



# MARIN MUNICIPAL WATER DISTRICT

JUL 16 2013

RECEIVED

220 Nellie Avenue Corte Madera CA 94925-1169

www.marinwater.org

July 15, 2013

Service No. 62323

Linda Neal  
Town of Fairfax Planning Dept  
142 Bolinas Rd  
Fairfax CA 94930

**RE: WATER AVAILABILITY – Second Unit - Attached**  
Assessor's Parcel No.: 003-193-02  
Location: 177 Frustuck Ave, Fairfax

Dear Ms. Neal:

There has not been a water entitlement established for the proposed second living unit. Although the parcel is currently supplied, the purpose and intent of existing Service No. 62323 is to serve a single family dwelling. Payment of a connection fee is required prior to granting (legalizing) water service to the second unit. The installation of a separate meter for the second unit is optional. Water service required for the 560 square foot second unit will be available upon request and fulfillment of the requirements listed below.

1. Complete a Standard Water Service Application.
2. Submit a copy of the building permit.
3. Pay appropriate fees and charges.
4. Comply with the District's rules and regulations in effect at the time service is requested.
5. Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. Plans shall be submitted, and reviewed to confirm compliance. The following are required:
  - Verification of indoor fixtures compliance
  - Landscape plan
  - Irrigation plan
  - Grading plan

Any questions regarding District Code Title 13 – Water Conservation should be directed to Water Conservation Department at (415) 945-1497. You can also find information about the District's water conservation requirements online at [www.marinwater.org](http://www.marinwater.org).
6. Comply with the backflow prevention requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1559.

If you have any questions regarding this matter, please contact me at (415) 945-1532.

Sincerely,

Joseph Eischens  
Senior Engineering Technician

JE: mp

cc: City of Mill Valley Building Dept  
John Owens, 177 Frustuck Ave, Fairfax CA 94930





**ROSS VALLEY SANITARY DISTRICT**  
2960 Kerner Blvd  
San Rafael, CA 94901  
(415) 259-2949 ~ [rvsd.org](http://rvsd.org)

RECEIVED  
JUL 10 2013  
TOWN OF FAIRFAX

July 10, 2013

Linda Neal, Senior Planner  
Town of Fairfax  
Dept. of Planning and Building Services  
142 Bolinas Road  
Fairfax, CA 94930

**SUBJECT: DESIGN REVIEW, 177 FRUSTUCK AVE., FAIRFAX; APN: 003-193-02**

Dear Ms. Neal:

We are in receipt of your transmittal letter received July 1, 2013 concerning the above-referenced project. Since this project involves an extensive demolition and rebuild, the project will require a connection permit from the District. 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 of the fixture count, the applicant has the option of installing a new lateral or, the old sewer lateral needs to be tested in the presence of a District Inspector and found to meet all current District requirements.

Sanitary District No. 1 will place a hold on said property once the building permit is issued. This hold prevents the new building from being released for occupancy until the District's permit and sewer requirements are fulfilled. It is the owner's responsibility to obtain a sewer connection permit from this office and meet all District requirements pertaining to the private side sewer/lateral.

If you need further information regarding this matter, please contact the office.

Sincerely,

  
Randall Y. Ishii, M.S., P.E.  
District Engineer

**TOWN OF FAIRFAX**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**

142 Bolinas Road, Fairfax, California 94930  
 Phone (415) 453-1584 FAX (415) 453-1618

**LETTER OF TRANSMITTAL**

**From: Fairfax Planning And Building Services Department**

**Date: June 27, 2013**

To:  Town Engineer       Fairfax Police Dept.       Marin County Open Space Dist.  
 Town Attorney       Sanitary Dist. 1       Other – Building Official  
 MMWD       Public Works Dept.  
 Ross Valley Fire       Marin County Health Dept.

Address and Parcel No: 177 Frustuck Avenue; Assessor's Parcel No. 003-193-02

Project: Construction of a 560 square foot residential second unit addition as a fourth story to a three story 2,093-square foot single-family residence with an attached garage/storage that provides 306 square feet of storage space underneath the 400 square foot garage.

These plans are being transmitted for review prior to public hearings on discretionary permits before the Fairfax Design Review Board and Planning Commission. Please provide your comments on the completeness and adequacy of the submittal for your agencies reviewing purposes within 10 days.

1	June 3, 2013	Preliminary development plans by Steve McArthur, pages A1.1 through A1.3, A2.1 through A2.3, A3.1 and P1.1 and P.2

**REMARKS:** NO COMMENTS AT THIS TIME

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Please respond by July 15, 2013 with any comments or requests for additional information.

If you have any questions please contact: Linda Neal, Senior Planner at (415) 453-1584

Attn: Sergeant Stuart Baker

TOWN OF FAIRFAX  
DEPARTMENT OF PLANNING AND BUILDING SERVICES  
142 Bolinas Road, Fairfax, California 94930  
Phone (415) 453-1584 FAX (415) 453-1618

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REMARKS: No Police Concerns SB

Please respond by July 15, 2013 with any comments or requests for additional information.

If you have any questions please contact: Linda Neal, Senior Planner at (415) 453-1584



**TOWN OF FAIRFAX  
PLANNING COMMISSION  
MEETING AGENDA/NOTICE  
7:00 PM, THURSDAY AUGUST 15, 2013  
FAIRFAX WOMEN'S CLUB, 46 PARK ROAD**

**CALL TO ORDER  
ROLL CALL  
APPROVAL OF AGENDA  
MEETING PROTOCOL**

The Chair shall maintain order at the meetings in accordance with Robert's Rules of Order and the Commission has the responsibility to be a model of respectful behavior in order to encourage community participation and citizen input at Commission meetings. The Commission and the audience are expected to refrain from using profane language and/or ridiculing the character or motive of Commission members, staff, or members of the public and to maintain the standards of tolerance and civility.

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

**CONSENT ITEMS**

**1. 24 Iron Springs Road; Application # 13-26**

Request for a Use Permit; Encroachment Permit and Combined Side Yard Setback Variance to construct a new two car parking deck and entry stairway to replace the existing dilapidated cardeck and entry stairway; Assessor's Parcel No. 009-091-09; Residential Single-family RS 6 Zone District; CEQA categorically exempt, § 15302.

**2. 19 Belle Avenue; Application # 13-28**

Request for a Use Permit and Variance to do a fifty percent (50%) remodel of an existing 1,382 square foot single-family home increasing the number of bedrooms from two (2) to three (3) with no expansion beyond the footprint of the existing structure and the provision of a third on-site parking space; Assessor's Parcel No. 002-211-09; Residential RD 5.5-7 Zone; Dan Cirimele, applicant/owner; CEQA categorically exempt, § 15301.

**3. 6 Arrowood Lane; Application # 13-29**

Request for Design Review of a proposed 3,112 square foot single-family residence and attached 737 square foot garage in the already approved and improved Arrowood Subdivision; Assessor's Parcel No. 174-290-06; Residential Single-family RS 6 Zone; CEQA categorically exempt, § 15303(a).

**PUBLIC HEARING ITEMS**

**4. 130 Wood Lane; Application # 13-23**

Request for a Use Permit and Side Setback Variance to legalize an unpermitted 247 square foot carport; Assessor's Parcel No. 002-061-09; Residential Single-family RS 6 Zone District; John Leimer, applicant; Suzanne Quentin, owner; CEQA categorically exempt, § 15303(e).

**5. 40 Forrest Terrace; Application # 13-25**

Request for a Use Permit to construct a 216 square foot attic addition to a 1,841 square foot single-family residence; 002-091-01; Residential RD 5.5-7 Zone; Harold Lezzeni, Architect; Julien and Martha Pearl, owners; CEQA categorically exempt, § 15301(e)

**4. 2001 Sir Francis Drake Boulevard; Application # 13-30**

Request for an excavation permit to remove and replace over 100 cubic yards of contaminated material that exist beneath the existing gas station; Assessor's Parcel No. 002-116-04; Central Commercial CC Zone; Bob Clark-Riddell, Pangea Environmental, applicant/Civil Engineer; Arash Salkhi, owner; CEQA categorically exempt, § 15308.

**6. 177 Frustuck Avenue; Application # 13-31**

Request for a Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit to construct a fourth story, 560 square foot residential second unit beneath a 2,093 square foot, three story, single-family residence; Assessor's Parcel No. 003-193-02; Residential Single-family RS-6 Zone; John Owens and Diana Dullaghan, applicants/owners; CEQA categorically exempt, § 15301(e), 15303(a) and 15305(a) and (b).

**MINUTES**

7. Minutes from the June 20, 2013 Planning Commission meeting

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."**

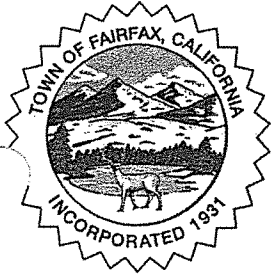
177 Frustuck is probably the most sustainable home built in Fairfax to date. If Leed Certification existed in 2006, it would have been rated Gold Standard (see letter from Leed certified Architect). The proposed energy efficient second unit would be Leed certified to Gold or Platinum Standard. The second 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."



# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930  
(415) 453-1584 / FAX (415) 453-1618

August 16, 2013

John Owens and Diana Dullaghan  
177 Frustuck Avenue  
Fairfax, CA. 94930

## NOTICE OF PLANNING COMMISSION ACTION

**RE: 177 Frustuck Avenue; Application # 13-31**

Request for a Residential Second Unit Use Permit, Height Variance, Setback Variance and Encroachment Permit to construct a fourth story, 560 square foot residential second unit beneath a 2,093 square foot, three story, single-family residence; Assessor's Parcel No. 003-193-02; Residential Single-family RS-6 Zone; John Owens and Diana Dullaghan, applicants/owners; CEQA categorically exempt, § 15301(e)(1).

Dear Mr. Owens and Ms. Dullaghan,

At its meeting on August 15, 2013, the Fairfax Planning Commission continued the above referenced application off calendar at your request.

If you have any questions regarding the Planning Commission action please feel free to contact the Fairfax Planning Department.

Sincerely,

Linda Neal  
Senior Planner

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

TOWN OF FAIRFAX

AUG 29 2013

RECEIVED

August 22, 2013

Hand Delivery

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

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

Dear Mr. Moore and Ms. Neal:

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

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

Specifically Code Sections 17.048040.D:

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

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





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

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

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

**Parking**

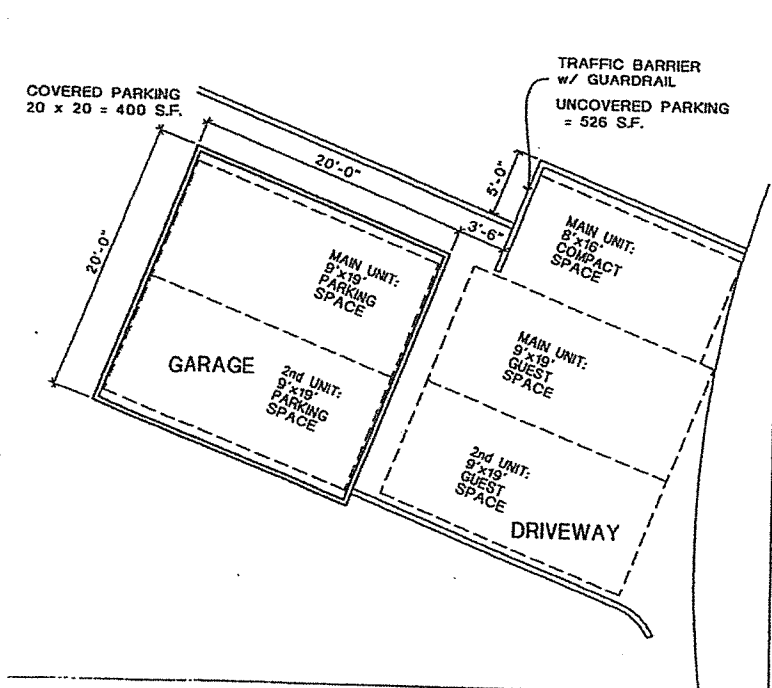
Town Code § 17.052.030(A) indicates that three 9ft x 19ft parking spaces are required for a single-family residence. The Residential Second Unit Ordinance requires an additional one 9ft x 19ft parking space for a second unit [17.048.040(D)].

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

(Town Staff Report, 8.15.13)

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





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

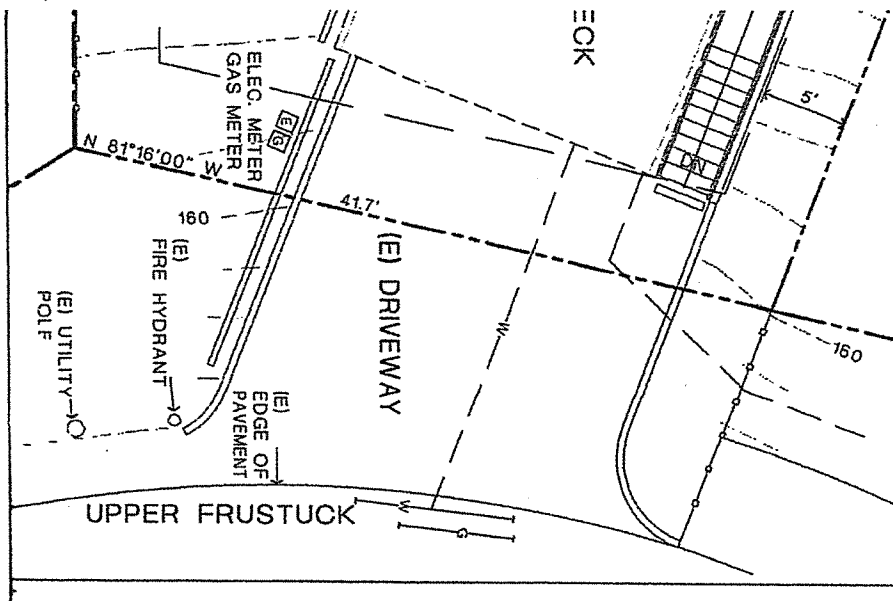
2. There will be no precedent set for allowing second unit parking in an easement for the use of the general public. This statement simply does not apply to our application, and should be removed.

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

(Town Staff Report, 8.15.13)

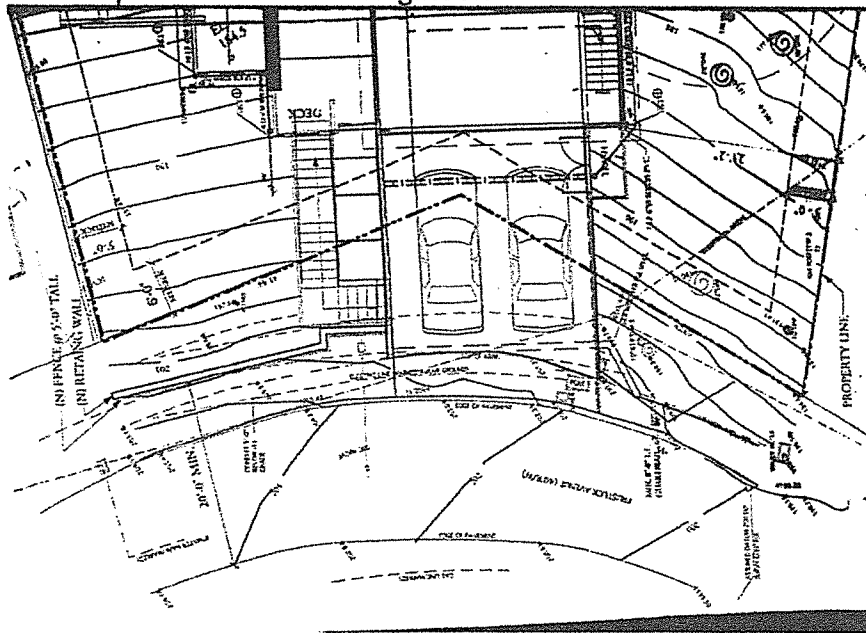
3. The above statement is absolutely untrue. Our property was approved in 2004 with two approved parking spaces in the Town right of way. The Deals property at 183 Frustuck was approved in 2009, and has two approved parking spaces in the Town right of way (easement). Below are copies of the driveway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





177 Frustuck

Note: our driveway is already the full width of the property on the right side as it curves to the property line. The Town already gave up the access to the right of way (easement) in 2004 at the request of the Town Engineer.

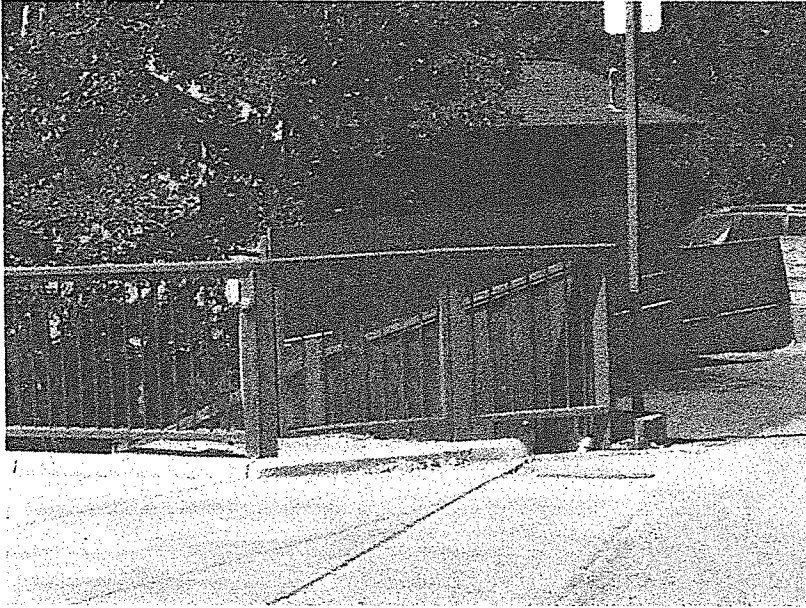


183 Frustuck

Every home in Fairfax has a driveway. The driveway cut is always in the Town right of way. The encroachment permit needed to construct that portion of every private driveway is permission to encroach a driveway or parking space in the Town right of way (easement). All homes with driveways have already captured part of the Town right of way. All homes on our hillside street have captured the driveway cut and up to three of their approved parking spaces are in the Town right of way (easement). The Town does have the right to reclaim parking easements. If the parking easement were reclaimed on our street we would not lose our second unit parking (it is in the garage). We would lose our main house parking, and half the parking spaces would be lost in the neighborhood. This reclaiming will never happen. Please remove the precedent statement - it is simply false.



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



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

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

(Town Staff Report 8.15.13)

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





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

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

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

"... the site is narrow and steep so the parking for the second unit has been located within the side yard setback adjacent to the neighboring garage and the unit has been designed as a fourth story within the existing residence. The narrow width and steep slope are the special circumstances applicable to the property, that contribute to the strict application of the setback requirements and height limitations depriving the applicant of the ability to provide an affordable unit in compliance with the Fairfax Housing Element and the California Government Code " Staff report 2/19/2009.

"17.052.020 Parking Exceptions

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

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

Previous side yard setback variances for approved second units:

Nov 20 2003: 88 Dominga

April 17 2008: 17 Vista Way

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

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



2.19.2009 Planning Commission meeting

5.6.2009 Appeal to Council

7.1.2009 Appeal to Council

2/19/09 – PC Meeting

Time on CD 1:16:45

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

Linda "three"

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

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

Ketchum "ok, thank you"

Time on CD 1:29:35

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

John "there are five spaces"

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

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

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

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

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

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

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

John "town right of way"



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

1:35:45

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

Staff "correct, the parking for the unit"

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

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

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

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

(G) Negative impacts.

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

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

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

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

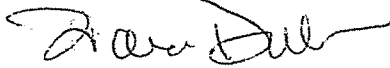


Fairfax has made no effort to penalize existing units for their non compliance with the Town ordinances, and the Housing code.

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

Best regards,

John Owens & Diana Dullaghan







K E S T E N - L A W

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

October 4, 2013

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

Re: Application for second unit 177 Frustuck Avenue Fairfax.

Dear Mr. Moore,

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

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

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

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



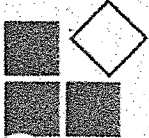
I am available to answer questions should you feel the need.

Sincerely,

Steven Kesten

SMK: ns





Date: November 5, 2013

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

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

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

Dear Mr. Moore,

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

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

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

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

Sincerely,

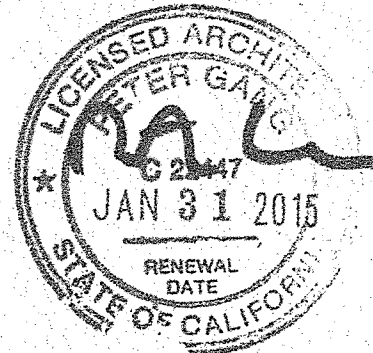
Pete Gang, AIA, LEED-AP

Common  
Sense  
Design

145 Keller Street  
Petaluma, CA  
94952

(707) 762-4838

Architecture  
& Planning





November 5, 2013

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

603 Redbud Way  
Nevada City  
CA 95959

Re: 177 Frustuck Second Unit

Dear Mr. Moore,

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

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

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





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

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

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

Sincerely

Peter Ramsay





John Owens <johnowensservices@gmail.com>

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## Fwd: second units

1 message

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**Peter Ramsay** <petramsay@gmail.com>

Wed, Aug 28, 2013 at 11:00 AM

To: John Owens <johnowensservices@gmail.com>

Begin forwarded message:

**From:** Jim Moore <jmoore@townoffairfax.org>

**Date:** August 28, 2013 8:44:43 AMPDT

**To:** Peter Ramsay <petramsay@gmail.com>

**Subject:** RE: second units

Hi Peter,

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

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

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

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

Best Regards,

Jim

James M. Moore



August 19, 2013

Peter Ramsay  
603 Redbud Way  
Nevada City  
CA 95959

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

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

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

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

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

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

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

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

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

Sincerely

Peter Ramsay. Former Planning Commissioner



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

August 16, 2013

Via Email and US Postal Service

Linda Neal Senior Planner  
Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

Re : Inaccuracies in the Town of Fairfax Staff report for the August 15<sup>th</sup> Planning Commission meeting .

Dear Linda,

I was surprised not to receive any communication from you prior to the public notice for the upcoming meeting. It is now obvious from the Staff report prepared by you that the intention was to move quickly to recommend denial of our affordable housing second unit.

I have already written to the Planning Director to have our second unit application taken off the August 15<sup>th</sup> Planning Commission agenda. I will communicate with the Planning Director that I would prefer he take over our second unit application and move towards getting it back on the Planning Commission Agenda. I sincerely hope we can work the situation through to gain the support of the Town of Fairfax for our second unit given that the housing quota required by the Housing and Community Development Agency is 172 units for the two planning periods through to 2014.

This will be the third occasion that a Planning Director has taken over our application. After receiving your 3.20.08. letter deeming our Garage application incomplete the application was taken over by Anne Welsh Planning Director, and successfully brought before the Commission. In January of 2009 we butted heads over the resubmitted second unit application and it was taken over by Larry Kennings the Interim Planning Director and successfully brought before the Commission. I suggest at this point we politely say that we do not see eye to eye on everything, and I will deal with Jim Moore the Planning Director.

Yours sincerely,

John Owens







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

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**Getting 177 Frustuck back on the agenda**

2 messages

**John Owens** <johnowensservices@gmail.com>

Fri, Aug 16, 2013 at 6:59 AM

To: Linda Neal &lt;lneal@townoffairfax.org&gt;

Cc: Jim Moore &lt;jmoore@townoffairfax.org&gt;

**See attached letter****John**

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

**8.16.2013 Change of Planner.docx**

44K

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**Jim Moore** <jmoore@townoffairfax.org>

Fri, Aug 16, 2013 at 9:13 AM

To: John Owens &lt;johnowensservices@gmail.com&gt;, Linda Neal &lt;lneal@townoffairfax.org&gt;

Cc: Garrett Toy &lt;gtoy@townoffairfax.org&gt;, Linda Neal &lt;lneal@townoffairfax.org&gt;

Hello Mr. Owens,

Linda Neal is the project planner on your application. She will continue in that role under my direction and I see no reason to change this assignment. We pulled your application from the Planning Commission Agenda last night at your request. Let us know when you would like to be on a future agenda.

When and if you do proceed, the staff report and its recommendations (which I review and approve) will remain the same unless you can give new information that alters our opinion. Keep in mind that staff only make recommendations to the Planning Commission and that it is up to the Planning Commission and/or the Town Council under an appeal to determine the merits of a project or not: like both parties did when you previously applied for a second unit and were denied approval.

About your letter to staff, that you sent earlier today and its reference to the General Plan / Housing Element (HE): it is true that the HE policy is to promote second units in Town. What you do not seem to understand is that staff is beholden to working toward that end within the confines of the Town Code – which will be subject to review in the near future.

Sincerely,

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)*

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

**Sent:** Friday, August 16, 2013 6:59 AM

**To:** Linda Neal

**Cc:** Jim Moore

**Subject:** Getting 177 Frustuck back on the agenda

[Quoted text hidden]



**8.16.2013 Change of Planner.docx**

44K



John Owens <johnowensservices@gmail.com>

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## Memorandum of Understanding

1 message

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

Thu, Aug 29, 2013 at 4:41 PM

Hi John,

We received your letter. Jim asked me to have you read, sign and return a copy of the enclosed MOU to Town Hall. If you have any questions about it, feel free to contact him.


Linda

—Original Message—

From: Copier@townoffairfax.org [mailto:Copier@townoffairfax.org]  
Sent: Thursday, August 29, 2013 5:50 PM  
To: Linda Neal  
Subject: Fairfax Scanner

Scanned image from scanner

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 **SCAN6168\_000.pdf**  
30K



John Owens <johnowensservices@gmail.com>

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**MOU**

1 message

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

Tue, Sep 3, 2013 at 9:59 AM

Hi John,

We received your second letter dated September 3, 2013. If you would like to meet in person to discuss your pending application, please sign and return the MOU.

Regarding the staff report that Linda had prepared for the August 15<sup>th</sup> hearing that you pulled your application from: at this point in time we don't feel the need to change anything. We are open to meeting with you to discuss the details in the report to enlighten on the Code, but you need to sign the MOU to have that meeting.

Also, if you don't agree with the staff report, you are more than welcome to take up those differences at the Planning Commission meeting (if you go forward).

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)