

A	B	C	D	E	F
APN	NAME	ADD	CITY	ST	ZIP
1					
2	002-022-24 CALDARARO NICCOLO L/TR/ &	165 FRUSTRUCK AVE	FAIRFAX	CA	94930
3	002-022-27 WADE FAMILY TRUST ETAL	155 FRUSTRUCK AVE	FAIRFAX	CA	94930
4	002-022-32 GREGOIRE AARON &	275 FRUSTRUCK AVE	FAIRFAX	CA	94930
5	002-022-33 WALL ROSEMARY	149 FRUSTRUCK AVE	FAIRFAX	CA	94930
6	002-022-37 FITZGERALD PAUL M &	1 COREE LN	FAIRFAX	CA	94930
7	002-022-39 OCCUPANT	15 COREE LN	FAIRFAX	CA	94930
8	002-022-39 FOLAN JAMES P	20 COREE LN	FAIRFAX	CA	94930
9	002-022-39 OCCUPANT	300 BOLINAS RD	FAIRFAX	CA	94930
10	002-022-40 MARTINEZ SHONEM & ALICE O	171 FRUSTRUCK AVE	FAIRFAX	CA	94930
11	002-022-41 BASSIK ELAINE R TR	15 KENNILWORTH TER	GREAT NECK	NY	11024
12	002-022-41 OCCUPANT	16 COREE LN	FAIRFAX	CA	94930
13	002-031-01 PERI CHARLES A TR	29 BROADWAY	FAIRFAX	CA	94930
14	002-031-01 OCCUPANT	8 CYPRESS DR	FAIRFAX	CA	94930
15	002-031-02 OCCUPANT	14 CASCADE DR	FAIRFAX	CA	94930
16	002-031-02 PERI CHARLES A TR				
17	002-031-03 FAIRFAX CITY OF				
18	002-032-04 WICK DONALD A &	33 CASCADE DR	FAIRFAX	CA	94930
19	002-032-05 TAYLOR PATRICIA L	19 CASCADE DR	FAIRFAX	CA	94930
20	002-032-07 OCCUPANT	1 CASCADE DR	FAIRFAX	CA	94930
21	002-032-07 FRANTZIS BRUCE K /TR/ &	PO BOX 99	FAIRFAX	CA	94978
22	002-032-15 WILLIS FAMILY TRUST ETAL	15 CASCADE DR	FAIRFAX	CA	94930
23	003-191-11 SCHEREMETOW ALEXANDRA TR	228 FRUSTRUCK AVE	FAIRFAX	CA	94930
24	003-191-12 BROWN NANCY K TR	232 FRUSTRUCK AVE	FAIRFAX	CA	94930
25	003-191-14 OLIVER GEORGE D	42 HICKORY RD	FAIRFAX	CA	94930
26	003-191-26 CLARK DOREE S &	238 FRUSTRUCK AVE	FAIRFAX	CA	94930
27	003-191-27 KLOCK ROBERT M TR	242 FRUSTRUCK AVE	FAIRFAX	CA	94930
28	003-192-21 BOGAN-ZIEGLER PATTIE S	10 WALSH LN	FAIRFAX	CA	94930
29	003-192-32 RILEY BARRY M & ESTHER S REVOC I V TRUST ETAL	20 WALSH LN	FAIRFAX	CA	94930
30	003-192-36 CASADY ROBERT M &	24 WALSH LN	FAIRFAX	CA	94930
31	003-192-48 BUNNELL BRUCE R /TR/ &	170 FRUSTRUCK AVE	FAIRFAX	CA	94930
32	003-192-53 MURPHY DENIS C JR &	200 FRUSTRUCK AVE	FAIRFAX	CA	94930
33	003-192-54 NORWOOD FAMILY TRUST	21 WALSH LN	FAIRFAX	CA	94930
34	003-192-55 OCCUPANT	76 MANZANITA RD	FAIRFAX	CA	94930
35	003-192-55 NORWOOD FAMILY TRUST B 2000				
36	003-193-02 OWENS JOHN &	177 FRUSTRUCK AVE	FAIRFAX	CA	94930
37	003-193-05 MILES WILLIAM C.	189 FRUSTRUCK AVE	FAIRFAX	CA	94930
38	003-193-07 DE CELLE ANGELA S TR	211 FRUSTRUCK AVE	FAIRFAX	CA	94930

A	B	C	D	E	F
39	003-193-08	KOEPPEL MARTIN P /TR/ &	215 FRUSTRUCK AVE	FAIRFAX	CA 94930
40	003-193-09	SHAW RICHARD B /TR/ &	231 FRUSTRUCK AVE	FAIRFAX	CA 94930
41	003-193-10	JONES BRIAN K & THERESE M	241 FRUSTRUCK AVE	FAIRFAX	CA 94930
42	003-193-11	SIMON ROBERT L /TR/	195 FRUSTRUCK AVE	FAIRFAX	CA 94930
43	003-193-12	MARIAH JOAN /TR/	175 FRUSTRUCK AVE	FAIRFAX	CA 94930
44	003-193-13	DEAL SHANE &	183 FRUSTRUCK AVE	FAIRFAX	CA 94930
45	003-201-19	PELLETIER GERALD L TR &	45 HICKORY RD	FAIRFAX	CA 94930
46	003-201-20	CAMPDONICO SANDRA G	33 HICKORY RD	FAIRFAX	CA 94930
47	003-202-01	BRAGMAN LAWRENCE W	30 HICKORY RD	FAIRFAX	CA 94930
48	003-202-02	LAMONT/SINGER FAMILY TRUST ETAL	24 HICKORY RD	FAIRFAX	CA 94930
49	003-202-03	LAMOTT ANNE P	20 HICKORY RD	FAIRFAX	CA 94930
50	003-202-04	SVENSON NICHOLAS S &	20 CYPRESS DR	FAIRFAX	CA 94930
51	003-202-05	OCCUPANT	16 CYPRESS DR	FAIRFAX	CA 94930
52	003-202-05	MONTEROSSO MARIE D /TR/	21345 MONTERRA	LAKE FOREST	CA 92630
53	003-202-06	OCCUPANT	10 CYPRESS DR	FAIRFAX	94930
54	003-202-06	PERI CHARLES A TR	Duplicate Owner		
55	003-203-14	ROBINSON MICHAEL E	35 CYPRESS DR	FAIRFAX	CA 94930
56	003-203-15	STUART SPENCER M &	1 HICKORY RD	FAIRFAX	CA 94930
57	003-205-01	FAIRFAX TOWN OF	Duplicate Owner		

56 - duplicates (5) = 51 Total

002-022-24

CALDARARO NICCOLO L /TR/  
165 FRUSTUCK AVE  
FAIRFAX, CA 94930

022-33

WALL ROSEMARY  
149 FRUSTUCK AVE  
FAIRFAX, CA 94930

002-022-39

FOLAN JAMES P  
20 COREE LN  
FAIRFAX, CA 94930

002-022-41

BASSIK ELAINE R TR  
15 KENNILWORTH TER  
GREAT NECK, NY 11024

002-031-01

OCCUPANT  
8 CYPRESS DR  
FAIRFAX, CA 94930

002-032-05

TAYLOR PATRICIA L  
19 CASCADE DR  
FAIRFAX, CA 94930

002-032-15

WILLIS FAMILY TRUST ETAL  
15 CASCADE DR  
FAIRFAX, CA 94930

003-191-14

OLIVER GEORGE D  
42 HICKORY RD  
FAIRFAX, CA 94930

003-192-21

BOGAN-ZIEGLER PATTIE S  
10 WALSH LN  
FAIRFAX, CA 94930

003-192-48

WELL BRUCE R /TR/ &  
FRUSTUCK AVE  
FAIRFAX, CA 94930

002-022-27

WADE FAMILY TRUST ETAL  
155 FRUSTUCK AVE  
FAIRFAX, CA 94930

002-022-37

FITZGERALD PAUL M &  
1 COREE LN  
FAIRFAX, CA 94930

002-022-39

OCCUPANT  
300 BOLINAS RD  
FAIRFAX, CA 94930

002-022-41

OCCUPANT  
16 COREE LN  
FAIRFAX, CA 94930

002-031-02

OCCUPANT  
14 CASCADE DR  
FAIRFAX, CA 94930

002-032-07

OCCUPANT  
1 CASCADE DR  
FAIRFAX, CA 94930

003-191-11

SCHEREMETOW ALEXANDRA TR  
228 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-191-26

CLARK DOREE S &  
238 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-192-32

RILEY BARRY M & ESTHER S TRUST  
20 WALSH LN  
FAIRFAX, CA 94930

003-192-53

MURPHY DENIS C JR &  
200 FRUSTUCK AVE  
FAIRFAX, CA 94930

002-022-32

GREGOIRE AARON &  
275 FRUSTUCK AVE  
FAIRFAX, CA 94930

002-022-39

OCCUPANT  
15 COREE LN  
FAIRFAX, CA 94930

002-022-40

MARTINEZ SHONE M & ALICE  
171 FRUSTUCK AVE  
FAIRFAX, CA 94930

002-031-01

PERI CHARLES A TR  
29 BROADWAY  
FAIRFAX, CA 94930

002-032-04

WICK DONALD A &  
33 CASCADE DR  
FAIRFAX, CA 94930

002-032-07

FRANTZIS BRUCE K /TR/ &  
PO BOX 99  
FAIRFAX, CA 94978

003-191-12

BROWN NANCY K TR  
232 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-191-27

KLOCK ROBERT M TR  
242 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-192-36

CASADY ROBERT M &  
24 WALSH LN  
FAIRFAX, CA 94930

003-192-54

NORWOOD FAMILY TRUST  
21 WALSH LN  
FAIRFAX, CA 94930

STAPLES

label size 1" x 2 5/8" compatible with Avery®5160/8160

003-192-55

OCCUPANT  
76 MANZANITA RD  
FAIRFAX, CA 94930

193-07

DE CELLE ANGELA S TR  
211 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-10

JONES BRIAN K & THERESE M  
241 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-13

DEAL SHANE &  
183 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-202-01

BRAGMAN LAWRENCE W  
30 HICKORY RD  
FAIRFAX, CA 94930

003-202-04

SWENSON NICHOLAS S &  
20 CYPRESS DR  
FAIRFAX, CA 94930

003-202-06

OCCUPANT  
10 CYPRESS DR  
FAIRFAX, 94930

003-193-02

OWENS JOHN &  
177 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-08

KOEPEL MARTIN P /TR/ &  
215 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-11

SIMON ROBERT L /TR/  
195 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-201-19

PELLETIER GERALD L TR &  
45 HICKORY RD  
FAIRFAX, CA 94930

003-202-02

LAMONT/SINGER FAMILY TRUST  
24 HICKORY RD  
FAIRFAX, CA 94930

003-202-05

OCCUPANT  
16 CYPRESS DR  
FAIRFAX, CA 94930

003-203-14

ROBINSON MICHAEL E  
35 CYPRESS DR  
FAIRFAX, CA 94930

003-193-05

MILES WILLIAM C.  
189 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-09

SHAW RICHARD B /TR/ &  
231 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-193-12

MARIAH JOAN /TR/  
175 FRUSTUCK AVE  
FAIRFAX, CA 94930

003-201-20

CAMPDONICO SANDRA G  
33 HICKORY RD  
FAIRFAX, CA 94930

003-202-03

LAMOTT ANNE P  
20 HICKORY RD  
FAIRFAX, CA 94930

003-202-05

MONTEROSSO MARIE D /TR/  
21345 MONTERRA  
LAKE FOREST, CA 92630

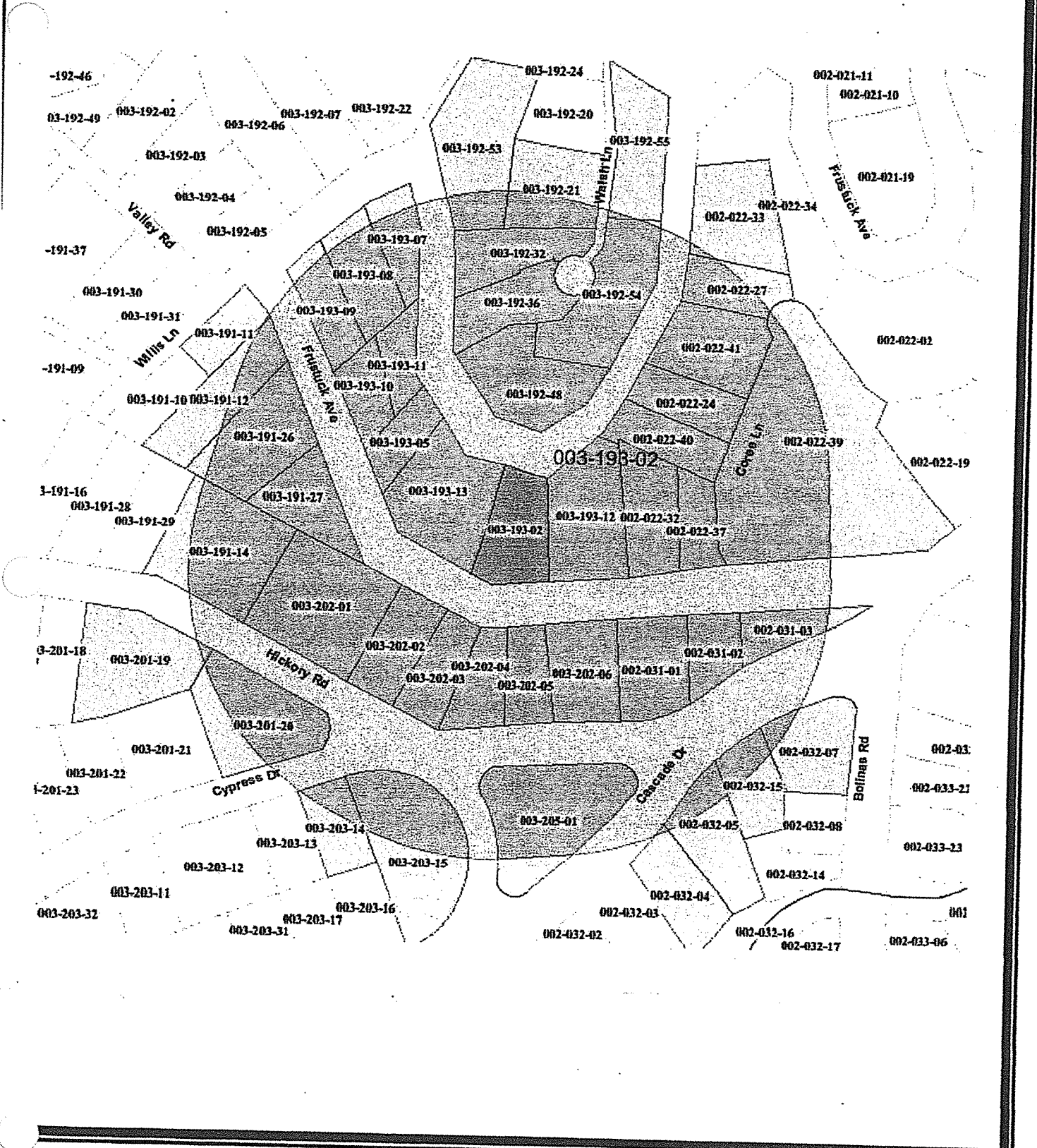
003-203-15

STUART SPENCER M &  
1 HICKORY RD  
FAIRFAX, CA 94930

STAPLES

label size 1" x 2 5/8" compatible with Avery®5160/8160  
Étiquette de format 25 mm x 67 mm compatible avec Avery®5160/8160

177 FRUSTUCK AVE., FAIRFAX  
APN: 003-193-02





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

## 177 Frustuck Avenue Second Unit Application.

3 11:44:00 AM

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

Wed, Aug 7, 2013 at 7:31 AM

Hello Jim,

Seeing you briefly at Town Hall yesterday jogged my memory to contact you and follow up on the conversation we had a couple of Month's ago when I called to see if you would continue to support our Second Unit.

During the conversation you told me you had not supported the unit, and you had taken the stance that we had to choose between the garage and the second units.

Yesterday I reviewed the Staff Reports for the Planning Commission and the Appeal to the Council, the minutes of both meetings, the audio tapes for both meetings, the letter of denial, and the motion to deny the unit.

You were mistaken. The Planning Department made findings to recommend the second unit at both meetings. It was David Weinsoff at the 11th hour of the last Council Meeting asked you a question as to if the approved Garage had already been built. You said it had not. Weinsoff made the suggestion that we choose between the garage and the second unit. Planning Staff supported the unit at both meetings.

I would expect this to be factually correct in the Staff Report for the upcoming Planning Commission. The reason Staff supported the project was the need and requirement to provide affordable housing. That situation has not changed or improved in this Town in nearly four years.

John Owens

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

Wed, Aug 7, 2013 at 9:05 AM

Hi John,

You are correct, my mistake about staff's previous support.

This history will be accurately reflected in our forthcoming staff report, along with any other information and/or opinions we may now have.

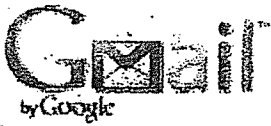
Best,

Jim

James M. Moore  
Director of Planning & Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930  
Phone: (415) 453-1584  
Fax: (415) 453-1618

"The Life of the Land is Perpetuated in Righteousness"  
(Ua mau ke ea o ka aina i ka pono has been the motto of Hawaii for over 160 years)  
[Quoted text hidden]

16



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

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**Document Request**

2 messages

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

Thu, Aug 8, 2013 at 8:16 AM

Hi Jim,

It is my understanding that the 2010 housing element was not accepted by the Housing & Community Development (HCD). I would appreciate receiving a copy of that letter. Could you email or fax me a copy, or do I need to request it at the counter?

I would appreciate receiving it by the end of today. Thanks.

Best regards,

John

John Owens Services, Inc.  
P.O. Box 1089  
Fairfax CA 94978  
(415) 456-2906  
Fax: (415) 456-9017  
johnowensservices.com

---

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

Thu, Aug 8, 2013 at 9:39 AM

Hi John,

Sure, here is the letter attached.

FYI: We have been working for several months with consultants & HCD staff to address all eleven pages of their comments. As of last Friday, we have completed the draft amendments (that have informal blessings from HCD staff) to the 2010 Housing Element that we will be taking to a joint meeting of the Planning Commission/General Plan Implementation Committee/Affordable Housing Committee in the near future for their review.

Best Regards,

Jim

James M. Moore

Director of Planning & Building Services

Town of Fairfax

142 Bolinas Road

Fairfax, CA 94930

Phone: (415) 453-1584

Fax: (415) 453-1618

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

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

---

**From:** John Owens [mailto:johnowensservices@gmail.com]

**Sent:** Thursday, August 08, 2013 8:17 AM

**To:** Jim Moore

**Subject:** Document Request

[Quoted text hidden]

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 **1 28 13 Fairfax\_Adopted\_mc.pdf**  
123K



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

1800 Third Street, Suite 430  
P. O. Box 952053  
Sacramento, CA 94252-2053  
(916) 323-3177 / FAX (916) 327-2643  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



December 13, 2012

James M. Moore  
Director of Planning and Building Services  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930

Dear Mr. Moore:

**RE: Review of the Town of Fairfax's Adopted Housing Element**

Thank you for submitting Fairfax's adopted housing element received for review on September 14, 2012 and adopted on April 4, 2012. The adopted housing element was submitted for the 4<sup>th</sup> planning cycle and covers the 2009-2014 planning period. The Department is required to review adopted housing elements and report the findings to the locality pursuant to Government Code Section 65585(h). A meeting and subsequent conversations with you facilitated the review.

According to Department records, the Town did not submit a draft element for review as required by State housing element law. Government Code Section 65585(b) states "at least 60 days prior to the adoption of an amendment to this element the planning agency shall submit a draft of the element or amendment to the Department" (of Housing and Community Development). Furthermore, Section 65585(e) states, "prior to the adoption of its draft or draft amendment, the legislative body shall consider the findings made by the Department." Since the element was not submitted to this Department prior to adoption, the Town must consider these findings pursuant to Section 65585(e) and (f).

The adopted element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). In particular, the element must demonstrate adequate sites to accommodate the City's regional housing need allocation (RHNA) for lower-income households. The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

We are committed to assist Fairfax in addressing all statutory requirements of housing element law. If you have any questions or need additional technical assistance, please contact Melinda Coy, of our staff, at (916) 445-5307.

Sincerely,

Glen A. Campora  
Assistant Deputy Director

Enclosure

## APPENDIX TOWN OF FAIRFAX

The following changes would bring Fairfax's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on the Department's website at [www.hcd.ca.gov/hpd](http://www.hcd.ca.gov/hpd). Refer to the Division of Housing Policy Development and the section pertaining to State Housing Planning. Among other resources, the Housing Element section contains the Department's latest technical assistance tool *Building Blocks for Effective Housing Elements (Building Blocks)* available at [www.hcd.ca.gov/hpd/housing\\_element2/index.php](http://www.hcd.ca.gov/hpd/housing_element2/index.php), the Government Code addressing State housing element law and other resources.

### A. Review and Revision

*Review the previous element to evaluate the appropriateness, effectiveness, and progress in implementation, and reflect the results of this review in the revised element (Section 65588 (a) and (b)).*

A thorough program-by-program review is necessary to evaluate Town's performance in addressing housing goals. As part of this analysis, the element should describe the actual results of the prior element's programs, compare those results to the objectives projected or planned, and based on an evaluation of any differences between what was planned versus achieved, provide a description of how the objectives and programs of the updated element incorporate changes resulting from the evaluation. This information and analysis provides the basis for developing a more effective housing program.

### B. Housing Needs, Resources, and Constraints

1. *Include an analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected needs for all income levels, including extremely low-income households (Section 65583(a)(1)).*

While the element quantifies the number of existing ELI households (Page HB-6), it must also include an estimate of the projected number of extremely low-income households and analyze the existing housing needs. The element may either use available Census Data to calculate the number of extremely low-income households, or presume 50 percent of the very low-income households qualify as extremely low-income households. To assist the analysis, see the *Building Blocks'* website at: [http://www.hcd.ca.gov/hpd/housing\\_element2/EHN\\_extremelylowincome.php](http://www.hcd.ca.gov/hpd/housing_element2/EHN_extremelylowincome.php).

2. *Include an analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition (Section 65583(a)(2)).*

While the element includes overpayment information for lower-income households, the element must also identify and analyze overpayment by tenure (renters and owners) for all households. Further, the element must include overcrowding information by tenure. A thorough analysis will assist the Town in

developing appropriate housing policies and prioritizing housing resources. For additional information, refer to the *Building Blocks*' technical assistance tool at [http://www.hcd.ca.gov/hpd/housing\\_element2/EHN\\_Overpayment.php](http://www.hcd.ca.gov/hpd/housing_element2/EHN_Overpayment.php).

3. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

Fairfax has a regional housing need allocation (RHNA) of 108 housing units, of which 35 are for lower-income households. To address this need, the element relies on second units, vacant and non-vacant sites, and non-residential sites. To demonstrate the adequacy of these sites and strategies to accommodate the Town's RHNA, the element must include complete analyses:

Addressing Unaccommodated Need from the Previous Planning Period (AB 1233):

The element did not address this requirement. Pursuant to Chapter 614, Statutes of 2005 (AB 1233), if the Town of Fairfax failed to make adequate sites available to accommodate the regional housing need in the prior planning period, including failure to implement rezoning, the Town must zone or rezone sites to accommodate any unaccommodated need within the first year of the 2008-2014 planning period. As you know, the Town of Fairfax's housing element was found out of compliance in the previous planning period due to inadequate sites, and therefore the element must include an analysis or programs to demonstrate compliance with these statutory requirements. Further information can be found at [http://www.hcd.ca.gov/hpd/hrc/plan/he/ab\\_1233\\_final\\_dt.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_1233_final_dt.pdf).

Please also note, Government Code Sections 65584.09 and 65583(c)(1) (AB 1233) requires the Town to zone sufficient sites to accommodate the unaccommodated need from the previous planning period within the first year of the 2009-2014 planning period. As this timeframe has lapsed, the Department cannot find the element in compliance until the required rezoning is complete and it is amended to reflect that rezoning.

Sites Inventory: While the element lists sites by parcel number, parcel size, existing use and zoning, it must also include the general plan designation and estimated capacity for each parcel.

Multiple Parcels: Sites 1, 3, 5, and 6 are comprised of multiple parcels. While the inventory may aggregate parcels, it should also list sites individually by size, General Plan designation, zoning, and capacity. *For parcels anticipated to be developed individually*, the element should include an analysis demonstrating the potential of these sites to accommodate new residential development, given necessary economies of scale particularly for new multifamily rental development affordable to lower-income households. While it may be possible to build housing on a very small parcel, the nature and conditions necessary to construct the units often render the

provision of affordable housing infeasible. For example, assisted housing developments utilizing State or federal financial resources typically include 50-80 units. For parcels anticipated to be consolidated, the element could describe the potential for lot consolidation, including conditions rendering parcels suitable and ready for redevelopment, trends or information on the number of owners and indicating where sites have been assembled.

Realistic Capacity: The element did not address this requirement. The element must describe the methodology for determining the residential capacity of sites. The estimate of potential unit capacity must consider land-use controls and site improvement requirements and could reflect recently built densities. For mixed-use or commercial sites allowing residential uses, the capacity analysis should also account for potential development of non-residential uses and could consider any performance standards mandating a specified portion of a mixed-use site as non-residential (e.g., first floor, front space as commercial). See the *Building Blocks'* website and sample analysis at [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_zoning.php#capacity](http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#capacity).

Suitability of Underutilized Sites: The element did not address this requirement. The element appears to rely on potential reuse or intensification of sites with existing residential development to accommodate a portion of the remaining regional housing need. While the element provides a very general description of the existing uses, it must also demonstrate the potential for redevelopment and evaluate the extent to which existing uses may impede additional residential development. For example, one site is listed including a mix of old homes, apartments and offices, while another lists the use as a variety of commercial businesses, but provides no information about the appropriateness of these sites or the potential for the uses to be discontinued. The evaluation should consider development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites. For sites with residential uses, the inventory could generally describe structural conditions or other circumstances and trends demonstrating the redevelopment potential to more intense residential uses. For non-residential sites, the inventory could generally describe whether the use is operating, marginal or discontinued, and the condition of the structure or could describe any expressed interest in redevelopment. Refer to the sample analysis on the *Building Blocks'* website at: [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_zoning.php#nonvacant](http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#nonvacant)

Second-Units: As the Town plans to utilize second units to accommodate a portion of the regional housing need for lower-income households, the element must include an analysis supporting the realistic capacity of second units in the planning period based on the number of units approved in the previous planning period, whether or not the units are permitted by-right, the need for the units in the community, the resources or incentives available for their development, anticipated affordability, and any other relevant factors. In addition, the capacity analysis should also account for the timeframe for development and adoption of the new amnesty program. This

analysis is critical given only two units were approved under the previous amnesty program (page H-11). The analysis could consider trends and the length of time to bring illegal structures to current building code requirements for residential use.

Sites with Zoning for a Variety of Housing Types: The element did not address this requirement. The housing element must demonstrate the availability of sites, with appropriate zoning, that will facilitate a variety of housing types including multifamily rental housing, factory built housing, mobilehomes, housing for agricultural employees, emergency shelters and transitional housing. An adequate analysis should, at a minimum, identify whether and how zoning districts explicitly allow the uses, analyze whether zoning, development standards and permit procedures encourage and facilitate these housing types. If the analysis does not demonstrate adequate zoning for these housing types, the element must include implementation actions to provide appropriate zoning. Additional information on this requirement, including a sample analysis, is available in the Building Blocks' website [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_variety.php](http://www.hcd.ca.gov/hpd/housing_element2/SIA_variety.php)

Emergency Shelters: Program H-2.1.5.1, (page H-38) proposes to amend the zoning code to allow emergency shelters without as a "permanent, non-conditional use" in the CC zone and public and Quasi- Public districts. Pursuant to Chapter 633, Statutes of 2007 (SB 2), the element must include an analysis of the suitability and appropriateness of this zone and demonstrate sufficient capacity to accommodate at least one year-round emergency shelter. In addition, the rezone must occur within one year of adoption of the element. Refer to the sample analysis on the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/SHN\\_shelters.php#Requisite Analysis](http://www.hcd.ca.gov/hpd/housing_element2/SHN_shelters.php#Requisite_Analysis).

4. *Analyze potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7) (Section 65583(a)(5)).*

Land-Use Controls: While the element generally concludes that the Town's land use standards do not constrain the development of housing, it should describe these standards and analyze their potential impacts on the cost and supply of housing or add implementation actions to address and remove or modify the standards as constraints on development. For more information, see the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_landuse.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_landuse.php)

Fees and Exaction: The element must include a complete listing of processing and impact fees for single and multifamily development and analyze their impact on the cost and supply of housing. For example, the element should describe total planning and impact fees for typical multi and single-family developments and analyze the total

effect or proportion of these fees and exactions on development costs. For further information, refer to the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_fees.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_fees.php).

Local Processing and Permit Procedures: While the element includes some information regarding the typical timeframes for approval of a single and multifamily development, it must specifically describe and analyze the Town's permit processing and approval procedures by zone and housing type. To address this requirement, the element should discuss all processing and approval procedures, including type of permit, level of review, and any discretionary approval procedures or design review requirements.

In addition, the element states multifamily developments over 10 units must be approved through a CUP (page H-17). This process must be further analyzed as a constraint and should identify findings of approval for the CUP and their potential impact on approval certainty, timing, and cost. The Town may need to include a program to address this permitting requirement. Additional review and complex discretionary findings can add significant time and uncertainty to the approval process and consequently can impact the cost and supply of housing, particularly housing affordable to low- and moderate-income households. Consequently, the element must demonstrate this process is not a constraint or include a program to remove or mitigate this permitting requirement

Design Review: The element indicates design review is required as part of the approval procedure for residential development (page H-13). The element should include a description and analysis of the design criteria review guidelines and process, including identifying requirements and approval procedures and analyzing the impact of the guidelines and process on housing costs and approval certainty.

On/Off-Site Improvements: While the element notes sidewalks, curbs and other improvements are required, the element should identify the actual standard (i.e., 40 foot minimum street width) and analyze potential impacts on the cost and supply of housing.

Constraints on Persons with Disabilities: While the element includes Program H-2.1.3.1 to adopt a reasonable accommodation procedure, it must include a complete analysis of potential constraints on the development, maintenance, and improvement of housing for persons with disabilities. The analysis should address zoning, development standards, any definition of family, building codes, and approval procedures for the development of housing for persons with disabilities. Additional information, including sample and model ordinances, is available in the *Building Blocks'* website at [http://www.hcd.ca.gov/hpd/housing\\_element2/CON\\_disabilities.php](http://www.hcd.ca.gov/hpd/housing_element2/CON_disabilities.php).

The Town should also review its density bonus ordinance for compliance with recent statutory amendments (Chapter 1928, Statutes of 2004) to State density bonus law (Government Code Section 65915). A copy of the current law is available on the Department's website at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=qov&group=65001-66000&file=65915-65918>

- 4. *The housing element shall contain programs which address, and where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing (Section 65583(c)(3)).*

As noted in Finding B4, the element requires a complete analysis of potential governmental constraints. Depending upon the results of that analysis, the Town may need to revise or add programs and address and remove or mitigate any identified constraints.

- 5. *The housing program shall preserve for low-income household the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance (Section 65583(c)(6)).*

The element must include specific and proactive actions to preserve housing units at-risk of converting to market-rate. For example, the program should ensure compliance with noticing requirements and include a tenant education component and consider pursuing funding on at least an annual basis. The program should also commit the Town to contacting non-profits immediately to develop a preservation strategy by a date certain to be ready to quickly act when notice of conversion is received.

**D. Quantified Objectives**

*Establish the number of housing units, by income level, that can be constructed, rehabilitated, and conserved over a five-year time frame (Section 65583(b)(1 & 2)).*

Include quantified objectives estimating the number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period. This requirement could be addressed by utilizing a matrix like the one illustrated below:

Income	New Construction	Rehabilitation	Conservation/ Preservation
Extremely Low-			
Very Low-			
Low-			
Moderate-			
Above Moderate-			
<b>TOTAL</b>			

**E. Public Participation**

*Local governments shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the element shall describe this effort (Section 65583(c)(7)).*

While the element includes a general summary of the public participation process (page H-3), it does not demonstrate how the Town did or will make a diligent effort to achieve the involvement all economic segments of the community through the adoption process. The element should be revised to specifically describe the Town's efforts to circulate the housing element among low- and moderate-income households and organizations that represent them and to involve such groups and persons in the development of the element. For example, the element could describe the success of outreach efforts, summarize public comments and describe how the element incorporated public input.

**F. Consistency with General Plan**

*The housing element shall describe the means by which consistency will be achieved with other general plan elements and community goals (Section 65583(c)(7)).*

The element must include a complete discussion of how consistency will be achieved and maintained during the planning period. The element could include a program to conduct an internal consistency review as part of its annual general plan implementation report required under Government Code Section 65400. This annual report can also assist future updates of the housing element.

The Town should also note recent statutory changes to Government Code Section 65302 (Chapter 369, Statutes 2007 [AB 162]) which requires amendment of the safety and conservation elements of the general plan to include analysis and policies regarding flood hazard and management information upon the next revision of the housing element on, or after, January 1, 2009. Please refer to Department's website at [http://www.hcd.ca.gov/hpd/hrc/plan/he/ab\\_162\\_stat07.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/ab_162_stat07.pdf) for additional information.



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TOWN OF FAIRFAX

AUG 13 2013

August 13, 2013

RECEIVED

Jim Moore  
Linda Neal  
Town of Fairfax

Re: Town of Fairfax Planning Commission Staff Report Re: 8/15 Agenda/Meeting

Dear Jim and Linda,

Because the staff report we received from you is full of inaccuracies we are not prepared to come before the planning commission for such an important application. Major items are incorrect, for example:

**Page 3: A side yard setback variance:** The 9ft x 19ft parking space for the second unit is proposed within the required 5 ft side yard setback. Town Code Section 17.052.010(B) prohibits the location of parking in a side yard setback.

**Correction:** The parking space layout is on page A1.3 of our plans and it is an 8' x 16' space for the main house located in the side setback.

Another example:

**Page 4: The proposed project provides two spaces** for the main residence in the garage, a third guest space for the main residence is located partially in the driveway on private property and partially in the public easement on the driveway approach. The fourth space for the second unit is proposed adjacent to the existing driveway in the side yard setback and almost entirely within the public road easement. Therefore, the proposal, if approved, would create a precedent of allowing second unit parking in an easement meant for the use of the general public.

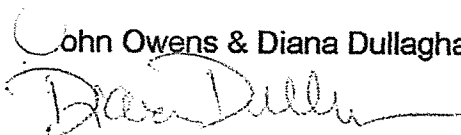
**Correction:** The fourth parking space for the unit is in the garage on the property, and there is no mention of the fifth space. We are fully aware of the Town parking codes. Your paragraph does not make sense due to the actual layout of the parking spaces.

There are more inaccuracies which I do not have time to address before Thursday. Please withdraw 177 Frustuck second unit application, item 7, from the 8/15 agenda. I will be in contact shortly with the full list of inaccuracies and corrections.

Let's discuss this situation further. I know the Town has a deadline to produce 25 affordable second units in 5 months. This is a prime opportunity for the Town. I would like to work towards the Planning Department recommending our second unit for approval.

Please confirm by telephone message or email that you have removed this item from the 8/15 agenda. Thank you.

John Owens & Diana Dullaghan



17

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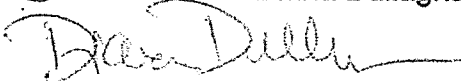
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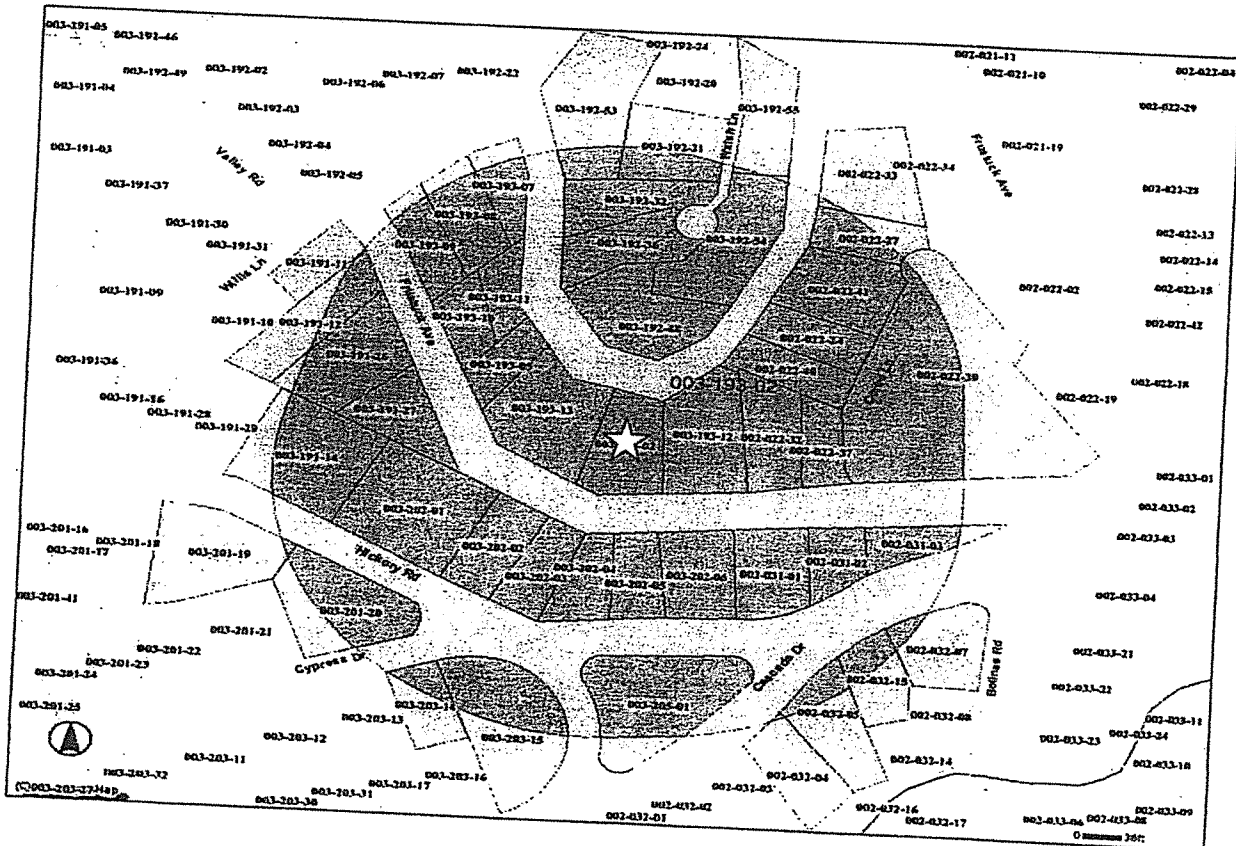
John Owens & Diana Dullaghan



# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Planning Commission  
**DATE:** August 15, 2013  
**FROM:** Jim Moore, Director of Planning and Building Services  
 Linda Neal, Senior Planner  
**PROJECT:** Residential second unit and associated parking additions to a single-family residence  
**ACTION:** Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit; Application # 13-31  
**APPLICANTS:** John Owens and Diana Dullaghan  
**OWNERS:** Same  
**LOCATION:** 177 Frustuck Avenue; Assessor's Parcel No. 003-193-02  
**ZONING:** Residential Single-family RS 6 Zone  
**CEQA STATUS:** Categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b).



**177 FRUSTUCK AVENUE**

## BACKGROUND

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

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

Construction of a garage on the parking deck was completed in 2012.

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

The request was denied by the Planning Commission on February 19, 2009 and the denial was upheld by the Town Council on August 5, 2009 by the adoption of Resolution No. 09-56 (Exhibit A – Resolution No. 09-56 and minutes from the July 1, 2009 Town Council meeting).

## DISCUSSION

The 8,493sf property is a street-to-street site with the front and rear property lines located along different portions of the Frustuck Avenue right-of-way. The site has an average slope of 53% and is wooded with numerous oak trees.

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

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

The proposed second unit complies with the current Residential Single-family RS 6 Zone regulations as follows:

	Front Setback	Rear Setback	Combined Front/rear Setback	Side Setbacks	Combined Side Setbacks	FAR	Lot Coverage	Height
Required/ Permitted	6ft	12ft	35ft	5ft & 5ft	20ft	.40	.35	35ft
Existing	6ft	57ft	63ft	5ft & 17ft	22ft	.27	.34	35ft, 3 stories
Proposed	6ft	52ft	58ft	5ft & 17ft	22ft	.16	.18	35ft, 4 stories

In order to approve the residential second unit the Planning Commission will need to approve the following discretionary permits:

- **A residential second unit use permit:** Section 17.048.180 of the Second Unit Amnesty Ordinance indicates that second unit amnesty permits can be approved by the Planning Director provided the project does not require any exceptions to the Zoning Ordinance (Exhibit C). This project requires exceptions to the zoning regulations and therefore, requires the review and approval of the Planning Commission.
- **A height variance:** Town Code § 17.080.060(A) limits the height of residences on down-sloping lots to 35ft and only three stories. The proposed residence and unit will result in a four-story structure but it will not exceed the 35ft maximum height limitation.
- **A side setback variance:** The 9ft x 19ft parking space for the second unit is proposed within the required 5ft side yard setback. Town Code § 17.052.010(B) prohibits the location of parking in a side yard setback.
- **An encroachment permit:** Most of the parking space for the second unit will be located within the public right-of-way. Although the Residential Second Unit Ordinance requires that the parking for a second unit be located on private property [Town Code 17.048.040(D)], Town Code § 12.32.030 allows the Planning Commission to approve private improvements in portions of the public right-of-way not being used by the public.

### Vegetation

The project would be located within a portion of the existing residence's envelope and the patio would extend into an area of the property with no trees. Therefore, the construction would not require the removal of any trees that are subject to the tree removal process. The applicant is proposing to plant 5 shrubs at the rear of the patio to screen it from the view of the neighbors and to provide the resident of the second unit with some private outdoor living space.

### Excavation

Construction of the unit would only require the excavation of 6 cubic yards of material and therefore would not require the approval of an excavation permit from the Planning Commission (Town Code § 12.20.080).

## **Parking**

Town Code § 17.052.030(A) indicates that three 9ft x 19ft parking spaces are required for a single-family residence. The Residential Second Unit Ordinance requires an additional one 9ft x 19ft parking space for a second unit [17.048.040(D)].

The proposed project provides two spaces for the main residence in the garage, a third guest space for the main residence is located partially in the driveway on private property and partially in the public easement on the driveway approach. The fourth space for the second unit is proposed adjacent to the existing driveway in the side yard setback and almost entirely within the public road easement. Therefore, the proposal, if approved, would create a precedent of allowing second unit parking in an easement meant for the use of the general public.

## **Second Unit Regulations**

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

(A) *Owner occupancy.* Either the primary residence or the second unit shall be owner-occupied. The occupancy shall be verified by the submission to the Director of an affidavit of occupancy signed by the property owner prior to issuance of the permit for a residential second unit. The affidavit shall be provided by the town. The affidavit shall be renewable every three years or upon the sale of the property, whichever occurs first, and shall require a re-inspection of the second unit by town staff to verify continued conformance with the development standards. A nominal fee shall be imposed for the affidavit renewal and inspection, as set by resolution of the Town Council. *The owner currently resides in the residence and will have to comply with this requirement to assure the continued legalization of the unit.*

(B) *Unit type.* Second units shall be limited to those contained within the existing single-family residential structure, additions thereto, or detached structures on sites developed with a single family residence. *The unit is attached to the main residence.*

(C) *Maximum number.* Only one residential accessory unit is allowed for a single-family residence developed on a legal and conforming building site, as determined by the town. Accessory units are not allowed in conjunction with duplex or multiple residential developments. *After construction only one residential accessory unit will exist on the property.*

(D) *Design standards.* Any modifications to the exterior of the building, or construction of new structures, shall be strictly in keeping with the architectural character of the principal residence, and shall maintain the scale and character of the existing residence within the neighborhood in which the second unit is situated. *The unit is located below the existing residence and the entrance will be from the side. Therefore, the unit will not be visible from the street and the residence will still appear to be a single-family residence.*

(E) *Utilities.* Adequate utility service shall be available for sewer, water, telephone, gas and electricity. *Marin Municipal Water District and the Ross Valley Sanitary District have indicated that they can provide service to the proposed unit (Exhibit B – Memorandums dated 3/4/08 and 3/3/08)*

(F) *Separate entry and facilities.* The unit shall contain a separate entry, kitchen and bathroom. *The proposed unit contains a separate entry, kitchen and bathroom.*

(G) *Negative impacts.* The second unit shall not cause excessive noise, traffic/parking congestion or overloading of public facilities, nor change the character of the neighborhood. *The second unit has the potential to create a precedent for four story structures in the hillside area and to allow use of the public roadway easement for private second unit parking.*

(H) *Minimum site size.* The project site shall meet the minimum size and width requirements, based on the slope of the property, that are set forth for the residential zoning district in which the property is located. *The applicant has applied for a Use Permit for the unit which is the requirement for a property with less than the minimum size and width as indicated in the Second Unit Ordinance, Town Code § 17.048.100(A).*

(I) *Required inspection.* The property owner(s) shall provide written consent to a physical inspection of the premises as part of the application requirements. *By signing the application the owner provides written consent to inspect the property. Ongoing inspections of the site during construction and approval of the Use Permit allows staff to inspect the site if there are any complaints that the conditions of approval are not being complied with. If the Town receives complaints that the unit and/or owners and tenants are not complying with the conditions of approval or are creating problems for the neighborhood, the Town may schedule hearings to address the neighbors concerns.*

#### **Precedent Setting Policy Issues**

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

However, with the adoption of the 2010 – 2030 Fairfax General Plan, the Town documented that it is leaning towards meeting the Town's affordable housing needs by encouraging residential second units.

While staff previously recommended approval of this second unit and the required discretionary exceptions in 2009, we do acknowledge that the approval of the project as designed could set a precedent for the approval of the following:

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

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

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

#### **Other Agency/Department Comments/Conditions**

##### **Ross Valley Fire**

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

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

Smoke detectors and carbon monoxide alarms shall be provided.

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

##### **Marin Municipal Water District**

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

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

##### **Ross Valley Sanitary District**

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

#### **RECOMMENDATION**



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

#### ATTACHMENTS

- Exhibit A – Applicant's supplemental information
- Exhibit B – Resolution No 09-56
- Exhibit C - Minutes from the July 1, 2009 Town Council meeting and the February 19, 2009 Planning Commission meeting.
- Exhibit D – Memorandums from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District

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

August 8, 2013

Via Email and Hand Delivery  
Planning Commission  
Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

We are asking the Planning Commission to take a fresh look at our resubmitted second unit application. Four years have passed since our last application. The Town of Fairfax is still required by the Association of Bay Area Governments to develop 108 housing units between 2009 and 2014. A large portion of the quota is to be affordable housing. To date the Town has approved at most two affordable second units. This unit will be the third affordable unit within the 2009-2014 planning period.

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

177 Frustuck is probably the most sustainable home built in Fairfax to date. If Leed Certification existed in 2006, it would have been rated Gold Standard (see letter from Leed certified Architect). The proposed energy efficient second unit would be Leed certified to Gold or Platinum Standard. The second unit will have double the required off street parking spaces. It would be an infill of an existing space under an existing house. We are not constructing a fourth story as the space already exists under the house. There would be no visual impact from the exterior, and the existing footprint will not change.

The Town has an objective of producing 27 Accessory Dwelling Units by 2014. We are heading into 2014 and Fairfax has only produced at most two (unclear because the Town was required to produce 64 units under the previous ABAG planning period and that quota was not met and some approvals were in the previous time period).

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

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

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

Please don't ignore the written and adopted policies of the Town of Fairfax. It is August 2013 and the Town is 25 second units short of its quota. Please approve this unit.

The Town of Fairfax has already set a precedent by granting multiple exceptions and variances for the three second units that I am aware of that have been approved to date:

#### **SECOND UNITS (Town Code)**

##### **§ 17.048.010 PURPOSE.**

The purpose of this chapter is to implement the housing element of the general plan in order to increase housing opportunities for all economic segments of the community. The intent is to provide for retention in the housing stock of existing units that comply with health and safety standards and to encourage construction of new accessory residential units in full compliance with such standards.

##### **§ 17.048.090 EXCEPTIONS.**

(A) Exceptions to the requirements of this chapter shall be made in the following cases: The provisions of this chapter shall not apply to legal non-conforming second units; legal non-conforming units are subject to the provisions of Chapter 17.016 of this title. (B) Any other exceptions to the provisions of this chapter are subject to securing a variance or use permit as prescribed by Chapters 17.028 and 17.032 of this title. (Ord. 704, passed 6-8-2004).

November 20, 2003. 88 Dominga. Application approved outside of the second unit amnesty. Approval to convert an existing 324 sq. ft. garage to a second unit. The unit and the parking space were located in the side yard set back and both needed variances. ( I believe only one variance was allocated to the project to expedite a much needed second unit) **Two Variances.**

April 17<sup>th</sup> 2008 17 Vista Way. Unit approved under the second unit amnesty. This project required **Three variances.** A size variance, a side yard setback variance, and a parking variance.

September 18<sup>th</sup> 2008 130 Mono Avenue approval under the second unit amnesty. This project required a side yard setback variance for an existing parking space. The second unit square footage also exceeded the 700 square foot or 30% of the main unit.  
**Two Variances.**

### **Greatest Exception**

In the spring of 2010, the Town Council voted to modify the State Fire Code in regards to the requirement of fire sprinklers in the legalizing of existing illegal second units. This was an effort to encourage legalizing the three hundred to four hundred documented illegal units in Town. The code modification was over the strong objections of safety from the Ross Valley Fire Marshall. Council member Tremaine stated at the final council meeting that the Town had to do this because the Town was under the gun from ABAG.

177 Frustuck does require exception for a side yard setback parking space. This variance has been common in Fairfax and granted to previous second units. An encroachment permit for working in the Town right of way (not an exception as this is usually an over the counter permit). We require exception for a third story variance. The home does not have at any point three stories stacked on top of each other. The house is two stories with a vacant storage space underneath.

The precedents are already set. The Town has already shown it will make great exceptions for the production of second units. The requested variances are no different. There will not be a flood of requests to build new four story houses with second units because the Town has already stated in previous Housing Elements that for all intents and purposes the Town is built out, and those handful of remaining lots are largely uneconomic to develop. There will not be a flood of applications to build new units under existing homes because the retrofitting of existing older homes would not be economically viable. It certainly would be a plus to the Town of Fairfax if more applicants legally in-filled spaces under their homes to produce legal second units with off street parking.

Lastly, the Town is "under the gun" from ABAG and State of California HCD. This situation is clearly stated in the 2010 adopted Housing Element (adopted by the Town but not approved by the State of California).

"In short, many of the policies and objectives proved unattainable (2006 element). As a result, the 2010 Housing Element update must take into account the shortcomings of the 2006 Housing Element to ensure that the Town of Fairfax does not face fines and penalties from State and federal agencies, or challenges from housing advocacy groups".

The 2006 Housing Element and the 2010 Housing element have not been approved by the State of California. Fairfax is the Town in Marin County with the longest history of noncompliance with ABAG and HCD. It makes it the obvious next target for penalties from the State or law suits from housing advocacy groups.

In the December 13, 2012 11-page review and refusal of the Town of Fairfax Adopted Housing Element by the State Department of Housing and Community Development, the HCD has great concerns about the viability of providing 27 affordable second units with the 2009-2014 period.

**"Second-Units: As the Town plans to utilize second units to accommodate a portion of the regional housing need for lower-income households, the element must include an analysis supporting the realistic capacity of second units in the planning period based on the number of units approved in the previous planning period, whether or not the units are permitted by-right, the need for the units in the community, the resources or incentives available for their development, anticipated affordability, and any other relevant factors. In addition, the capacity analysis should also account for the timeframe for development and adoption of the new amnesty program. This analysis is critical given only two units were approved under the previous amnesty program (page H-11). The analysis could consider trends and the length of time to bring illegal structures to current building code requirements for residential use."**

We urge you to approve our Leed Certifiable Affordable Housing Second Unit.

Thank you for your consideration.

John Owens & Diana Dullaghan

PROJECT DESCRIPTION: INFILL AFFORDABLE  
SECOND UNIT WITHIN THE EXISTING  
STRUCTURE.

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	8943	8943
Size of structure(s) or commercial space (square feet)	2093	2653
Height and No. of stories	35' - 3	35' - 3
Lot coverage	1424	1424
No. of dwellings units	1	2
Parking <sup>1</sup>	No. of spaces	4
	Size of spaces	9' x 19'
		4 x 9' x 19' 1 x 8' x 16'

Amount of proposed excavation and fill	Excavation = 0	Fill = 0
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Estimated cost of construction \$ 60,000

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

<sup>1</sup>Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they?

DEED RESTRICTION - THAT THE EXISTING  
STORAGE AREA ON THE LIVING LEVEL CAN  
NOT BE RESIDED IN.

[Signature]  
 Signature of Property Owner  
6.24.13.

\_\_\_\_\_  
 Signature of Applicant  
 \_\_\_\_\_  
 Date

Date  
 Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA.  
 (415) 453-1584

## FLOOR AREA RATIO (FAR) AND LOT COVERAGE STATISTICS

The following information will be used to verify application FAR and lot coverage amounts.  
Applications will not be considered complete until the following table is complete.

	Existing	Proposed
Footprint square footage for all structures	1424	1424
Living space square footage		
First floor	1069	1069
Second floor	1024	1024
Third floor	0	560
Total	2093	2653
Accessory structure square footages		
Sheds		
Pool houses		
Studios/offices		
Second units		
Miscellaneous (specify use)	STORAGE 370	STORAGE 370
Total	370	370
Square footage of impervious surfaces		
Walkways		
Patios	195	195
Impervious decks	717	717
Miscellaneous (specify use)		
Total	913	913
Garage/carport square footages (specify type)		

\* All square footage measurements must be the sum of all interior floor area measured from the exterior faces of the exterior walls for structures (Town Code § 17.008.020).

**FLOOR AREA:** Fairfax Town Code § 17.008.020, Definitions, defines "floor area" as the sum of all interior floor area measured from the exterior faces of the exterior walls. The "floor area" of any accessory structures on the same lot shall be included. The "floor area" of any garage in excess of 500sf in size for single-family residences and 800sf in size for duplexes shall also be included.

**LOT COVERAGE:** Fairfax Town Code § 17.008.020, Definitions, defines "lot coverage" as the percentage of the lot area that is occupied by the ground area of a building, any accessory building(s), as well as any impervious surface areas such as patios (other than driveways) adjacent to the building or accessory structure.

## SUPPLEMENTAL QUESTIONNAIRE & DRB APPLICABILITY

### DESIGN REVIEW

For Commercial, Planned Developments, Hillside Residential and Multiple Family Design Review: (Include brand and number for all finish and/or paint colors.)

1. Exterior finish: same no change
2. Proposed exterior wall color(s): same no change
3. Proposed exterior trim color: same
4. Proposed exterior window color: same
5. Proposed roof material and color: same - no roof
6. Special features: \_\_\_\_\_
7. Lot Coverage: same no change
8. Number of existing parking spaces and their sizes: 4 - 9' x 19'
9. Number of proposed parking spaces and their sizes: 5 - extra 8' x 16' compact for main house.

### DESIGN REVIEW APPLICABILITY

#### 1. Hillside Design Review (in a ridge line)

All new dwellings located on hillside properties and all additions on properties located in a ridgeline scenic corridor (which include deck and stairway structures) shall require design review.

Additions and accessory structures may be exempt from design review where the applicant demonstrates, through the use of story poles, plans and photo montages, that an accessory structure or addition will have no impact on significant view corridors due to the proposed location of the structure in relation to existing improvements. Project exemption shall be determined by the Fairfax Planning Director.

#### 2. Multiple family Design Review

Multiple family residential units of three (3) or more and additions to structures located in the Multiple Family RM Zone.

#### 3. 50% remodels of additions to residential properties



SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

\_\_\_\_\_ foot front yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the front property line.

\_\_\_\_\_ foot rear yard variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the rear property line.

5 foot side yard variance to construct a PARKING SPACE within \_\_\_\_\_ feet of the side property line.

\_\_\_\_\_ foot creek setback variance to construct a \_\_\_\_\_ within \_\_\_\_\_ feet of the top of the creek bank.

Other (fence height, building height, parking number or size, etc.) HEIGHT — NO RADICAL CHANGE — TECHNICALLY ONE MORE STORY.  
FINDINGS:

- 1. List below special circumstances applicable to the property, including size, shape, topography, location, or surroundings, to show why the variance should be granted; and why the granting of the variance will not be a granting of special privileges inconsistent with the limitations upon other properties in the vicinity and zone (you may attach a statement).

PROVIDE OFF STREET PARKING FOR THE SECOND UNIT  
SAME VARIANCE GRANTED TO THREE PREVIOUS  
SECOND UNITS, THE ONLY UNITS APPLIED FOR  
THAT I AM AWARE OF.

- 2. List below your reasons why the variance will not materially adversely affect the health or safety of persons residing or working in the neighborhood or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood (you may attach a statement).

ALMOST ZERO VISUAL IMPACT  
MOST PEOPLE WOULD WALK BY AND NOT NOTICE  
ANY CHANGE

- 3. Explain why complying with the Town Ordinance requirements will be a hardship for the owner.

DENIAL OF THE SECOND UNIT WOULD BE AN  
EXTREME FINANCIAL HARDSHIP TO THE OWNERS.  
WE DESERVE THE SAME VARIANCES GRANTED  
TO PREVIOUS SECOND UNIT ~~APPLICANTS~~ APPLICANTS.  
THE SAME SECOND UNIT VARIANCES ADDRESSED  
IN THE TOWN HOUSING ELEMENT.

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties. — ~~NA~~ — NO CHANGE TO BUILDING
- Lot coverage calculation including all structures and raised wooden decks.

In order to approve your project, the Planning Commission must make findings of fact which state that 1) there is a special feature of the site (such as size, shape or slope) which justifies an exception; 2) that the variance is consistent with the treatment of other property in the neighborhood; 3) that strict enforcement of the ordinance would cause a hardship; and 4) that the project is in the general public interest.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project:

1. — No physical change to structure.
2. Variances are consistent with variances granted for previous second units.
3. Financial hardship — previous 2nd unit applications were approved affording the applicants income from their units.
4. Fairfax is required to provide 108 housing units by 2014. This unit would be an affordable housing unit to house a needy person.

The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- > The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

Same privileges granted to previous  
second unit applicants

- > The development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

Just the opposite to the above statement.  
Beneficial to town, neighborhood, and parking in  
Town.

- > Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town.

Meets all guidelines in the Town Housing  
Element for affordable, sustainable, energy  
efficient housing. Meets the ABAR guidelines  
for affordable, energy efficient housing.

**RESOLUTION NO. 09-56**

**A RESOLUTION OF FAIRFAX TOWN COUNCIL  
UPHOLDING THE DECISION OF THE PLANNING COMMISSION AND  
DENYING AN APPEAL FOR A PROJECT LOCATED AT 177 FRUSTUCK AVENUE.**

**177 Frustuck Avenue; Assessor's Parcel No. 003-193-02**

**WHEREAS**, the Town Council of the Town of Fairfax received an appeal from the owner for a Use Permit and Height Variance for a residential second unit and for an encroachment permit and Setback Variance to place the second unit parking within the side yard setback and partially within the public right-of-way. The appeal of application #09-02 requested that the Planning Commission's February 19, 2009 decision which denied the previously referenced discretionary permits for a Residential Second Unit and the required additional parking be overturned; and

**WHEREAS**, the Planning Commission held a duly noticed Public Hearing on February 19, 2009, at which time all interested parties were given a full opportunity to be heard and to present evidence; and

**WHEREAS** the Planning Commission, on the basis of substantial evidence in the record before it, made findings for denial based on the project not complying with the regulations set forth in Town Code § 17.048.040(D) and (E); and

**WHEREAS**, the Town Council held a duly noticed Public Hearing on July 1, 2009, on the appeal at which time all interested parties were given a full opportunity to be heard and to present evidence; and the Council reviewed the findings and the records of the Planning Commission meeting of February 19, 2009; and

**WHEREAS** the appealed project is Categorically Exempt from the Environmental Quality Act (CEQA) pursuant to Section 15303, "New Construction or Conversion of Small Structures", Class 3(a) of the Public Resources Code (CEQA).

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does hereby find and determine as follows:

1. There is substantial evidence in the record to support the findings and decision of the Planning Commission on this project.
2. There are no special circumstances applicable to the property that prohibit the owner from constructing a second unit in compliance with the height limit of 35 feet and three stories or from converting a portion of the existing three story residence into a unit.
3. The variance to allow a four (4) story structure would be a grant of special privilege. The owner's right in the RS 6 Single-family Residential Zone is for a single-family residence.

Granting an exception to the Town height regulations for a second unit, which is a privilege in the RS 6 Zone, would constitute a grant of special privilege.

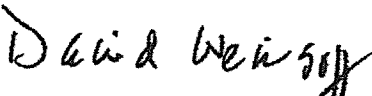
4. The construction of a Residential Second Unit on this property would cause excessive or unreasonable detriment to adjoining properties or premises because the parking for the unit would be located almost entirely within the public right-of-way. The future use of the right-of-way for public improvements would eliminate the required parking for the unit and for the guest parking space for the main residence and render the site non-conforming with the parking requirements.
5. Approval of the three discretionary permits, the Height Variance, Setback Variance and Encroachment Permit to facilitate the creation of a Residential Second Unit on a property where the owners already have a substantial use with an existing single-family residence, would not be in the public interest or for the protection or enhancement of the safety or welfare of the community because the increased density cannot be accommodated in compliance with the Town Codes.

NOW, THEREFORE, the Town Council of the Town of Fairfax does, based on the findings enumerated above, resolve as follows:


1. The Council upholds the decision of the Planning Commission, which denied the Use Permit application #09-02 for 177 Frustuck Avenue

THE FOREGOING RESOLUTION was duly and regularly adopted by the Town Council of the Town of Fairfax, County of Marin, State of California, at a regular meeting thereof, held on the 5<sup>th</sup> day of August, 2009, by the following vote, to wit:

AYES: Bragman, Maggiore, Tremaine, Weinsoff  
NOES: Brandborg  
ABSENT: None

  
\_\_\_\_\_  
DAVID WEINSOFF, MAYOR

Attest:

  
\_\_\_\_\_  
Judy Anderson, Town Clerk

# 7/1/09 TOWN COUNCIL MINUTES

Councilmember Brandborg asked about the status of the budgeted purchase of a defibrillator and Town Manager Rock explained that money was in the 2008-09 budget and that the purchase would be made and charged to the previous year's budget.

Councilmember Bragman suggested that the Town check with the Paramedic Authority because they were making a similar purchase and might be able to offer the Town a discount or to donate one to Fairfax.

## Health Care Costs

In response to a question from Councilmember Brandborg, Finance Director Ireland-Ashley stated that \$70,000 to be saved on employee health care was reflected in the proposed budget.

## Other Budget Discussion

Councilmember Brandborg noted some typographical errors in the proposed budget and asked that they be corrected in the final printed version. She also requested that the outside consulting costs and contracts be listed with the related amounts and that the budget be brought to the Council one more time with the requested information and corrections.

Mayor Weinsoff opened the public hearing.

Rob Whitelock, Maple Ave., stated that the budget reflected unrealistic policies; that the Town needed to increase revenues; that the installation of paid parking downtown should be considered; and that the Town shouldn't pass Measure "F" until police dispatch was consolidated.

Niccolo Caldararo, Frustuck Ave., stated that historically citizens were willing to pay for their towns; that Fairfax residents had to pay more taxes; and that responsible citizens wanted a beautiful community with services provided.

Mayor Weinsoff closed the public hearing.

M/S, Tremaine/Maggiore, Motion to adopt the resolution to approve of the budget incorporating Councilmember Brandborg's corrections.

Town Manager Rock noted that the Council would review the budget again in September.

Mayor Weinsoff stated that the Council would have to hear from the Town Manager and the Finance Director about the budget on a regular basis.

Roll Call Vote:

Bragman: AYE; Brandborg: ABSTAIN; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

177 Frustuck Avenue; Application # 09-02; Appeal of the Planning Commission's denial of a request for a setback variance, a height variance, encroachment permit and a second unit use permit in order to construct a second unit underneath an existing three story, single-family residence and to construct parking for the second unit within the required side yard setback and the adjacent public right-of-way; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, appellants/ property owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b) – Planning (Continued from May 6, 2009 and June 3, 2009)

Planning and Building Services Director Moore presented the staff report.

Alan Mayer, attorney for the appellants, stated that the envelope of the building remained the same; that the Town needed more affordable housing and green building; that it wouldn't change the character of the neighborhood; that there was overwhelming neighborhood support for the project; the issue of "precedence" was brought up but that the current project would not set a precedent; and that the Housing Element and other Town documents supported green building and affordable housing, both a part of the project.

Paul Fitzgerald, Corree Lane, noted that the appellant had 130 signatures on a petition in support of the project, that they were not altering the footprint of the existing structure, and that there was already a four-story house with a car deck next to his house in the neighborhood.

Niccolo Caldararo, Frustuck Ave., stated that the four-story precedent was important to avoid; that affordable housing was not the same as low income housing; that there was no guarantee that the unit would be low income; that it would set a bad precedent because the Town allowed the applicant to submit one plan to the community at the beginning of the process and received permission for it and then increased the size with the garage and then applied again to include a second unit. He stated that allowing the garage was a change in the neighborhood because no garages were at the top of properties like the one proposed.

Peter Ramsay, Mono Ave., Planning Commissioner, stated that he worked for Marin Housing as his day job; that small one-bedroom second units were in high demand in the rental market; that Marin Housing had opened the Section 8 housing list recently and had received 12,000 applications in one week; that there was great demand for the type of unit the appellant proposed to create; that a variance had been necessary for the fourth story of the house; that a similar application had been reviewed on Acacia and that neither application changed the size of the building; and that he supported the project as an opportunity for the Town to provide an affordable housing unit.

Pam Meigs, Cypress Drive, Planning Commissioner, stated that she had come to Fairfax for the character and didn't want to see the proposed type of development in town.

Shane Deal, Belle Avenue, expressed his support for the project; stated that he had also moved to Fairfax for the community; that he supported infill development; that the structure of the house wasn't changing; that the appellant was providing the necessary parking; and that it wasn't setting a precedent except for the installation of affordable housing in an existing structure.

J.A. Wanasel, Madrone Road, stated his support for the project and that the Town of Fairfax needed more diversity.

Bill Madsen, Porteous Ave., spoke in support of the project.

Kelly Dunleavy, Ross Valley Reporter newspaper, asked for clarification of the garage issue.

Ryan O'Neil, Open Space Committee, stated that he knew the footprint wasn't changing but that the Open Space Committee was concerned about a proliferation of homes with four stories; that it wasn't this application that he opposed, but the precedent that it would set for four-story homes.

John Owens, appellant, stated that the fourth story was not setting a precedent because it was not their living space but was for an affordable unit so it was actually a three-story residence with a one-story unit.

Mayor Weinssoff closed the public hearing.

Councilmember Brandborg, in response to comments about the structure overcrowding the lot, described the setbacks for the project and noted that they were well within the requirements.

Vice Mayor Tremaine stated that granting the appeal would be setting a precedent for four-story

homes; that affordable housing should be near public transit, not auto-centric; and that the Council had adopted a three-story limit for a reason.

Councilmember Brandborg quoted the Town's Housing Element to show that the Town had already acknowledged limitations on creating affordable housing, "The Town is nearly built-out with all remaining undeveloped land being either very steeply sloped or constrained from development for other reasons."

Councilmember Maggiore stated that she was having difficulty making a decision and acknowledged that the unit would be created in a space that already existed in the structure and asked if the appellants would be willing to trade the garage for the unit.

Alan Mayer, attorney for the appellants, stated that the Owens were willing to sign a deed restriction to guarantee that the second unit would be dedicated to affordable housing; that they were not willing to trade; and that their home was lower than the buildings on either side and did not exceed the 35-foot height limit.

Town Attorney Karpiak clarified that a tie vote would be a denial of the project and recommended that the Council direct staff to prepare findings for approval or denial for presentation at the next Council meeting.

Mayor Weinsoff led a discussion about the standards for approval of a variance. He stated that the Owens had a choice of either the garage or the unit; that he couldn't support the appeal as it stood; and that he was concerned about the possible consequences of the approval of the project.

Alan Mayer, attorney for the appellants, stated that the Owens had a right to a garage, that 80% of the neighbors had garages and that to deny them the garage was to single them out for negative treatment; that he understood the use of the garage as a bargaining chip, but that it was unfair; quoted from the staff's proposed findings for approval included in the February 19<sup>th</sup> staff report, "Therefore, the development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens..." in response to comments made about the impact on the neighborhood; stated that the home was lower than the homes on either side; that there were not affordable housing projects in the Town that supported bicycle use and were near public transit as promoted by the Council; that the Town could meet 25% of its housing requirement with infill in existing housing; that the Town should approve the project because it provided affordable housing and used green building techniques as desired by the Town; that the height of the structure was not being increased; that they were willing to commit to a thirty-year deed restriction for the affordable unit; and that the house was already in existence and the height had already been approved.

M/S, Tremaine/Weinsoff, Motion to direct staff to return with findings for the denial of the appeal.

Roll Call Vote:

Bragman: Recused; Brandborg: NO; Maggiore: AYE; Tremaine: AYE; Weinsoff: AYE

Mayor Weinsoff adjourned the meeting for a break from 9:10 to 9:20 p.m.

M/S, Maggiore/Bragman, Motion to hear the item regarding the election before the item regarding the fee study.

AYES: All

Adoption of a Resolution of the Town Council of the Town of Fairfax, California, Calling for the Holding of a General Municipal Election on November 3, 2009, for the Election of Certain Officers and for the Submission to the Voters of a Question Relating to the Renewal of a Special Municipal Services Tax for Five (5) years. Requesting the Marin County Board of Supervisors to Consolidate



John Malloy, Sorella Café, stated that he was thrilled that a restaurant would be opening next door. Mr. Malloy and Senior Planner Neal discussed parking requirements.

Commissioner Goyan stated that he was delighted that a business would be moving in to the property and that there appeared to be adequate parking.

Commissioner Meigs was in agreement with Commissioner Goyan.

Commissioner Ketcham noted any commercial business would be unlikely to meet the parking requirements for the site, and that bicyclists would be encouraged. He supported the project with the findings made in the staff report.

Commissioner LaMotte stated that activity had been needed in that space, and noted that people could walk there from nearby parks. She would encourage stroller parking, in addition to bike racks and stated that she supported the project.

Commissioner Ramsay noted that he was a cyclist and a vegetarian and that he supported the project.

Chair Lacques noted that the previous use had not appeared to impact parking, and traffic impact should be insignificant. He supported the project.

M/S, La Motte/Meigs, Motion to approve Application # 09-01 for a request for a parking variance to locate a restaurant in an existing commercial space previously occupied by a retail use at 123 Bolinas Road.

AYES: All

The Chair read the appeal rights.

177 Frustuck Avenue; Application # 09-02, Request for a setback variance, a height variance and a second unit use permit in order to construct a second unit underneath an existing single-family residence and to construct parking for the second unit within the required side yard setback; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens and Diana Dullaghan, owners; John Owens, applicant; CEQA categorically exempt, § 5301(e), 15303(a) and 15305(a) and (b).

Senior Planner Neal presented the staff report. She noted that living space would be provided within the interior of the house, and that the deck and patio were the only additional outside spaces. Senior Planner Neal discussed the reasons why staff had been able to support a side setback variance and height variance for the fourth story second unit construction; that the main reason was that affordable housing would be constructed.

Senior Planner Neal noted that the application complied with the Second Unit Ordinance, which included the need for the owner to remain in one of the residences.

In response to Commissioner Ketcham, Senior Planner Neal noted that the applicant had been able to take advantage of the second unit amnesty program by the fees being halved.

In Further response to Commissioner Ketcham, Senior Planner Neal noted that the fourth story level would be providing affordable housing, albeit that a height variance would be necessary.

Senior Planner Neal discussed the Affidavit of Occupancy, which she said was similar to a Deed Restriction.

In response to Commissioner Meigs, Senior Planner Neal stated that height variances had been granted to downhill developments but not for a fourth story. She further stated that staff believed the overriding issue in allowing a fourth floor was affordable housing; that the unit would not protrude outwards and the downhill slope.

The Commissioners discussed previous applications for this site and Senior Planner Neal noted that Town Code did not prohibit multiple applications on a single property.

Commissioner Ketcham and Senior Planner Neal discussed FAR (floor area ratio) and lot coverage.

Chair Lacques adjourned the meeting for a break between 8.30pm and 8.35pm for staff to check lot coverage and FAR.

Senior Planner Neal confirmed that the FAR did not exceed the Planning Code and that decks did not count towards lot coverage.

In response to Chair Lacques, Senior Planner Neal confirmed that a prior deed restriction regarding storage space would remain in effect.

In response to Commissioner Meigs, Senior Planner Neal stated that the Building Official and former Planning Director had allowed the owner to begin construction on the patio prior to the approval of the project for logistical reasons and that the Building Official had determined that a permit was not necessary.

In response to Chair Lacques, Senior Planner Neal stated that design review for second units was undertaken by staff to conform to the requirement that the process for planning approval for second units to be less cumbersome.

Commissioner Ketcham and Senior Planner Neal discussed the Second Unit Amnesty in relation to the provision of separate utility meters.

John Owens, applicant, stated that the construction of the deck was supervised; that inspections were made and piers were engineered. He further stated that the separate meters were required.

Mr. Owns discussed the deck and he noted that a fourth story variance would not have been required had the first floor been a garage, rather than living space. He also explained the reasons the projects had been split and that the construction of second units, in general, seemed to require variances.

Commissioner Ketchem noted that a second unit application with a requested height variance had not been presented previously to the Commission, and that side yard variances had been granted in the past because lots were often very small.

Commissioner Ketcham and Mr. Owens discussed the parking variance.

Chair Lacques and Senior Planner Neal discussed the noticing process and the encroachment variance, which Senior Planner Neal said was necessary in order to allow for construction of the second unit.

In response to Commissioner Ramsay, Senior Planner Neal stated that the original house and garage had not required variances.

Chair Lacques opened the meeting to the public.

Bill Miles, Frustruck Avenue, stated that he supported the project.

Chair Lacques closed the meeting to the public.

In response to Commissioner Goyan, Senior Planner Neal stated that the patio and path, which were about 320 sq ft, would be the only impervious surfaces being added.

Commissioner Meigs stated that she supported affordable housing but, however, this project would not be in keeping with the character of the town and would set a precedent for other four-story projects. Furthermore, it was unusual that the owner had not needed a permit to drill piers. Commissioner Meigs did not support the project.

In response to Commissioner Goyan, Senior Planner Neal stated that a similar project was unlikely to be presented because this property was on a particularly steep hillside which could accommodate a second unit, but staff would not the opportunity to inspect every possible site.

Commissioner Ketcham noted that a single project would not solve the issue of lack of affordable housing; that the Town Council had made a decision not to allow fourth stories and that this property would consist of four stories, as defined by the Code. Furthermore, Commissioner Ketcham stated that the Code did not stipulate that a second unit would be entitled to a height variance. Commissioner Ketcham further stated that more applications for four-story developments could be forthcoming if this project were approved. He did not support the project.

Commissioner LaMotte expressed her concern that housing had become unaffordable to attract a diverse population, and stated that the footprint of the building would not change, apart from the addition of a fairly modest-sized patio. Commissioner LaMotte stated that she could support a project that provided affordable housing, which she believed off-set the problem of a project not adhering to the character of the town.

Commissioner Ramsay stated that the proposal provided an opportunity for affordable housing; that the footprint would not be increased and sustainable materials had been proposed by the owner. Furthermore, he believed that the building would adhere to the height regulations had a fourth story not been proposed. Commissioner Ramsay supported all other variances for reasons laid out in the staff report, and that he supported the project.

Commissioner Goyan expressed concern that there was potential for more fourth-story applications on downward-sloped properties. He noted that, following a previous application, the Town Council had deemed a property consisting of four stories of living space to contravene Town Code.

Chair Lacques noted that what was considered a four-story dwelling had been cemented, which would include the project under discussion. Chair Lacques stated that if the whole property development had been submitted under one application, including variances, a fourth floor, garage and deck, it would have been most likely turned down, whereas it had been presented piecemeal. Furthermore, he questioned the need for a fourth story variance; that 35 feet was the height limit on a three-story home, and the applicant had already chosen to build a garage. However, if the application were successful, then Chair Lacques believed that the Affidavit should be recorded; that he would recommend a deed restriction and would support the front yard variance to provide parking that should be recorded in the affidavit as belonging to the second unit and that the occupancy of the second unit be limited to one person through lack of parking. Chair Lacques was concerned that a precedent for fourth story additions would be set and did not support the project.

Commissioner Ketcham noted that owners of upslope properties would be deprived of such a project, and that he would support the project if the height regulations and definition of a four-story property were different. Furthermore, he stated that the sustainability of a project should be demonstrated in the application. However, he was in agreement that if the project were approved then the limitations suggested by Chair Lacques should be included as conditions of approval. He would support the project if it were not a four-story dwelling as defined by Town Code.

Commissioner Meigs said that their job was to protect the character of the town, and that four-story dwellings would not meet the criteria of the character of Fairfax. This project could be symbolic of the future of Fairfax, and four-story dwellings had been turned down by the Planning Commission previously. She believed that this project could affect the town and allow for four-story down slope dwellings, which would not equate with the character of Fairfax. Commissioner Meigs stated she would not support the project.

M/S, Ketcham-Meigs, motion to deny application 09-02 based on the following findings:

1. The project does not comply with the three story height limit, set forth in Town Code § 17.080.060A.
2. The definition of a second unit either under the Town Code second unit ordinance or the second unit amnesty ordinance does not suggest or convey waiver of the second unit requirements. If the intent of the amnesty program was to waive zoning regulations such as height and setbacks it should have included language to that effect and it does not.
3. There are a very large number of downslope properties that could make similar application for four story structures that could in the short term or long term change the overall character of Fairfax.
4. Denial of the application does not deny the owners substantial use of their property.
5. This decision does not change the discretionary permits issued in the past for the development of this property, including the approval of the garage.
6. The granting of a fourth story to this property would be a grant of special privilege to this site that would not be feasible to grant to property owners of up-sloping sites.
7. Denial of this application is not a hardship for the applicant. Hardship was not identified as a need in the application.
8. This denial in no way reduces the importance, value or need for affordable housing within the Town of Fairfax as long as it is provided in a manner that complies with the Town Code and will not change the character of the Town.

Chair Lacques offered the following friendly amendment to the motion: That the piece meal nature of this application is such that if the project was originally proposed as it is now submitted with a covered garage, 4 stories, a second unit and with the given the square footage of the house, it would not have been approved because it is out of proportion with the project site and requires far too many variances.

Mr. Owens indicated that he and his wife have to leave to pick up their daughter and asked that the Commission make a decision. Then the applicants left the meeting at 10PM.

Commissioner Ketcham rejected the friendly amendment indicating that the original residence did not require any variances only a Hill Area Residential Development permit and an encroachment permit.

The following was added as additional finding number 9: the application as presented requires multiple variances besides the height variance, a variance for the compact

parking stall, a variance to park in the side yard setback and an encroachment permit because the second unit parking is located within the public right-of-way and not on the private property.

Ayes: Meigs, Lacques, Ketcham,

Noes: Ramsay, LaMotte

Motion passed.

Chair Lacques read the appeal rights.

Chair Lacques adjourned the meeting for a break between 10.05pm and 10.15pm.

Tree Ordinance - Review and recommendation to the Town Council of draft Ordinance regulating the removal of trees within the Town of Fairfax.

Chair Lacques noted that the Town Attorney had amended the draft Ordinance. He stated that some of the changes were in contrast to the Commissioners wishes, such as the penalty for violating the Ordinance.

Interim Planning Director Kennings stated that the Town Attorney had incorporated Councilmember Bragman's changes on the appeal process; that he had not expected a virtual re-write of the draft ordinance. He stated that the Town Attorney had suggested that fines and fees should not be included in the draft ordinance due to the difficulty of adjusting them in the future. He suggested that this item be continued to a meeting when the Town Attorney could be present to explain the changes that were made. Furthermore, Interim Planning Director Kennings noted that the Town Manager had also made some amendments.

General concern was expressed that the Town Manager and Town Attorney had made amendments to an ordinance that had been drafted by the Planning Commission for the attention of the Town Council.

General consensus was reached that the Town Manager and Town Attorney would be invited to a workshop meeting next month.

Commissioner Meigs left the meeting at 10.35pm.

Discussion Items

Preliminary discussion on the Circulation Element.

Chair Lacques presented the report. He stated that a sub-committee, of which he was a member, had made changes to the draft, which he briefly discussed.



Ross Valley Fire Department  
777 San Anselmo Ave  
San Anselmo, Ca 94960  
Ph. 415-258-4886

**FIRE DEPARTMENT PLAN REVIEW**

PROJECT: 2<sup>nd</sup> Unit  
ADDRESS: 177 Frustuck  
Fairfax CA, 94930

Page: 1 of 2  
Date: 07/19/2013  
Reviewed by: Rob Bastianon  
(415) 258-4673

TYPE OF REVIEW: Planning  
Bldg. Dept. 07/1/13 Fire Dept. # 13-0213  
Fire Department Standards can be found at: [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

E-mail: [Rbastianon@rossvalleyfire.org](mailto:Rbastianon@rossvalleyfire.org)  
Review No. 1

Applicant\*: Planning

Address:

Fairfax Ca

*\*Applicant is responsible for distributing these Plan Review comments to the Design Team.*

Occupancy Class: R-3	Fire Flow Req: 750 GPM	Sprinklers Required: YES
Type of Construction: V-B	On-site Hyd. Req: NO	Fire Alarm Required: NO
Bldg Area: sf:	Turn-Around Req: NO	Permits Required: Sprinkler
Stories: 4+ Down Slope	Fire Flow Test Required: NO	
Height: +ft.:	Wildland-Urban-Interface: YES	

The project listed above has been reviewed and determined to be:

- COMPLETE (no modifications required)
- APPROVED AS NOTED (minor modifications required - review attached comments)
- NEEDS REVISION (revise per attached comments and resubmit)
- INCOMPLETE (provide additional information per attached comments and resubmit)

**NOTE:** Please review the comments and make corrections and/or add notes as required. Changes and/or additions shall be clouded and referenced by date on a legend. Approval of this plan does not approve any omission or deviation from the applicable regulations. Final approval is subject to field inspection. Approved plans shall be on site and available for review at all times.

ROSS VALLEY FIRE DEPT.  
REVIEWED  
DATE: 7-19-13

Inspections required:

- Access/Water Supply prior to delivery of combustibles
- Defensible Space/Vegetation Management Plan
- Sprinkler Hydro/Final
- Final

**EXHIBIT # D**



Ross Valley Fire Department  
777 San Anselmo Ave  
San Anselmo, Ca 94980  
Ph. 415-258-4666

### FIRE DEPARTMENT PLAN REVIEW

PROJECT: 2<sup>nd</sup> Unit  
ADDRESS: 177 Frustuck  
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Page: 2 of 2  
Date: 07/19/2013  
Reviewed by: Rob Bastianon  
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TYPE OF REVIEW: Planning E-mail: [Rbastianon@rossvalleyfire.org](mailto:Rbastianon@rossvalleyfire.org)  
Bldg. Dept. 07/1/13 Fire Dept. # 13-0213 Review No. 1  
Fire Department Standards can be found at: [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

ITEM #	SHEET	COMMENTS	Corr. Made
1		A fire sprinkler system shall be installed throughout the entire building which complies with the requirements of the National Fire Protection Association (NFPA) 13-D and local standards. A separate deferred permit shall be required for this system. Plans and specifications for the system shall be submitted by an individual or firm licensed to design and /or design-build sprinkler systems. <b>Note as deferred submittal on plans</b>	
		Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/> Plans <input type="checkbox"/> Calculations.	
2		Maintain around the structure an effective firebreak by removing and clearing all flammable vegetation and/or other combustible growth. Ross Valley Fire Department Fire Protection Standard 220 Vegetation/Fuels Management Plan is available online @ <a href="http://Rossvalleyfire.org">Rossvalleyfire.org</a> to assist the applicant in meeting the minimum defensible space requirements.	
		Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/> Plans <input type="checkbox"/> Calculations.	
3		All smoke detectors in the residence shall be provided with AC power and be interconnected for simultaneous alarm. Detectors shall be located in each sleeping room, outside of sleeping rooms centrally located in the corridor and over the center of all stairways with a minimum of one detector per story of the occupied portion of the residence.	
		Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/> Plans <input type="checkbox"/> Calculations.	
4		Carbon monoxide alarms shall be provided in existing dwellings when a permit is required for alterations, repairs, or addition exceeds one thousand dollars. CO alarms shall be located outside of each dwelling unit sleeping are in the immediate vicinity of the bedroom(s) and on every level of a dwelling unit including basements.	
		Submitter's Response: Correction has been completed. See Sheet _____ of <input type="checkbox"/> Plans <input type="checkbox"/> Calculations.	
5		Address numbers at least 4" tall must be in place adjacent to the front door. If not clearly visible from the street, additional numbers are required. Residential numbers must be internally illuminated (backlit), placed to a light or be reflective numbers. If your project is a new house or substantial remodel, they may only be internally illuminated or illuminated an adjacent light controlled by a photocell and switched only by a breaker so it will remain illuminated all night. If not currently as described, they must be installed as part of this project.	

All items listed above shall be included in the construction permit plans.

Fire and life safety systems may require a separate permit. Fire permits may be noted as deferred.