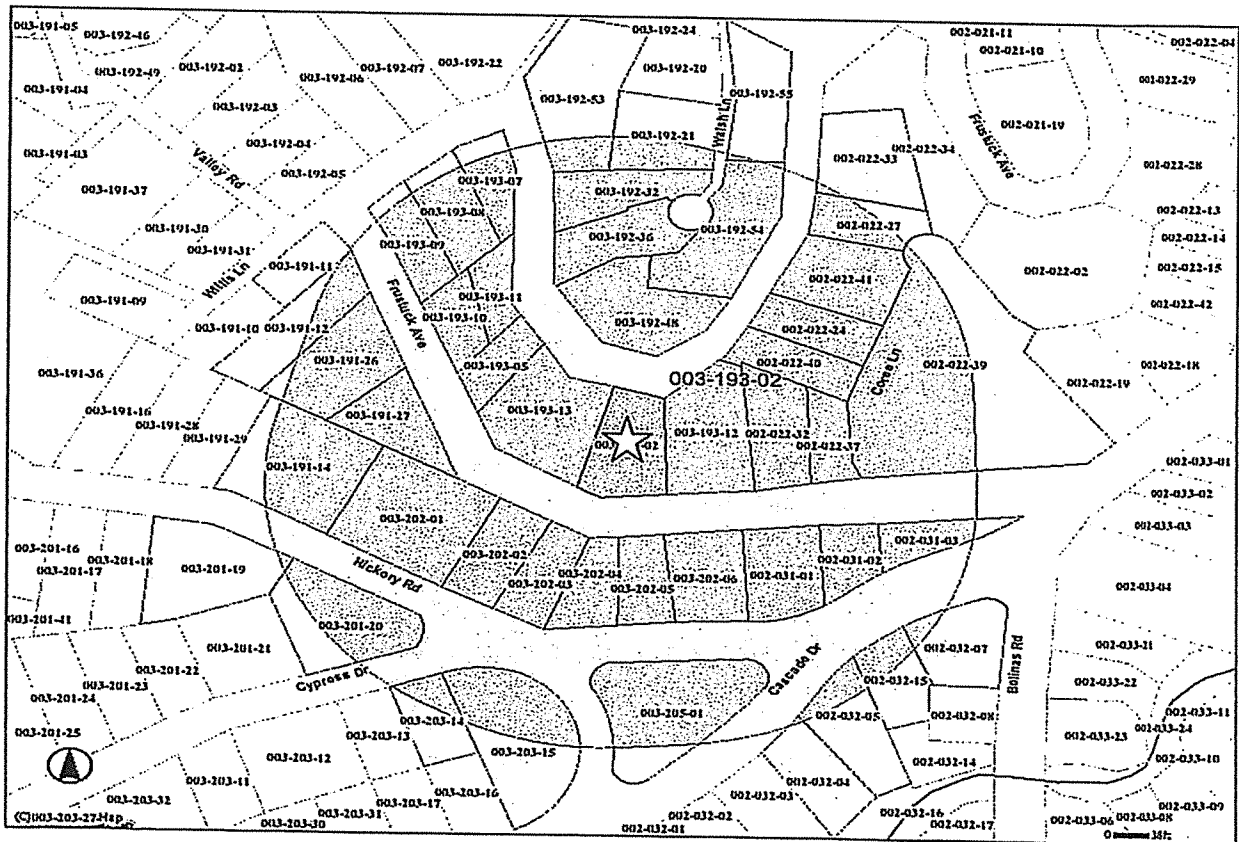


# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning and Building Services

**TO:** Planning Commission  
**DATE:** ~~NOVEMBER~~ September 21, 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 on November 16, 2008.

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 on appeal by the Town Council on August 5, 2009 by the adoption of Resolution No. 09-56 (Exhibit B – Resolution No. 09-56 and minutes from the July 1, 2009 Town Council meeting and the February 19, 2009 Commission meeting). Please note that at the appeal hearing before the Town Council on February 19, 2009 the applicant/appellant was offered the opportunity to not construct the garage that had been previously approved, thereby reducing the number of existing stories to two, and likewise thereby - the proposed second unit would only be a third story – and comply with the Town Code. The appellant turned down this offer, and construction of a garage on the parking deck was completed in 2012; comprising three stories.

Staff had previously scheduled this new submittal for the August 15, 2013 Commission meeting but the applicant requested that the matter be removed from the agenda in the attached letter dated August 13, 2013 (Exhibit C). In the same letter and subsequent letters also included in the packet the owner alleges that there are inaccuracies in the staff report. He asserts that the parking for the second unit is being provided in the garage and does not require an encroachment permit.

When the house was originally approved, it was clear that the parking for the residence was being provided in the garage, on private property, as required by the Town Code. All the spaces in the driveway are mostly located within the public right-of-way and would not have met the Code requirements for parking for a new single-family residence.

Since the removal of the project from the August agenda the applicant has repeatedly indicated that the staff report is full of errors and most recently made the assertion that the Town has violated the permit streamlining act and must issue him a building permit for the fourth story second unit (Binder 2, dividers 17, 18, 23 and 24). The Town Attorney has reviewed all of the applicant's letters and other information and does not agree. The confidential attorney memorandum has been provided to the Commissioners electronically.

For a further discussion of the project see the staff report below and the attachments. The applicant has provided 1 copy of a thorough history of the property and other supplemental information in two binders (Binder 1, dividers 1 through 28 and Binder 2, dividers 1 through 25). The one hard copy of the binders is available at Town Hall and has been sent electronically to the Commissioners.

**DISCUSSION**

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 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.

The applicant has re-submitted a Residential Second Unit Use Permit application for the same 560sf, one bedroom, and 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 side yard setback and within the public right-of-way.

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.

Please Note: It is true, that with the adoption of the 2010 – 2030 Fairfax General Plan, the Town documented that it wants to encourage residential second units in appropriate locations and at the appropriate scales that would/will contribute to meeting the Town's affordable housing needs. This does not by necessity mean allowing fourth floors in this Zone.

While staff previously recommended approval of this second unit and the required discretionary exceptions in 2009, the Planning Commission and Town Council did not agree and the application was denied. Staff now acknowledges that the approval of the project as designed would set a “unwelcomed” 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 second unit parking in the side yard setbacks.
- Exceptions to the code section that requires the main unit parking and the second unit parking to be 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 for a second unit 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.

Should the Planning Commission and the Town Council decide in the future to permit fourth floors in this Zone, the proper place for that change to occur is in the Town Code – applicable to all properties: after a thorough public hearing on amending the Town Code.

#### **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

**Binders 1 and 2 (Binder 1, dividers 1 through 28 and Binder 2, dividers 1 through 25) provided electronically to the Commission. The one paper copy provided by the applicant to the Town is available at Town Hall**

Exhibit A – Resolution No. 13-9

Exhibit B - letter dated 8/13/13 requesting continuance

Exhibit C – Resolution No 09-56 and minutes from the 7/1/09 Council meeting and 2/19/09 Commission meeting

Exhibit D – Memorandums from the Ross Valley Fire Department, Marin Municipal Water District and the Ross Valley Sanitary District

Exhibit E – Anonymous letter in opposition of the requested second unit dated 8/15/13



**RESOLUTION NO. 13-9**

**A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION DENYING THE DISCRETIONARY USE PERMIT, BUILDING HEIGHT VARIANCE, SIDE SETBACK VARIANCE, PARKING STALL SIZE VARIANCE AND ENCROACHMENT PERMIT FOR A RESIDENTIAL ACCESSORY UNIT ON A SITE ALREADY DEVELOPED WITH A SINGLE-FAMILY RESIDENCE  
177 FRUSTUCK AVENUE; ASSESSOR'S PARCEL NO. 003-193-02**

**WHEREAS,** The Planning Commission received an application from the owner of 177 Frustuck Avenue for a residential second unit and for an encroachment permit, height variance, parking space size variance and setback variance to facilitate the second unit on a site that does not comply with minimum size and width requirements of the Town Code based on the property slope; and

**WHEREAS,** The Planning Commission held a duly noticed Public Hearing on August 15, 2013 at which time all interested parties were given a full opportunity to be heard and to present evidence; 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.

**NOW THEREFORE BE IT RESOLVED,** The Planning Commission of the Town of Fairfax does hereby find and determine as follows:

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 under the Town Code second unit ordinance does not suggest or convey waiver of the second unit requirements.
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 which is already developed with a 2,653 square foot residence.
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.

**EXHIBIT #**     A

7. 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.

8. 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.

9. 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 by converting a portion of the existing three story structure into a unit.

10. 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, parking size regulations and setback regulations as well as allowing use of the public easement for private parking would constitute a grant of special privilege.

11. The construction of a Residential Second Unit on this property would cause excessive of unreasonable detriment to adjoining properties because the parking for the unit will be almost entirely located within the public right-of-way, rendering it unable for use by the public.

12. Approval of the four discretionary exceptions required for the proposed unit the Height Variance, Setback Variance, Parking Space Size 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, is not 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 Planning Commission of the Town of Fairfax does, based on the findings enumerated above, deny Use Permit # 13-31 for 177 Frustuck Avenue.

**The Foregoing Resolution** was duly and regularly adopted by the Planning Commission of the Town of Fairfax at a regular meeting thereof, held on the 21<sup>st</sup> day of November, 2013 for the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Shelly Hamilton, Chair

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Jim Moore  
Director of Planning and Building Services

John Owens and Diana Dullaghan  
177 Frustuck Avenue, Fairfax CA 94930  
(415) 456-8064 Email: [johnoph@aol.com](mailto:johnoph@aol.com)

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

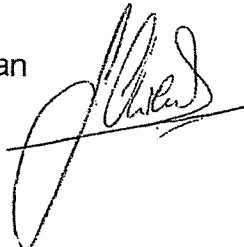


EXHIBIT #

B

**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.

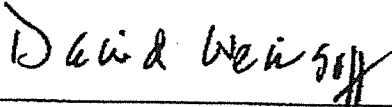
4. The construction of a Residential Second Unit on this property would cause excessive or unreasonable detriment to adjoining properties or premises because the parking for the unit would be located almost entirely within the public right-of-way. The future use of the right-of-way for public improvements 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:

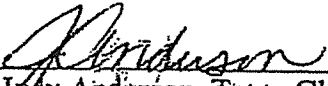
1. The Council upholds the decision of the Planning Commission, which denied the Use Permit application #09-02 for 177 Frustuck Avenue

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 Weinsoff 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.

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.

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AYES: All

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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.

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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.

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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. 415-258-4686

### 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  
E-mail: [Rbastianon@rossvalleyfire.org](mailto:Rbastianon@rossvalleyfire.org)  
Review No. 1  
Fire Department Standards can be found at: [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

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 94960  
Ph. 415-258-4686

### 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  
(415) 258-4673

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.



# MARIN MUNICIPAL WATER DISTRICT

JUL 16 2013

RECEIVED

220 Nellen Avenue Corte Madera CA 94925-1169

[www.marinwater.org](http://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.

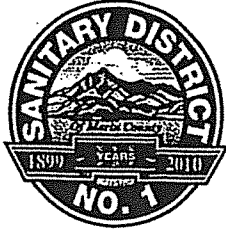
If you have any questions regarding this matter, please contact me at (415) 945-1532.

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







Frustuck Ave.

Fairfax, Ca.

8/15/13

TOWN OF FAIRFAX

AUG 15 2013

RECEIVED

Dear Planning Commission,

I live near 177 Frustuck Ave. and prefer to remain anonymous. I have a concern about the second unit that is being proposed there. It is about parking. There aren't many parking spaces on Frustuck and another unit is going to add more cars. The owner of 177 must have his business in his house because his box van is often parked in his driveway.

When his truck is not parked in his driveway, it is parked at the intersection of Frustuck and Manzanita Road. A lot of vehicles park there because there are no signs limiting parking there and I am concerned about fire trucks getting through that intersection in an emergency.

If another unit is put in at 177 Frustuck, it will mean that the owner's box van will always be parked at that intersection because it is too tall to fit in the garage.

Thank You

EXHIBIT #       E

## MEMORANDUM

TO: Janet Coleson  
FROM: Katherine Wisinski  
DATE: November 13, 2013  
SUBJECT: 177 Frustuck Avenue, Fairfax  
Permit Streamlining Act compliance

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### QUESTION

A planning application form was submitted to the Town of Fairfax on June 27, 2013. Although originally scheduled to be heard by the Planning Commission on August 15, 2013, the item has not yet been acted on. Applicants are now claiming that the Town has violated the Permit Streamlining Act and that the application is thus "deemed approved" per the Act. Has the application in fact been "deemed approved" by operation of law?

### SHORT ANSWER

We do not believe so. Although a project may be deemed approved by operation of the Act if an agency fails to review and approve or disapprove it within specified timelines, all applicable public notice requirements must be met for this to occur. According to the facts provided to us by the Town, these notice requirements have not been met, and the project thus has not been deemed approved.

### BACKGROUND

The following background facts were provided by the Town to us: on June 27, 2013, John Owens and Diana Gullaghan, owners of 177 Frustuck Avenue, submitted a "Planning Application Form" to the Town Planning Department. The form indicated that the owners were seeking approval of a host of discretionary actions, including a Second Unit Use Permit, a Variance, and an Encroachment Permit for an "infill affordable second unit within the existing structure" (a single family home).

The Planning Application Form includes the following advisory:

Within 30 days of submittal, Town staff will review this application for completeness of required information and/or fees, and a notice of completeness or non-completeness will be mailed to the applicant. Applications cannot be

processed until accepted as complete. Further revisions of completed material may be necessary after the 30 day period.

Due to staffing shortages, the Town does not always provide written notice of completeness to applicants. Instead, completed applications are simply scheduled for hearing before the appropriate body. This was the case here: on August 2, 2013, public notice was issued advising that the 177 Frustuck Avenue application (as well as other applications) would be heard by the Town's Planning Commission on August 15, 2013. According to the certification accompanying the agenda, this notice was posted on the bulletin board at the Town Hall Offices, on the bulletin board at the Fairfax Post Office, and on the bulletin Board at the Fairfax Women's Club (where Planning Commission meetings are held).

On August 13, 2013, the Applicants delivered a letter to the Planning Department, advising that they believed there to be errors in the Planning Commission staff report prepared for the 177 Frustuck Avenue application and requesting that the item be removed from the Planning Commission's August 15th agenda. In the letter, the Applicants stated, "Let's discuss this situation further," but did not formally acknowledge their request to be an extension of time under the Permit Streamlining Act. The Planning Department removed the item from the August 15<sup>th</sup> agenda.

Between August 16, 2013, and October 3, 2013, the Applicants and the Planning Department exchanged multiple letters and e-mail regarding the project. Applicants continued to insist that the staff report contained errors, which they wanted to be "fixed" before the item was returned to the Planning Commission's agenda. (See, e.g., letter of September 3, 2013, wherein Applicant stated, "...please make the corrections to the Staff Report (per my last letter) so this application can proceed.") The Town's Planning Department's e-mail responses continually advised Applicants that the Town stood ready to place the item back on the Planning Commission's agenda as soon as Applicants indicated they were ready to proceed. (See, e.g., e-mail from Planning Director Moore in response to Applicant's September 3<sup>rd</sup> letter, advising "[a]lso, 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).")

One further element in the processing of this application arose on September 3<sup>rd</sup> when Ms. Neal e-mailed a copy of the Town's January 3, 2012, Memorandum of Understanding (regarding information and advice provided by Town staff) to the Applicants and requested they sign it before either member of the Planning staff would consent to an in-person meeting with Applicants. Applicants have refused to execute the MOU.

Finally, on October 3, 2013, the Applicants sent a letter to the Town Planning Director advising that they believed the discretionary time period for the Town's processing of their application had expired and that, as a result, Applicants believed the Town was required to now issue building permits for the project. Though they did not cite the Permit Streamlining Act, this

seemed to be the basis of their contentions. The Applicants did not notify the Town that they intended to provide public notice of any impending deadlines under the Permit Streamlining Act.

The Town has since re-scheduled the hearing for the application on the November 21, 2013, Planning Commission agenda.

## ANALYSIS

***The Permit Streamlining Act, generally.*** The Permit Streamlining Act (the “Act,” found at Government Code §§ 65920, *et seq.*) was enacted “to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects.” Gov. Code § 65921. To that end, the Act established, among other things, a host of requirements governing how and when applications for development projects subject to adjudicatory or quasi-judicial decision-making are processed.<sup>1</sup> Each element of these requirements as is pertinent to this application is analyzed below.

***Completeness determinations.*** Under the Act, local agencies processing development applications must create detailed lists of the information required of development applicants. Gov. Code § 65940. Upon receipt of a development application, the local agency has 30 days to inform the applicant – in writing – whether the application is complete. Gov. Code § 6594(a). If no completeness determination is made within 30 days of the agency’s receipt of the application and the application includes a statement that it is an application for a development permit, the application will be deemed complete on the 30<sup>th</sup> day. Gov. Code § 65943(a) and 14 CCR § 15101.<sup>2</sup> If the application is complete, the agency’s planning department must send the applicant a letter explaining the process and time limits that apply to the processing of the application. Gov. Code § 65941.5.

Here, the Town uses a form entitled ‘Planning Application Form,’ which does not include a statement that it is an application for a development permit. The Town’s records indicate that it was received on June 27, 2013. The form includes a number of blanks to be completed by applicants and lists on page 4 the items that must be submitted for consideration of ‘administrative actions’ and those subject to Planning Commission and Design Review Board action. As noted above, the Planning Application Form does include the following advisory:

Within 30 days of submittal, Town staff will review this application for completeness of required information and/or fees, and a notice of completeness or non-completeness will be mailed to the applicant. Applications cannot be processed until accepted as complete. Further revisions of completed material may be necessary after the 30 day period.

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<sup>1</sup> The Act does not apply to decisions that are legislative or ministerial. Gov. Code § 65928.

<sup>2</sup> However, a local agency and an applicant may mutually agree to extend the deadlines for determining completion set forth in Gov. Code § 65943. Gov. Code § 65943(d).

No completeness letter was sent to the Applicants, and the records provided by the Town do not include any correspondence to Applicants explaining the process and time limits that apply to the processing of their application. Rather, the matter was simply scheduled and noticed for a hearing by the Planning Commission on August 15, 2013.

Under a strict reading of Gov. Code § 65943(a), since the application does not contain a statement that the application is for a “development permit,” it cannot be deemed complete by operation of law. And since the Town has not provided any completeness letter to Applicants, no official notice of completion has been otherwise communicated in satisfaction of § 6594(a). However, given the Town’s practice of scheduling items for hearing upon a completion determination, and given that this item was in fact so scheduled for August 15, arguing that the Town never found the application to be complete would likely not succeed. The Town should treat the application as having been determined complete as of the date the notice for the August 15, 2013, Planning Commission meeting was posted (i.e., August 2, 2013).

***Environmental review.*** The timelines for approval or denial of projects subject to the Act do not begin to run until the CEQA documentation for the project has been prepared. Gov. Code § 65950. Thus, to determine the applicable timelines in which to process a given application, one first must determine the relevant CEQA deadlines.

CEQA statutory requirements are found in the Public Resources Code, section 21151.5(a)(1) of which provides that “for projects described in [§ 21065(c)], each local agency shall establish, by ordinance or resolution, time limits that do not exceed the following: (A) one year for completing and certifying EIRS, (b) one hundred eighty days for completing and adopting negative declarations.” Note that no mention is made of a timeline for reaching exemption determinations.

After a CEQA document is approved, the Act provides that the lead agency must either approve or disapprove a development project within the pertinent timeline: (a) 180 days from the date of EIR certification,<sup>3</sup> (b) 60 days from the date of adoption of a negative declaration, or (c) 60 days from a CEQA exemption determination. Gov. Code § 65950. These time limits for approval or disapproval of a project may be extended once, with the applicant’s written consent, for no more than 90 days. Gov. Code § 65957. (Note that previously, agencies could request a common law “waiver” of Permit Streamlining Act timelines from applicants, but that is no longer permitted. Indeed, the California legislature explicitly amended section 65957 to do away with common law waivers, following *Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, wherein the California Supreme Court allowed waivers of the Act if the waiver was “knowing, intelligent, and voluntary.”)

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<sup>3</sup> Note that this is reduced to 90 days for certain affordable housing projects. Gov. Code § 65950.

Here, staff found the Applicant's proposed project to be categorically exempt from CEQA by virtue of 14 CCR §§ 15301(e), as well as 15303(a) and (b). Staff's determination is found in the August 15 staff report, as well as the August 2 notice of public hearing. From a review of other Planning Commission resolutions issued for items determined by staff to be categorically exempt from CEQA, it does not appear that it is staff's practice to include this type of determination in the Planning Commission's resolution of this application.<sup>4</sup> As such, the applicable date for the start of the CEQA clock on this matter would be August 2, the date on which the public notice was posted with staff's CEQA determination, unless staff's files indicate that this decision was in fact reached prior to that time.

***Deemed approved provisions.*** The Permit Streamlining Act's real teeth are in its "deemed approved" provisions, whereby, if an agency fails to approve or disapprove a development application within the Act's timelines, the application may be deemed approved by operation of law. Gov. Code § 65956. Concern for competing public policy concerns, however, has substantially tempered this potentially dramatic result. Specifically, a project subject to the Act will not be "deemed approved" without satisfaction of the public notice requirements in the Act. Gov. Code § 65956(b).

Within sixty days of the expiration of the Act's timelines, the applicant may seek a writ to compel an agency to provide notice and conduct a public hearing on the proposed project. Gov. Code § 65956(a). Alternatively, the applicant can also choose to provide that notice. Gov. Code § 65956(b). If the applicant chooses to post the required notice, he must give the agency seven days advance notice of his intention to do so. *Ibid.* Then, no earlier than 60 days from the expiration of the Act's timelines, the applicant may provide the required public notice. *Ibid.* If the applicant opts for this course, that notice shall include the following:

- A description of the proposed development substantially similar to the descriptions which are commonly used in public notices by the permitting agency,
- The location of the proposed development,
- The permit application number,
- The name and address of the permitting agency, and
- *A statement that the project shall be deemed approved if the permitting agency has not acted within sixty days.* *Ibid.*, emphasis added.

The section goes on to provide that "[i]f the applicant has provided the public notice required by this section, the time limit for action by the permitting agency shall be extended to 60 days after the public notice is provided." *Ibid.*

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<sup>4</sup> This is a practice that can be discussed further.



Here, the Applicants' letter of October 3 seems to indicate that they believe the Permit Streamlining Act's "deemed approved" feature to be self-executing, which it is not. The Applicants have not sought a writ to compel the Town to schedule a public hearing, per Gov. Code § 65956(a), nor have they notified the Town of their intention to provide the required notice, per Gov Code § 65956(b). In the absence of these steps, their application cannot be "deemed approved" under the Act.

### CONCLUSION

Given the fact that the Applicant has not met the public notice requirements set forth in the Permit Streamlining Act that are necessary in order to acquire "deemed approved" status, their application has not been deemed approved by operation of law. However, the Town should act on the application without further delay. In addition, we would be happy to have a discussion about some suggested practices and procedures the Town may wish to adopt in this regard in the future.

Town of Fairfax Planning Commission Minutes  
Fairfax Youth Center  
Thursday, November 21, 2013

**Call to Order/Roll Call**

**COMMISSIONERS PRESENT:** Roxanne Ezzet  
Esther Gonzalez-Parber  
Philip Green  
Shelly Hamilton (Chair)  
Laura Kehrlein  
Brannon Ketcham  
Shelby LaMotte (Vice-Chair)

**STAFF PRESENT:** Jim Moore, Planning Director  
Joanne O'Hehir, Minutes Secretary

Chair Hamilton called the meeting to order at 7.05 p.m.

**APPROVAL OF AGENDA**

M/s, LaMotte/Kehrlein, Motion to approve the agenda:

Ayes: ALL

**PUBLIC COMMENTS ON NON-AGENDA ITEMS**

No one from the public came forward to speak.

**CONSENT ITEMS**

None.

7:10 p.m.

**PUBLIC HEARING ITEMS**

1. **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 and the required parking for the unit partially within the public right-of-way; 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).

**EXHIBIT #**     C

Planning Director Moore presented the staff report. He said that a letter had been received from a neighbor, which expressed their concern with parking problems related to the property. Mr. Moore said that he had been in contact with the owner and his attorney, and that Mr. Owens' attorney confirmed that the main issue had been the fourth floor variance.

Mr. Moore provided background information on the project. He said that the reasons staff did not support the variance for a fourth floor second unit related to precedents that could be set if an exception were made. He noted that the requests made by the applicant had previously been denied by the Planning Commission in 2009, whose decision had been upheld by the Town Council. Mr. Moore noted that Counsel would be handling a complaint by the applicant of violations to the Streamlining Act.

Mr. Moore discussed the required discretionary permits. He said that the Planning Commission would need to approve a Use Permit for the second unit, and he noted a correction to the staff report in this respect.

Mr. Moore addressed the height variance, which he said would be necessary because the Town's code imposed a 35 feet height limitation on a maximum of three stories, when the residence had been deemed to compose of four stories.

Mr. Moore also went on to discuss a side setback variance and encroachment permit. He noted that the code specifically stated that an additional parking space needed to be provided on site for a second unit, but that the proposed space would encroach the side yard setback, which the code prohibited. He noted that the granting of the height variance and side yard parking variance would be setting a precedent.

In summation, Mr. Moore suggested that, if the commissioners were able to make the findings to support the project, staff be tasked with preparing a resolution to reflect the discussions.

In response to Commissioner Kehrlein, Mr. Moore said he would defer to the Senior Planner in relation to the definition of a story. Mr. Moore discussed the previous building projects that related to the property in more detail

In response to Commissioner Green, Mr. Moore said that the Fire Department had reviewed the plans and had not commented upon the fire engine turnaround in the vicinity of the dwelling.

In response to Commissioner Ketcham, Mr. Moore noted that, to his knowledge, no fourth floor exceptions had been granted.

John Owens, applicant, discussed his application in more detail. He noted that the number of variances he had requested was not unusual, and he addressed the fourth story issue. He said that there was another four-story house near his property. Mr. Owens discussed his second unit request in relation to affordable housing, and he explained why he believed it would not constitute a special privilege if his project were approved.

Commissioner Green and Mr. Owns discussed the use of his property for business purposes.

Commissioner Ketcham and Mr. Owens discussed other properties that might consist of four stories. Commissioner Ketcham noted that the town had not approved any four-story applications.

In response to Chair Hamilton, Mr. Owens confirmed that he had brought forward the application in light of the town's need to meet additional affordable housing to which he could contribute a unit.

Chair Hamilton opened the public comment period.

Francois Ramsay, former resident of Fairfax, discussed the exceptions that she had been granted for a project on a home she formerly owned in Fairfax in relation to the project at 177 Frustuck. She noted that they had benefitted from building a second unit and that she supported the project.

Chris Lang, Canyon Road, said that he supported the project. He discussed the reasons he believed the project should be approved, which related to the need to provide affordable housing and that there were carports in the vicinity that should have required an encroachment permit.

Barbara Cassidy, Walsh Lane, discussed her concerns about parking. She said that cars parked on both sides of the street, which made it harder for drivers to maneuver through the narrow street and hairpin turns. She also expressed concern that emergency vehicles would not be able to pass, although she said that she was not against the project.

Randall Gillett, Frustuck Ave, said that he supported the project and that the second unit would be a modern unit in comparison to some illegal second units.

Larry Bragman, Hickory Road, Councilmember, noted that he had never voted and could not vote on any projects brought before the Town Council that related to the property because he lived within 500 feet. He confirmed he was addressing his concerns as a private citizen. Mr. Bragman said that he was concerned about the addition, which did not seem to be workable due to the lack of parking. He noted that the owner used the street to park his vehicles, which took up spaces, and that the problem might get worse. Mr. Bragman discussed a deed restriction on the property, which restricted the property to three floors. He said that a previous decision had been made, which should be enforced.

Chair Hamilton commented on the fourth story addition. She said that the commissioners would need to make the findings to approve the fourth story variance. Chair Hamilton noted that she could not make the findings and that she had never done so on other fourth story projects. Therefore, she would not support the project.

Commissioner Gonzalez-Parber said that a lot of thought went into codes, which were formulated for safety purposes by different regulatory bodies. She said that the project was a safety issue and that she did not support the variance.

Commissioner Green discussed the project in relation to providing affordable housing. He noted that the town would be able to comply with the number of units mandated. Commissioner Green said that the ordinance was clear about structures not exceeding three stories and that he could not see how an exception could be granted. He also discussed his concerns about fire truck access on the street.

Commissioner Ezzet said that she could not find the basis to grant a variance for a fourth story addition. She noted that affordable housing was needed but that it should be provided within the town's codes. Commissioner Ezzet suggested that there were avenues that could be explored in order to change the town's code, but that it was not within their purview to recommend a fourth story addition.

Commissioner Kehrlein discussed her interpretation of a fourth story and the reasons she believed that the house consisted of three stories, which she discussed with Director Moore. He noted that the applicant previously argued that a variance had not been necessary because the garage and understory were attached to and were part of the house, otherwise a variance would have been necessary for the garage and storage area below.

Commissioner Ketcham discussed the character of Fairfax in relation to fourth story additions, and he said that they must honor those applicants whose previous request for fourth story additions had been denied. Commissioner Ketcham also discussed the Second Unit Amnesty in relation to bringing units into compliance that met the town's codes. He said that foregoing the requirement to install sprinklers in second units did not contribute towards the overall safety needs and values.

Vice-Chair LaMotte said that it appeared to be a great house and a great project but that the town did not allow four-story buildings. She confirmed that the town needed to provide affordable housing, but that she did not favor supporting a second unit at the expense of public safety or the town's code. She agreed with Commissioner Ketcham that it would not be fair to previous applicants, whose request for a fourth story addition had been denied, if this project were approved.

M/s, Ketcham/Green, Motion to deny Application #13-31, a 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 and the required parking for the unit partially within the public right-of-way, with the following amendments to Resolution 13-9:

**WHEREAS**, The Planning Commission held a duly noticed Public Hearing on August 15, 2013 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

To be amended to read:

**WHEREAS**, The Planning Commission held a duly noticed Public Hearing on November 21, 2013 at which time all interested parties were given a full opportunity to be heard and to present evidence; and

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.

To be amended to read:

6. The granting of a fourth story to this property would be a grant of special privilege to this site and is not in character with the Town of Fairfax.

Vice-Chair LaMotte offered a friendly amendment to remove the wording that related to a fourth story addition because a fourth story would be illegal and the wording redundant. Commissioner Ketcham agreed to the friendly amendment:

6. The granting of a fourth story to this property is not in character with the Town of Fairfax.

A roll call was taken:

Gonzalez-Parber:	AYE
LaMotte:	AYE
Ketcham:	AYE
Hamilton:	AYE
Green:	AYE
Kehrlein:	NO

Motion passed 6:1.

Chair Hamilton read the appeal rights.

8:15 p.m.

## **MINUTES**

2. Minutes from the September 19, 2013 meeting and the October 17, 2013 meeting

M/s, Ketcham/LaMotte, Motion to approve the minutes of September 19, 2013 with the amendment of the name "David Creasy" to "David Parisi" wherever it appeared in the item concerning 2001 Sir Francis Drake Blvd:

AYES:	Ezzet, Hamilton, Ketcham, LaMotte
NO:	None

M/s, Green/Ketcham, Motion to approve the minutes of October 17, 2013 with the following amendments:

“Gomez-Parber” to be amended to “Gonzalez-Parber” wherever it appeared in the draft minutes; the removal of the following paragraph on page 2 of the draft minutes:

“Ms. Fairchild asked if there were going to be any new lighting on the rear addition that might impact neighbors”;

That on page 4, the beginning of paragraph 5, “Al Baylacq, of the Good Earth, informed the Commission that they fence a fence extension.....” be amended to read:

“Al Baylacq, of the Good Earth, informed the Commission that a fence extension.....”, and;

That on page 7, paragraph 4 “.....that the noise at the Good Earth now starts at 5 AM instead of 3 AM like it is supposed to.....” be amended to read:

“...that the noise at the Good Earth now starts at 3 AM instead of 5 AM like it is supposed to....”

AYES: All

8:25 p.m.

## **PLANNING DIRECTOR’S REPORT**

Planning Director Moore reported that the town’s Housing Element had been passed by the State of California. He discussed the sites that had been identified as being suitable for affordable housing.

Mr. Moore discussed three second units with regard to the Second Unit Amnesty Ordinance. He discussed the town’s desire to encourage second units.

Mr. Moore confirmed that the town had received a state grant to undertake a survey for the Parkade in relation to the General Plan.

Mr. Moore said that he had contacted the Public Works Director at San Anselmo, Sean Condry, with regard to the lights at the intersections on Sir Francis Drake Blvd and Butterfield Road and Willow Avenue, which were managed by San Anselmo. He said that San Anselmo had received a grant for aerial synchronization and would address these intersections.

Commissioner Ketcham and Planning Director Moore discussed an exposed gravel area at the excavation site of the gas station on Sir Francis Drake Blvd that concerned problems that the rain might cause. Mr. Moore said he would ask the Public Works Director and Town Manager to address the potential problem.

Chair Hamilton, Vice-Chair LaMotte and Commissioner Green commended Planning Director Moore for his work on affordable housing.

8:45 p.m.

### **DISCUSSION ITEMS**

#### 3. Review of the General Plan Matrix

Planning Director Moore provided background information on the Matrix. He briefly discussed the items listed under the first year, and suggested that the commissioners might care to review those in year 2 at their convenience.

Mr. Moore noted that some of the elements had already been completed but that it would be impossible to implement the five hundred programs in the General Plan. He said that he would like the commissioners to choose those they feel would be the most important.

9 p.m.

#### 4. Presentation of the Draft Climate Action Plan

Planning Director Moore said that the Town Council were scheduled to discuss the Draft Climate Action Plan at their next meeting. Mr. Moore said that a recommendation would be made to the Town Council that they establish a climate action committee and that two members of GPIC (General Plan Implementation Committee) would make regular reports to the Town Council.

Bruce Ackerman, Chair of GPIC, discussed biodiesel with Commissioner Green in relation to Land Use and Transportation. Commissioner Green requested an analysis of biodiesel to be included in the Draft Climate Action Plan, and Mr. Moore said he would ask the Fire Department for their views on the possibility of using biodiesel for their trucks.

Commissioner Ketcham and Mr. Ackerman discussed the participation of residents in clean energy. Mr. Ackerman discussed green house emissions and how they were calculated.

### **COMMISSIONER COMMENTS**

Commissioner Ezzet identified some crosswalk lights that were not working.

Commissioner Green identified an area of sidewalk that he considered to be in a dangerous state. In response, Planning Director Moore said that the sidewalk would be included in the improvements scheduled as part of the Town Center Plan.

### **ADJOURNMENT**

A motion was made, seconded and unanimously passed to adjourn the meeting at 9:15 p.m.

Respectfully submitted

Joanne O'Hehir





Hi Larry:

Martin and I have been in Oregon for several weeks, and just returning tomorrow. We just got our forwarded mail which included a notice about 177 Frustuck, the addition that we are concerned about. We kind of always saw this coming...and even at present the situation doesn't seem workable due to the lack of adequate parking for the construction/residence that is already there. Ever since the property was built, we almost never have available parking for friends and guests in front of our house at 215 Frustuck. John has a construction business, and often his crew will park "down below", probably even as far down as your house, and then go up to car pool in a larger truck or whatever, I'm not sure. There have also been problems with long term parking of John's professional vans, as well as the Eye Deal van, which I've put notices out about and hasn't happened as much since then.

Anyway, we hate to be targeted as complainants, but we do want you to be aware of the problem as I'm sure you already are. We are actually driving back to Fairfax on Thursday, but not likely that we'll be there in time for the meeting.

Just wanted you to be aware of the problem that already exists and can only get worse. I imagine that neighbors above and below have the same concerns.

Thanks for doing whatever you can about this,

Sandra Stamos  
Martin Koepfel  
415-297-6343

Read into the record  
and submitted by  
Larry Bragman at the  
Planning Commission  
Meeting of Nov. 21, 2013.

**EXHIBIT #** \_\_\_\_\_

**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.

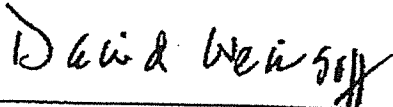
4. The construction of a Residential Second Unit on this property would cause excessive or unreasonable detriment to adjoining properties or premises because the parking for the unit would be located almost entirely within the public right-of-way. The future use of the right-of-way for public improvements 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:

  
\_\_\_\_\_  
Jody 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 Weinsoff 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

*February 19, 2009 Commission Minutes*

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.