road Appeal

JACKIE MOSKOWITZ <jmosk@comcast.net>

Wed 3/6/2024 6:49 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

Members of the Fairfax Town Council-

I am writing this letter in support of the appeal of Marny and Verle Sorgen regarding their property at 80 Crest Rd.

I have known Marny and Verle since 1966; we were fellow teachers at Sir Francis Drake High School (now Archie Williams High School). Marny and Verle have not only been exemplary citizens of Fairfax for many, many years, they also devoted many years of their lives to educating and counseling the young people of the Fairfax community.

I am a close friend of Marny's and have heard in great detail all that has happened since Marny and Verle went to the Fairfax Planning Commission six years ago to address some unpermitted work in their house. Their intent was to bring what was needed into compliance and to pay any fines that might be issued. Instead of dealing with this issue, the Planning Commission has raised other major work issues regarding the house. These issues have shifted over time.

Needless to say, this has been a most difficult time for Marny and Verle. I have seen first-hand the huge impact all of this has had on Marny.

I urge you all to look at what has happened very carefully. Once you do, I am sure that you will support this appeal of Marny and Verle Sorgen. I urge you to do so.

Thank you for your consideration.

Jackie Moskowitz

## 80 Crest Road Appeal

karna <klsacchi@gmail.com>

Tue 3/5/2024 11:16 AM

To:Fairfax Town Council <fairfaxtowncouncil@townoffairfax.org>

Dear Members of the Town Council,

I am writing to you in regards to my parents' appeal of the Fairfax Planning Commission recommendations which you will be hearing at your meeting this Wednesday. I was present at the Planning Commission meeting in question. In the last six years I have been very concerned by the actions of the town planning department and the stress that this case has caused my parents. I believe that my parents deserve to be treated better than this as long-time upstanding citizens of Fairfax.

Six years ago, my parents went to the town in good faith to address unpermitted work done in building a TV room under their garage. As most citizens would, they expected that it would be verified that this work was done to code and that there would be fines to pay for the delayed permits.

Unfortunately, nothing this simple occurred. Instead, the town has focused on questioning the legality of the height of the house even though the distance from the top of the roof to the ground has not changed since the structure was completed in 1973 and even though this height was legal according to the building code at that time. Yet over these six years, a shifting series of arguments has been presented to question the legality of the house.

I wonder how many other structures in Fairfax would not stand up to this type of examination. Despite its existence for more than 50 years, the height of my parents' residence never concerned the town until six years ago. The type of scrutiny their residence has endured is a deterrent to other Fairfax residents to reach out in good faith to the building department. I ask you to think about what kind of example you want to set with your decision.

We moved into 80 Crest Road shortly after my third birthday over 50 years ago. I grew up in this house, living there until I left for college. I can assure you that the height of the house is the same as it has been my entire life. The only structural changes which have occurred are the addition of the TV room under the garage, and the replacement and enclosure of the posts supporting the west side necessitated by weather compromising their integrity.

It is problematic to examine the past through the lens of the present. Yes, Fairfax is a very different place than it was 50 years ago and one that does not wish to cultivate a character that includes large houses such as my parents, but at the time the house was built it was the first property in that section of Crest Road. As such, it could be argued that it defined the character of the neighborhood, not the other way around. Furthermore, its size is not out of proportion with the huge lot it is on, especially as there are only two stories which rise above the street level.

I ask you as members of the Town Council, not to think about what you can do, which is the purview of lawyers, but about what you should do in the interest of your community. None of the Planning Commission recommendations will change the distance between the top of the roof and the ground or impact the exterior appearance of the house. They do not have a benefit to neighbors or the community, only a costly, punitive impact on the owners of the house who reached out to the town, trying to do the right thing. The recommendation to demolish the stairs to the lowest level which have existed for more than 50 years is especially unreasonable. No one should have to go out her front door, down a hillside, and then back in the lower level of her house just to access the main water shut off.

My parents who are 85 and 92 deserve to live out their final years in their home in peace, something which they have been denied by the town's six-year scrutiny of their house. The stress of having the fate of their residence in limbo has been constant. It has been very difficult for me to see the mental and physical toll this case has taken on my mother as she has been unable to sleep for weeks at a time due to the threat to her house.



The residence at 80 Crest Road is especially important to my mother not only because she has lived there for 50 years, but because its design is the only opportunity she had to fulfill her dream of becoming an architect at a time when the field was still closed to women. Though she was not able to finish her college study of architecture due to these barriers, the studies she did complete were enough for her to be able to create a plan for her dream house that another architect could execute.

I am troubled by the fact that only one member of the Town Council has been willing to visit the property whose fate you are deciding in order to understand firsthand the house's impact on its nearby surroundings and the impact the Planning Commission's recommendations would have on the house's integrity.

Asking my parents to demolish the lowest floor of their house is a waste of resources in a town that prides itself on being green. During the Planning Commission hearing, one of the members commented that the lowest floor of the house could help meet the need for affordable housing in Fairfax. Since that time this need has become much more urgent due to the state's requirement to add 490 homes to Fairfax. Rental units and ADU's are key tools being utilized by many Bay Area cities to comply with the state's demand.

Rather than demolish an enclosed, partly finished space at 80 Crest Road by removing electrical and plumbing, the space could be made a separate unit to provide affordable housing, merely by replacing one door at the bottom of the stairs with a wall. The existing plumbing and electrical could be used as the base to finish an area currently used for storage so that it could be used to provide affordable housing.

The recommendation of the town counsel to delay enforcement of the Planning Commission's recommendations until there is a change in ownership is directly problematic to me as the heir of the property. This merely defers the demolition and abandons the substantial sums of money my parents have already spent in an effort to keep their house whole. I do not wish to start this entire process over when I inherit the property.

In closing, I am asking you to think of what you as council members should do in the interest of your community. The town has not demonstrated any benefit of the recommended demolition to the neighbors or the Fairfax community. Nonetheless, the town is requiring demolition which is punitive and costly to the owners, my parents. This, however, pales in comparison to the cost to their quality of life which has already occurred, as they have been denied the opportunity to live out their final years in peace in the house where they have resided for more than 50 years.

Thank you for your time and consideration of this matter.

Sincerely,

Karna Sacchi

## No rent control

RICHERSON FARNSWORTH <rpfarncworth@comcast.net>

Tue 3/5/2024 9:15 PM

To:Christine Foster <cfoster@townoffairfax.org>

Hello Town Council:

We are a family of three who live at 137 Tamalpais Road in Fairfax.

We wanted to express our vehement opposition to implementing rent control in Fairfax without a vote in November.

We do not think it was inappropriate for the Town Council to implement such a sweeping change without approval of the residents. We believe the idea of rent control is extremely unpopular in Fairfax, and we are opposed to wasting taxpayer funds to partially implement it prior to the vast majority of residents having their say in the matter.

Please do not spend any more money on this until residents have a chance to vote on this extreme measure.

Sincerely,


Rich Farnsworth  
The Farnsworth Family

## Public comment TC meeting 3/6/2024 item 6 etc.

R Hamer <hamer2010@live.com>

Wed 3/6/2024 11:57 AM

To:Christine Foster <cfoster@townoffairfax.org>;Town Council <towncouncil@townoffairfax.org>

 1 attachments (164 KB)

mar-fairfax-adopted-out-021624.pdf;

Dear Christine,

Please distribute this letter to the town council, staff, attorney. I will be referring to this document during my verbal public comment.

Thank you,  
Rick Hamer  
Fairfax resident

Attachment: Department of Housing and Community Development letter of February 16, 2024. 3 page PDF.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



February 16, 2024

Heather Abrams, Town Manager  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 9930

Dear Heather Abrams:

**RE: Town of Fairfax's 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element**

Thank you for submitting the Town of Fairfax (Town) housing element adopted December 13, 2023 and received for review on December 19, 2023, along with revisions received on February 16, 2024. Revisions were authorized pursuant to Resolution 23-60. Pursuant to Government Code section 65585, subdivision (h), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by conversations with you, Jeff Beiswenger, Planning and Building Services Director, and your consultant, Andrew Hill.

The revised draft element addresses most statutory requirements in HCD's August 11, 2023; however, additional revisions are necessary to fully comply with State Housing Element Law (Article 10.6 of the Gov. Code) as follows:

- 1. An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

*Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09.*

Small Sites: The element did not address this requirement. The revised Appendix A identifies small sites under 0.5 acres to accommodate the Town's lower-income Regional Housing Needs Allocation (RHNA). These sites include APNs 001-183-10, 001-183-14, 001-183-15, 002-113-08, and 002-123-17 and 002-144-01 when consolidated. Please note while APNs 001-183-17 and 002-122-47 are over 0.5 acres, it does not meet the minimum capacity requirements of 16 units for sites that are rezoned to accommodate a shortfall for the lower-income RHNA. See below.

As stated in the prior review these sites are not eligible absent a demonstration that sites of equivalent size were successfully developed during the prior planning period for an equivalent number of lower-income housing units as projected for the site or unless other evidence is provided. Please see prior review.

Program 2-A: HCD recognizes the Town adopted Ordinance 887 the Workforce Housing Overlay to implement Program 2-A to rezone to address a shortfall of sites to accommodate the RHNA pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A). This includes rezoning to accommodate a shortfall of sites to accommodate the lower-income RHNA pursuant to Government Code section 65583.2, subdivisions (h), and (i). However, based on a review of ordinance number 887, and the revised housing element, it is unclear if the rezones include all the requirements pursuant to Government Code section 65583.2, subdivisions (h), and (i). For example, as stated above, it appears from the revised sites inventory that several of the sites identified to accommodate the lower-income RHNA are smaller than 0.5 acres and have a capacity of less than 16. This is inconsistent with the requirement that rezone sites for lower-income accommodate a minimum of 16 units. In addition, it is unclear if the Workforce Housing Overlay permits owner-occupied and rental multifamily uses by-right for developments in which 20 percent or more of the units are affordable to lower-income households. By-right means local government review must not require a conditional use permit (CUP), planned unit development permit, or other discretionary review or approval. The element and ordinance must be revised to demonstrate consistency with these requirements.

For your information, pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), as the Town failed to adopt a compliant housing element within 120 days of the statutory deadline (January 31, 2023), rezones to accommodate the regional housing needs allocation must be completed no later than one year from the statutory deadline. Otherwise, the local government's housing element will no longer comply with State Housing Element Law, and HCD may revoke its finding of substantial compliance pursuant to Government Code section 65585, subdivision (i) including all the by-right requirements. If the Town fails to adopt a compliant housing element within one year from the statutory deadline, the element cannot be found in substantial compliance until rezones to

accommodate a shortfall of sites pursuant to Government Code section 65583, subdivision (c), paragraph (1), subparagraph (A) are completed.

Programs: As stated above, the element does not include a complete site analysis; therefore, the adequacy of sites and zoning were not established. Based on the results of a complete sites inventory and analysis, the Town may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the Town should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and to email a link to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the Town will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the Town to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the cooperation provided during the review. We are committed to assisting the Town in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact me, at [Melinda.Coy@hcd.ca.gov](mailto:Melinda.Coy@hcd.ca.gov).

Sincerely,



Melinda Coy  
Proactive Housing Accountability Chief