



TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930

(415) 453-1584 / FAX (415) 453-1585 TOWN OF FAIRFAX

NOTICE OF APPEAL

NOV 27 2013

FOR STAFF USE

RECEIVED

Date: 11/27/13 Fee: \$500.00
Appl.# _____
Receipt# _____
Recvd. By: S. Waters
Action: _____

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

FEE: Fees are set by resolution of the Town Council. See fee schedule for current application fees.

PLEASE PRINT

Appellant's name JOHN OWENS + DIANA DULLAGHAN

Mailing address 177 FRUSTUCK AVE zip: 94930 Day phone 415 717 7621

Property Address: 177 FRUSTUCK AVE

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # 13-31
PLANNING COMMISSION

The following are my reasons for appeal:

SEE ATTACHED

I hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct.

Executed this 27 day of NOV, 2013

SIGNATURE OF APPELLANT: _____

Diana Dullaghan

(4/94)

EXHIBIT # A

Diana Dullaghan & John Owens
177 Frustuck Avenue
Fairfax, CA 94930
Johnoph@aol.com

RECEIVED
JAN 23 2014
TOWN OF FAIRFAX

January 21, 2014

Hand Delivered

Fairfax Town Council
Town of Fairfax

Rebuttal of comments made at the November 21st 2013 Planning Commission meeting

Dear Council Members,

The appeal of the Planning Commission decision before you is in regards to the creation of a Leed Certified Second Unit with off street parking at 177 Frustuck Avenue. Comments made by the Planning Commission members were merely a distraction from the issue of creating valuable housing stock in Fairfax.

The "theme" of the distractions from the podium and by Mr. Bragman from the floor were accusatory of how we run our home based business, and in regards to employees parking in the neighborhood and car pooling in my large service truck. The accusations are false.

The truth is we do have a home office. The only person in that office is Diana the homeowner. I do drive a plumbing and heating service truck on a daily basis without passengers. We have two other employees that have company trucks. They are dispatched from their homes. We have tools and material storage in San Rafael. We do not store wares of our business at home. My wife, daughter, and myself have three vehicles at home. We park off the street in our driveway and garage. Only under extraneous circumstances would we park in the street. We do not park in the fire lane. There is a big parking problem in our neighborhood. We are not the cause of the problem.

In regards to the accusation of an employee parking in the street and carpooling: The employee was a temporary employee. He was an unemployed carpenter with a family of four from Petaluma who asked us for work. We generated construction work for him to make a living and feed his family. He was never part of our service business. When he was parked in the neighborhood he either worked on a permitted remodel at 12 Valley Road, a permitted basement entry remodel at 177 Frustuck, or he did yard cleanup for us. At all times work was permitted, he was on payroll, and fully covered by workman's compensation. He was working on projects that generated revenue for the Town of Fairfax. The accusations as usual against us are false.

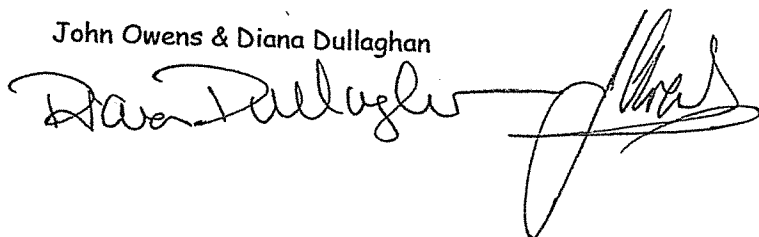
The same situation and distractions occurred at the 2009 Planning Commission meeting regarding the second unit application. Former council member Calderaro, current council member Bragman, and future council member Reed made derogatory comments against my character. It was reported in the Ross valley reporter that I was a bully and a monster. Subsequently we submitted twelve letters and signatures from our surrounding neighbors to attest that the accusations were unfounded and false.

These tactics are simply distractions from the issue at hand. The Town of Fairfax has a deadline of 172 housing units by 2014. Only a handful have been produced to date. There are no current programs or permit applications in process to meet that deadline. This is an application to add valuable housing stock to the Town of Fairfax.

I am requesting that Council Member John Reed recuse himself from the appeal as he spoke to the commission and told lies in regards to my character at the 2009 Planning Commission meeting for the same second unit. Mr. Reed has never met me, and has no firsthand knowledge of my behavior whatsoever.

Respectfully,

John Owens & Diana Dullaghan

Handwritten signatures of Diana Dullaghan and John Owens. The signature for Diana Dullaghan is on the left, and the signature for John Owens is on the right, written in a cursive style.

TOWN OF FAIRFAX

NOV 06 2013

1	ORIGINAL HOUSE APPLICATION
2	12/18/03 TOWN RESPONSE
3	3/9/04 RESPONSE TO CORRECTIONS
4	4/15/04 STAFF REPORT PLANNING COMMISSION
5	4/16/04 PLANNING COMMISSION ACTION
6	5/20/04 P.C + MINUTES
7	6/8/04 COUNCIL MEETING
8	7/6/04 COUNCIL MEETING.
9	8/3/04 COUNCIL MEETING + APPROVAL
10	9/8/04 DESIGN REVIEW + APPROVAL
11	5/10/04 NEIGHBORHOOD PETITION
12	6/15/04 ROSS VALLEY REPORTER "CRONYISM"
13	2/19/08 APPLICATION GARAGE SECOND UNIT
14	3/20/08 RESPONSE TO APPLICATION TOWN
15	4/11/08 OUR RESPONSE TO 3.20.08.
16	6/12/08 ATTORNEY LETTER TO TOWN
17	7/9/08 TOWN RESPONSE TO ATTORNEY
18	EMAILS, COUNCIL MEMBERS, PLANNING DIRECTOR
19	8/25/08 TOWN REJECTION OF PATIO.
20	8/28/08 OUR CLARIFICATION ON ATTACHED
21	9/23/08 OUR PUBLIC NOTICE MAILED OUT
22	10/8/08 ATTORNEY LETTER TO TOWN
23	10/16/08 PLANNING COMMISSION STAFF REPORT
24	10/8/08 11/4/08 ATTORNEY LETTERS COMMISSIONER
25	10/22/08 APPEAL TO COUNCIL
26	11/19/08 STAFF REPORT COUNCIL MEETINGS
27	08 PRESS CLIPPINGS.
28	11/3/13 OUTCOME OF 3.20.08 + 8.25.08
29	
30	
31	

PLANNING APPLICATION FORM
Town of Fairfax Planning Department

<p>For PLANNING COMMISSION action:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Annexation <input type="checkbox"/> General Plan Amendment from _____ to _____ <input type="checkbox"/> Design Review (hillside*, commercial*, multi-family*, 5'-8' residential setback additions to existing dwellings) <input type="checkbox"/> Precise Development Plan** <input type="checkbox"/> Second Unit Use Permit * <input type="checkbox"/> Sign Review * <input type="checkbox"/> Parcel Map/ Tentative Map/ Vesting <input type="checkbox"/> Tentative Map, Lot Line Relocation <input type="checkbox"/> Use Permit * <input type="checkbox"/> Variance <input type="checkbox"/> Zone Change from _____ to _____ <input type="checkbox"/> Encroachment <input type="checkbox"/> Certificate of Compliance <input type="checkbox"/> Hill Area Residential Development <input type="checkbox"/> Other: <hr/> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental Review* 	<p>For ADMINISTRATIVE action</p> <ul style="list-style-type: none"> <input type="checkbox"/> Admin. Sign Review (commercial)* <input type="checkbox"/> Admin. Design review (hillside)* <input type="checkbox"/> Admin. Lot Line relocation <input type="checkbox"/> Other <hr/> <p>For Office Use Only Application # _____ Receipt # _____</p>
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* Please complete the appropriate Supplemental Questionnaire.

** See special submittal requirements:

~~~~~ Please see fee schedule for required application fees. ~~~~~

|                                        |                                    |               |
|----------------------------------------|------------------------------------|---------------|
| Job Site Address:<br>190 FRUSTUCK AVE. | Assessor Parcel No.:<br>003-193-02 | Zone:<br>RS-6 |
|----------------------------------------|------------------------------------|---------------|

|                                                                      |                                                                 |                             |
|----------------------------------------------------------------------|-----------------------------------------------------------------|-----------------------------|
| Property Owner(s) Name:<br>JOHN WICKHAM                              | Phone Numbers:<br>Home: 310 200 5063<br>Work:                   | Fax Number:<br>310 952 8444 |
| Mailing Address:<br>1110 CATALINA ZIO                                | City:<br>REDONDO                                                | State/Zip:<br>CA 90277      |
| Applicant(s) Name (contact person):<br>JOHN OWENS<br>DIANA DULLAGHAN | Phone Numbers:<br>Home: 415 456 8064<br>Work: 415 717 7621 cel. | Fax Number:<br>415 456 9017 |
| Mailing Address:<br>22 BANCHERO WAY                                  | City:<br>FAIRFAX                                                | State/Zip:<br>CA 94930      |

PROJECT DESCRIPTION: Single family three bedroom house with separate garage building. Parking for four vehicles. 480 square feet of space under garage for small office, small shop area, and storage.

GENERAL INFORMATION (if applicable):

| Item                                                   | Existing   | Proposed              |
|--------------------------------------------------------|------------|-----------------------|
| Lot size                                               | 8943 SQ FT | 8943 SQ FT            |
| Size of structure(s) or commercial space (square feet) | —          | 3054 SQ FT.           |
| Height and No. of stories                              | —          | 34 FT. 2 STORY        |
| Lot coverage                                           | —          | 1504 SQ FT            |
| No. of dwellings units                                 | —          | ONE.                  |
| Parking <sup>1</sup> No. of spaces                     | —          | 4                     |
| Size of spaces                                         | —          | 2x 10'x24' 2x 10'x20' |

|                                        |                                 |             |
|----------------------------------------|---------------------------------|-------------|
| Amount of proposed excavation and fill | Excavation =<br>10 - 30 cu YDS. | Fill = ZERO |
|----------------------------------------|---------------------------------|-------------|

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade, including all projections from the face of the building.

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

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

Signature of Property Owner

Signature of Applicant

Date

Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-158

11/12/03.

**PROJECT DESCRIPTION:** Single family three bedroom house with separate garage building. Parking for four vehicles. 400 Square feet of space under garage for small office, small shop area, and storage.

**GENERAL INFORMATION (if applicable):**

| Item                                                   | Existing       | Proposed              |
|--------------------------------------------------------|----------------|-----------------------|
| Lot size                                               | 8943 SQ FT     | 8943 SQ FT            |
| Size of structure(s) or commercial space (square feet) | ---            | 3054 SQ FT.           |
| Height and No. of stories                              | ---            | 34 FT. 2 STORY        |
| Lot coverage                                           | ---            | 1504 SQ FT            |
| No. of dwellings units                                 | ---            | ONE.                  |
| Parking <sup>1</sup>                                   | No. of spaces  | 4                     |
|                                                        | Size of spaces | 2x 10'x24' 2x 10'x20' |

|                                        |                              |             |
|----------------------------------------|------------------------------|-------------|
| Amount of proposed excavation and fill | Excavation = 10 - 30 cu YDS. | Fill = ZERO |
|----------------------------------------|------------------------------|-------------|

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade, including all projections from the face of the building.

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

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

[Signature]  
Signature of Property Owner

11/12/03

Date

[Signature]  
Signature of Applicant

11/12/03.

Date

Planning Department staff is available by appointment between 8:30 a.m. and 12:00 noon and 1:00 p.m. and 5:00 p.m. Monday through Thursday at 142 Bolinas Road, Fairfax, CA. (415) 453-158

## SUPPLEMENTAL QUESTIONNAIRE & DRB APPLICABILITY

### DESIGN REVIEW

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

1. Exterior finish: Fiber Cement Siding.
2. Proposed exterior wall color(s): Brown - cedar or darker
3. Proposed exterior trim color: Dark wine color
4. Proposed exterior window color: Dark wine color
5. Proposed roof material and color: Metal raised seam - dark brown.
6. Special features: Good parking, Fire proof exterior, two structures (low mass), Fire, Flood resistant landscape
7. Lot Coverage: 150% 80 FT
8. Number of existing parking spaces and their sizes: None
9. Number of proposed parking spaces and their sizes: Four  
2 at 10' x 24' 2 at 10' x 20'

### DESIGN REVIEW APPLICABILITY

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

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

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

#### 2. Multiple family Design Review

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

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



APPLICANT AFFIDAVIT

FOR

PROPERTY OWNERS' MAILING LIST (300' RADIUS)

INSTRUCTIONS TO APPLICANT

The required mailing list of property owners within 300 feet of the applicant's subject property may be prepared either by: (A) the applicant; (B) the applicant's agent (C) the property owner; or (D) those who typically provide this service, such as a title insurance company or the Marin County Assessor's Office. Regardless of who prepares the required mailing list, labels, and map, the applicant is responsible to insure the accuracy of the information submitted to the Town of Fairfax.

This affidavit form **MUST** be completed, signed and submitted with the required notification materials (i.e., map showing the applicant's subject property and properties to be notified; and mailing labels, one complete set for each public hearing, and self adhesive stamps for each label) at the time an application requiring public notification (a Development Plan, Land Use Permit, Variance, etc.) is submitted to the City.

- > Name of Applicant John Owens Diana Dullaghan
- > Name of Property Owner John Wickham
- > Address of Project Site 190 Frustuck Ave.

I hereby certify that the map delineating the parcels within 300 feet of the applicant's subject property is accurate, complete and taken from the most recent Marin County Assessor's Tax Role; and that mailing labels and the required number of stamps are included.

[Handwritten Signature]  
Signature of Applicant

11/12/03  
Date

### Hill Area Residential Development (HRD) - Additional information required.

- Amount of excavation and fill required for development (in cubic yds.) 10-30  
If the excavation and fill amounts exceed 100 cubic yards it must be reviewed and approved by the Planning Commission. Please submit an excavation application and fee as well.
- If any public roads will need to be extended to access the residence plans must include the existing and proposed type of surface, the length and width of roadway to be improved, slope of roadway, elevations of any retaining walls that will need to be constructed, locations of curbs, gutter and drainage improvements and identification of emergency vehicle turn arounds (if required).
- Locate all trees within the right-of-way easement and any trees that will need to be removed (must include size and species of trees). An application for a tree permit and approval by the tree committee is required for the cutting or trimming of trees with a trunk circumference of 24 inches or more.
  - Check if a tree permit is required.
- List any notable physical features of the site, such as creeks, drainage channels, rock outcroppings, tree stands, etc.:

Two rock outcroppings on lower section of lot

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- Lot size 8943 square feet      Lot frontage \_\_\_\_\_ "
- Name and address of Licensed Surveyor: J.H. Engineering  
1539 Fourth Street San Rafael CA 94901  
415 457 6647      415 457 2517 Fax.
- Name and address of Registered Civil Engineer: Irving L. Schwartz  
IHS Associates Inc. 79 Galli Drive Ste A Novato 94949

NOTE: In order to visualize the dimensions and location of the proposed structure, the Town review process requires story poles. Story poles must be erected prior to an application being filed with the Planning Department. Poles shall be erected at all proposed building corners (rising to the proposed height of the building at that corner), and at the highest point of the proposed roof-line. Also the front corners of undeveloped land must be staked and tagged in the field. You, the applicant, will have to maintain the poles and corner flags in good condition until all public hearings on the project are over and appeal periods have lapsed. Avoid unnecessary delays to your project by maintaining the poles through out the review process.

SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

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

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

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

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

Other (fence height, building height, parking number or size, etc.) 2 Story Utility Structure

FINDINGS:

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

We designed the property as two structures to break up the mass of one integral house, garage, and storage structure. It is consistent with storage structures on this street.

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

The second story will be below the garage structure. It will not be visible from any other houses. It is consistent with other downslope houses on the street, most have storage below their carports at house level.

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

Owner would have to rent an office out of the house. Lack of storage below the garage would force us to use the garage for storage instead of parking. This is on a street that needs more parking. Lack of off street parking could be a hardship for the neighborhood.

Variance - Additional information required.

- Include a cross section through the proposed project depicting the project and the relationship of the proposal to existing features and improvements on adjacent properties.
- Lot coverage calculation including all structures and raised wooden decks.

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

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

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# TOWN OF FAIRFAX

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

December 18, 2003

John Owens and Diana Dullaghan  
22 Banchemo Way  
Fairfax, CA 94930

RE: 190 Frustuck Avenue; planning application.

Dear Mr. Owens and Ms. Dullaghan,

The Department of Planning and Building Services has completed its review of the above referenced application and we regret to inform you that it is incomplete. The following represents our findings and request for additional information:

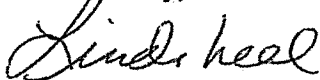
1. The proposal requires the approval of a front setback variance, a combined side yard setback variance and a height variance. The garage/storage/shop structure does not comply with the required 10' front yard setback. The proposed residence and deck located on the east side of the structure maintain a combined side yard setback of 10' while the code requires a combined setback for a residence and deck of 18' (decks can encroach 2' into a required setback). Additionally, the accessory parking storage structure exceeds the maximum 15' height limit and the one story limitation. The project should be revised to comply with requirements or variance applications should be submitted with the required fees. When it is physically possible, staff recommends that applicants strive to comply with the code. It is our experience that project are more likely to proceed smoothly through the planning process when the number of discretionary permits being applied for are minimized. Therefore, our recommendation would be to redesign the project so that it complies with the code requirements.
2. The site plan shall show the location of all the buildings on adjacent properties.
3. Provide one color elevation of the residence and a colors and materials board (see the enclosed Planning Application form).
4. Provide a cross section through the project showing project and adjacent residences.
5. Provide a lighting plan including details of exterior fixtures, location and illumination.
6. The Town Engineer and Public Works Director request the following items be addressed before processing of this application continues (see enclosed Town Engineer's memorandum dated 12/16/03):

2

- Provide a clear indication of the foundation types so that retaining walls and related fill work can be seen and excavation and fill quantities including structure excavation and structure backfill can be calculated. An accurate excavation and fill calculation is necessary for staff to determine the project will not require an excavation permit from the Planning Commission (see enclosed Town Engineer's memorandum dated 12/16/03).
- The drainage facilities must be modified as indicated in the enclosed Town Engineer's memorandum.
- Clarify the discrepancies between the topographical survey, the architectural plans and Arboricultural Assessment.
- The applicant shall be advised that Frustuck Avenue is a moratorium street as defined by the enclosed Town Code § 12.24.100.

Once the above information is provided this application will again be reviewed for completeness. If you have any questions, please do not hesitate to contact the Department of Planning and Building Services.

Sincerely,



Linda Neal  
Senior Planner

cc. Ken Kirkey, Director of Planning and Building Services



# TOWN OF FAIRFAX

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

## MEMORANDUM

To: Linda Neal – Senior Planner

Date: December 16, 2003

From: Ray Wrynski  
Town Engineer

Subject: Proposed Residence  
190 Frustuck Avenue  
Fairfax, CA

A.P. 003-193-02

The following is my response to your transmittal, requesting review, for this project. Information with the transmittal included a nine sheet set of plans with five sheets of architectural plans by Common Sense Design, dated November 7, 2003, a record of survey, dated 7/01, a Boundary and Topographic Survey by J. L. Engineering, dated 5/14/01 and a Drainage and Erosion Control plan, two sheets, dated 11/13/03 by ILS Associates, Inc.. Also transmitted was a folder with a Construction Management Plan, a drainage analysis by ILS Associates, Inc., dated 11/10/03, a Geotechnical Report by John C. Hom & Associates, Inc., dated 11/11/03, an Arboricultural Assessment by Moritz Arboricultural Consulting, dated 8/28/03 and a Preliminary Title Report, dated 5/2/03.

A site visit was done 11/26/03 and a review, by phone, was done with Bill Whitney 12/5/03.

My comments and recommended conditions are given below.

Town Code Section 17.38.080 provides a basic set of submittal requirements for hillside development.

1. **Topographic and Boundary Survey:** The submittal requirement for this has been satisfied.
2. **Site Plan:** Some additional information is needed for the site plan. A better indication of foundation types is needed so that retaining walls and related fill work can be seen and excavation and fill quantities including structure excavation and structure backfill can be calculated. Earth movement quantities must be calculated and the quantities of excavation, fill and material removed from the site must be shown on the plan so these quantities can be checked against Code Section 12.20 requirements. The drainage facilities shown must be modified in accordance with comments to follow. The required notation about easements must be shown and that should include dealing with the utility anchors on the lower part of the site. The required sanitary sewer, water and storm drain lines must shown and labeled with their sizes. A tree committee report is needed and

December 16, 2003  
Page 2 of 3

- clarification is needed between the topographic survey, architectural plans and the Arboricultural Assessment. The trees shown or described on the above plans and report either do not match as to what trees exist, which trees are on the property and which trees are to be trimmed, removed or dealt with for Sudden Oak Death Syndrome.
3. **Soil Engineer Report:** The required report has been submitted and provides the information called for including soil drainage, site geology and foundation information.
  4. **Drainage Analysis:** The drainage report submitted provides the required watershed boundary and drainage pattern information.
  5. **Erosion Control Plan:** The submitted erosion control plan provides the required information.
  6. The submitted construction management plan responds to Code Section 12.28 requirements. This is a very narrow road so avoiding obstructing the road during construction will require constant effort.
  7. Frustuck Avenue at the upper and lower street frontages of this site is a moratorium street under Code Section 12.24.100 and the required permit must be obtained. All utility connections are required to be underground.
  8. To limit problems with future street improvements or street widening work, the slope of the new driveway and parking surface, in the street right of way, is required to be no steeper than 8% slope. The driveway structure and parking structure in the street right of way must have an encroachment permit as required in Code Section 12.32.
  9. To limit problems with the steep slope at the edge of pavement, a guard rail is required at the uphill and downhill sides of the driveway for a minimum distance of eight lineal feet along the existing Frustuck Avenue pavement.

In item 2. above, the need for changes to the drainage plan was noted. New construction of roofs, driveways and other low permeability surfaces and placement of storm water conduits that increase water flow velocities both increase storm water runoff and usually increase peak storm flows. The Town Code calls for determining the effect of new development runoff on existing drainage systems. If it is found that the existing system cannot carry existing flows plus the added flows from the new development, for a 100 year storm, a detention system or some other solution, approved by the Town Engineer, must be provided. Based on a review with Bill Whitney, it is very likely that a complete analysis of the existing storm drain system, downstream of this site, will show that the system will not carry the 100 year storm flow. On previous project reviews it has been found that providing a detention system appeared to be the most economical solution to this problem. I suggest that a detention system be proposed for this project.

The drainage analysis submitted shows a runoff coefficient of 0.92 for the existing site. I find this to be too high. A coefficient of 1.0 would be suitable if the site was covered by concrete and the 0.92 is fairly close to that. Recently we have had civil engineers propose a runoff coefficient



December 16, 2003  
Page 3 of 3

of 0.4 for sites like this and I found that coefficient to be too low. Using the State Highway Design Manual, I find the runoff coefficient to be 0.68 and multiplying that by the Manual frequency factor coefficient of 1.25 for a 100 year storm gives a coefficient of 0.85. The effect of this coefficient difference with the submitted drainage analysis is to give an increase in runoff that is doubled due to this development. The submitted study gives a flow increase of 0.02 cubic feet per second and I find that 0.04 cubic feet per second is appropriate. If a detention basin is proposed, for this project, to contain that increased flow for the design storm time of concentration and meter it out so no increased flow occurs, that will resolve the increased flow issue. The proposed drainage plan shows a pipe discharge at pavement edge below this site. Based on a review with Bill Whitney some additional drainage improvements are needed. To complete the drainage improvements a drainage inlet (County Dwg. 232) and a pipe crossing the road to the existing drainage inlet are needed. The pipe is to be 12" class five concrete with rubber joints. The six inch pipe from the house site must have a minimum of 18 inches of cover in the street right of way area and it will drain into the new #232 inlet noted above.

I recommend that the processing of this application be delayed until the above noted issues are resolved.

*Ray Wrynski*

Ray Wrynski, P. E.  
Town Engineer

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

February 9th 2009

Planning Commission

Re: re submittal of second unit application 177 Frustuck

Dear Commissioners,

We feel there is a need to clarify some of the history of 177 Frustuck, and document arguments to support approval of our second unit.

#### History

When our house was originally designed it had an attached garage. It was 100% compliant with the Town ordinances and required no variances. The living level of the house was positioned to give a view of Mount Tam over the tree tops. This created a 14 foot high void under the house. **When the house was designed in 2004 development of the space under the house would not have constituted developing a fourth story, and would not have required a height variance.** We always thought of developing an affordable rental unit. In 2005 during construction of the main house we installed all the utilities for a future unit, including separate gas and electric services.

#### Last year's application.

Our application of February 20<sup>th</sup> 2008 included a garage and a sustainably built second unit. We believed the complete application would go through quickly on the merits of producing affordable housing for the Town, and producing a much needed garage for us.

For the Record: The Town took the stance that our previously attached garage in the 2004 application had become detached over the four year period. We were for some unexplained reason placed in the incorrect HRD permit category, which incorrectly prompted design review, structural engineering, landscaping, lighting, story poles, civil engineering, and arborist reports. For this incorrect review we were over charged by approximately \$1700 ( which we just received credit for this month 2009). We were also given a list of approximately 16 corrections in the review of our plans. The permit categories were incorrect and so were the list of corrections and reports. Most of these requests were not required by Town Code.

After months of legal wrangling 11 of the requests disappeared because they were not required by the Town Code. We removed the second unit to concentrate on the garage because the Town was focusing on preventing the garage. The attached versus detached issue was eventually dropped because there was no code to support the Town's opinion. The Planning Department took the stance that the garage application should be turned down because it had been turned down before. The Town Attorney advised that this was a completely new application, and the Town should not take this adversarial approach. The end result was the application was denied by the Planning

Commission , and approved by the Council. We are returning to complete the intended application of a garage and affordable second unit from February 2008. The physical design of the house and garage is no different to the original 100% compliant design of 2004.

#### Construction of retaining walls as the foundations to a patio.

As you can see from the photographs we started construction of the foundations for a patio in the summer of 2008. We completed the foundations to the patio while the concrete trucks, and drilling rigs were next door at 183 Frustuck. We got held up in legal wrangling with the Town over our garage / unit application. The foundation is completed as far as we could proceed before coming to the Planning Commission. Our intention was to minimize construction time on the hill for our neighbors. We hoped to have completed the entire project in 2008.

#### The need for legal Second Units.

Fairfax needs more affordable housing. Units are needed to house people who want to live in Fairfax and cannot afford to buy homes or rent complete houses. Purpose built second units provide safe, code compliant dwellings. This is much preferred to the many illegal units in Town that do not meet Housing or Building Code, and clog our streets with on street parking. Fairfax needs to provide 64 units to comply with the State of California Affordable Housing Requirements. This unit would be one of the 64. Purpose built units provide Planning, Building, and Property Tax revenue for the Town. Their construction provides employment in this time of recession.

#### Variations for the Second Units

This application requires two variations. A parking variance for a fifth parking space. This parking space will provide safe off street parking with no impact to the neighborhood or surrounding neighbors. A height variance for a fourth story. We are not building a story. We are filling in an existing space under a house. It is a fourth story by technical definition only. The granting of this variance will provide safe affordable housing. Variations have been granted for all three second units approved to date. November 20 2003 88 Dominga approval to convert an existing 324 sq. ft. garage to a second unit. The unit and the parking space were located in the side yard set back and both needed variations.

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

September 18<sup>th</sup> 2008 130 Mono Avenue approval under the second unit amnesty. This project required a side yard setback variance for an existing parking space.

#### Town desire for Affordable Housing and Green Building.

The Town of Fairfax has created an affordable housing committee . Members include Larry Bragman, Lew Tremaine, Mary Ann Magoria, Peter Ramsay, and Tony Gardener. There is currently a Second Unit Amnesty program in place to legalize existing second units. None of which have been legalized in nearly two years. The Planning Department, the Council, the Planning Commission are working towards changing

existing zoning to "mixed use overlay" to clear the way for builders of affordable units. The Planning Commission in 2005 expressed a desire that new houses include affordable second units, and they would be financially rewarded for doing so. Mr. Bragman, Ms. Maggoria, ExCouncilmember Egger have all expressed their desire for Green Sustainable Building. Four of the Planning Commissions expressed the same sentiments at the January 2008 appointment meeting. Niccolo Calderaro spoke strongly in favor of the house next door to us to include an affordable unit. He said he would be in favor of approving the house if it included a unit. This second unit is what the Planning Department, the Planning Commission, and the Town Council have been asking for. It is Green and Affordable. ( see meeting quotes at the end of this letter ).

#### Sustainability

Our existing house is the most sustainable house built to date in Fairfax. It produces 100% of it's electricity, and 70% of it's domestic hot water. A full list of sustainable features are on page A1.1 of the plans. The second unit is to be energy efficient, non toxic, and sustainable. It will produce most of it's own electricity. A full list of the unit's sustainable features appear on page A1.3 of the plans. A giant leap forward in the quality of rental property in Fairfax.

We hope you will view our application favorably. The Planning Department fully supports this project. This is the Green Sustainable Affordable Housing the Council, the Planning Commission, and Citizens of Fairfax have been asking for. We urge you to approve it.

Yours sincerely,

John Owens

Diana Dullaghan

#### Supporting Meeting Minutes John Owens Attended

Planning Commission Oct 20 2005

Continued discussion of General Plan Item. The Town considered charging an " In lieu of affordable housing fee" to all new construction over 2000 square feet. The minimum fee would be \$10,000 increasing as the house size increased. It was suggested that the fee be waived for new construction that included an affordable housing unit. The Planning Commission was encouraging affordable units to be built in new construction projects.

Town Council Meeting Minutes 9.19.07.

Appeal of the Planning Commission approval to construct a new home at 183 Frustuck Avenue.

Appellant Calderaro 165 Frustuck; stated that the Town was under stress and was losing open space and affordable housing; that the proposed structure would be almost 4,000 square feet and would be very prominent in the neighborhood; that it would be

built next door to the largest house in the area; that it would block views; that the house size was unprecedented and much too big, almost twice the size of the median sized house in the area; that the idea that it was a green project was hard to understand; that lots of earth would have to be removed for construction; that it would look like Daly City, not Fairfax; that the applicant would profit from the project, but that the neighbors properties would depreciate in value; that it would increase traffic; that the house should have been placed further down the lot; that the size should be reduced; that when such a large house was built, the builder should be required to contribute to the creation of affordable housing; that he would welcome a plan that included affordable housing; and that the project should be denied.

Excerpt from Town Council Meeting Minutes 10.17.07.

Appeal of the Planning Commission approval to construct a new home at 183 Frustuck Avenue.

Niccolo Calderaro, appellant, stated that the changes made to the plans by the applicant were cosmetic, not substantial, that there was still a plan for a garage on the ridgeline; that it was an opportunity for the Town to preserve his neighborhood; that the idea that it was a "green" project was misleading; that he was in favor of affordable housing and preserving Fairfax by protecting neighborhoods; that the house should be dropped down the hill; that the house be visible throughout the valley; and it would reduce the value of the neighbors property while enhancing the builders property value.

Council Meeting January 9th 2008

When Councilmember Bragman spoke in regards to the draft ordinance reducing the FAR of hillside homes. He said exceptions would be made for Green Building. Mr. Bragman has spoken on many occasions about the exceptions to be made for Green Building in Fairfax. He advocated affordable housing when he created the Second Unit Amnesty Program.

Council Meeting January 30<sup>th</sup> 2008 – appointment of Planning Commissioners. Pam Meigs, Shelbey Lamotte, Peter Ramsay and Terry Goyan in their speeches to the Council all proclaimed they were supporters of Green Sustainable Building, and Affordable Housing.

**TOWN OF FAIRFAX  
STAFF REPORT**

**Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** April 15, 2004  
**FROM:** Linda Neal, Senior Planner  
**PROJECT:** Construction of a single-family residence  
**ACTION:** Hill Area Residential Development permit and an Encroachment permit;  
Application # 04-14  
**APPLICANT:** John Owens and Diana Dullaghan  
**OWNER:** John Wickham  
**LOCATION:** 190 Frustuck Avenue; Assessor's Parcel No. 003-193-02  
**ZONING:** Residential Single-family RS 6  
**CEQA STATUS:** Categorically exempt per sections 15303(a) and 15305(b)

**PROJECT DESCRIPTION**

The project encompasses the construction of a 2,093 s.f. single-family residence with an attached 430 s.f. garage and 420 s.f. storage area. The first story includes three bedrooms, two bathrooms and a laundry "closet", the second story includes the living room, breakfast room, kitchen, study and the entryway and mudroom, and storage area while the third story is the two-car garage. The structure slopes down the hillside so the first story is the living level that is located the furthest down the hillside while the third story, the garage, is located at the street level.

**BACKGROUND DISCUSSION**

The subject property is 8,940 s.f. and has an average slope of 53 %. The site is wooded with Coast Live Oak Trees and there are two rock outcroppings located on the lower portion adjacent to lower Frustuck Avenue.

The project requires the approval of the following discretionary permits:

A Hill Area Residential Development Permit - Because the site is located within a landslide hazard zone as show in on the Open Space Element General Plan Map, the parcel does not meet the minimum size and width requirements for a property with a 53% slope and construction of the residence will require the excavation and/or fill of 112.5 cubic yards of material [Exhibit A - Town code sections 17.38.020((A)(4), (B) and (D)].

*now under 100 cu yards*

An Excavation Permit - Construction of the project will require the excavation of 96.5 cubic yards of material and the fill of 16 cubic yards of material. Town Code § 12.20.080 requires Planning Commission approval to excavate and/or fill over 100 cubic yards of soils or other material (Exhibit B).

*not needed anymore*

**AGENDA ITEM # 3**

An Encroachment Permit - The width of the Frustuck Avenue right-of-way easement is 40' while the paved portion of Frustuck Avenue along the property frontage is only 14' in width. Therefore, in order to access the proposed parking on the project site, a portion of the driveway access deck will need to be constructed within the public easement [Exhibit C - Town Code § 12.32.010(A)]

The project complies with the regulations set forth in the Residential Single-family RS 6 Zone as follows:

|                    | Front setback | Rear setback | Front/rear setback | Side setbacks | Combined side setback | height            | FAR | Lot coverage |
|--------------------|---------------|--------------|--------------------|---------------|-----------------------|-------------------|-----|--------------|
| Required/permitted | 6'            | 12'          | 35'                | 5' & 5'       | 20'                   | 35' and 3 stories | .40 | .35          |
| Proposed           | * 6'          | 58'          | 64'                | 5' and 13'    | ** 18'                | 33' and 3 stories | .28 | .19          |

\*Uncovered parking decks are permitted within the required front yard setback on properties that have over a 15% slope [Exhibit D - Town Code § 17.28.020(C)].

\*\* At one point, near the entry to the residence, the house, deck and eaves maintain a combined side yard setback of 18'. The 18' setback shown at these points complies with the zoning requirements because Town Code § 17.24.080(A)1) and (3) allows decks and eaves to project 2' into any required setback (Exhibit E).

**Hill Area Residential Development Permit and Excavation Permit:**

Construction of the residence will require the removal of 16 Coast Live oaks while 29 Coast Live oaks will be retained. The applicant has submitted an arborists report by Moritz Arboricultural Consulting dated October 8, 2003 that has addressed the health of all the oak trees on the site including the ones to be removed (Exhibit H, blue folder, section 5). He has recommended the removal of 8 of these trees either because they have sudden oak death syndrome or are otherwise in poor health. The arborist has made no recommendation on whether to remove or retain 9 of the trees within the project footprint whose health he rates as varying from fair to good, to fair to poor. He has recommended that only 1 of the trees to be removed (tree # 15) be retained. The project has been designed so that tree # 15 will be retained and the deck will be built around the tree. Included in staff's recommended conditions of approval is the condition that Moritz Arboricultural Consulting make recommendation on how to ensure the continued good health of tree # 15 during and after construction and that he be on site during the project grading.

The project should be conditioned upon the applicant obtaining a tree removal permit for any applicable trees prior to issuance of a building permit for construction. Other than the removal of these trees, the drainage and utility trenching and the construction of the drilled pier and grade beam foundation system, the natural topography of the site will be retained in its natural state.

The only excavation proposed for the project is to construct the pier and grade beam foundation system and to trench for the drainage system and the utility supply lines. The proposed excavation

is necessary to allow development of the site in a safe manner and therefore, the excavation has been minimized.

The project is exempt from the California Environmental Quality Act (CEQA) per § 15303(a) that exempts the construction of single-family residences.

The Town Engineer has reviewed the following plans, documents and reports and has determined that the site can be safely excavated and developed without creating any hazards which would threaten the general public or neighboring properties.

- A drainage analysis by ILS Associates Inc. dated February 13, 2004
- A geotechnical (soils) report by John D Hom and Associates, Inc. dated November 11, 2003
- A supplement letters from ILS Associates, Inc dated February 17, 2004
- A drainage and erosion control plan by ILS Associates, Inc. dated March 3, 2004
- A boundary and topographic survey prepared by J. L. Hallberg dated May 14, 2001
- Preliminary project development plans prepared by Architect Peter Gang, of Common Sense Design, revision date March 5, 2004
- Letter dated April 9, 1004 verifying the total amount of project excavation from Common Sense Design (Exhibit F)

The Marin Municipal Water District, the Ross Valley Sanitary District and the Ross Valley Fire Department have all reviewed the project plans and indicate that they can provide adequate service to the site.

Relocating the residence to the lower portion of the property would result in a significant amount of excavation to create parking, would require the alteration of at least one of the rock outcroppings on the site and would still require the removal of Coastal Live Oaks.

Although the residence will be visible from properties immediately adjacent to the site, The Frustuck Avenue neighborhood is a developed urban area and effort has been made by the applicants to minimize the size and the visual impacts of this residence while also complying with all the zoning regulations.

The proposed garage provides parking for 2 vehicles and the driveway apron provides the guest parking space and a 4th additional parking space. Therefore, the proposed parking exceeds that required by the Fairfax Town Code.

#### **Encroachment Permit**

18' of the driveway bridge will be constructed within the Frustuck Avenue right-of-way to connect the on site parking with the edge of the paved road. Additionally, safety railing required by the Uniform Building Code are proposed for either side of the driveway bridge. The safety railing will not exceed 3 feet in height. The encroachment is the minimum necessary to allow vehicle access to the on site parking.

#### **RECOMMENDATION**



1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve application # 04-14 based on the following findings and subject to the following conditions:

#### Suggested Findings

1. The proposed development is consistent with the following Fairfax General Plan policies:

General Plan Policy 4.1.3 - All new developments shall be required to preserve some of the natural landscape.

*The proposed development retains the rock outcroppings on the lower portion of the site, most of the natural topography and the majority of the Coast Live Oaks on the site except those located within the residence footprint.*

← very important to retain natural topography.

General Plan Policy 5.1.2 - The development minimizes the risk to human life from structures in hazardous areas.

*Based on the Town Engineer's review of the following documents the proposed development can be constructed in a manner to minimize the risk to human life from structures located in this hillside area:*

- *A drainage analysis by ILS Associates Inc. dated February 13, 2004*
- *A geotechnical (soils) report by John D Hom and Associates, Inc. dated November 11, 2003*
- *A supplement letters from ILS Associates, Inc dated February 17, 2004*
- *A drainage and erosion control plan by ILS Associates, Inc. dated March 3, 2004*
- *A boundary and topographic survey prepared by J. L. Hallberg dated May 14, 2001*
- *Preliminary project development plans prepared by Architect Peter Gang, of Common Sense Design, revision date March 5, 2004*
- *Letter dated April 9, 1004 verifying the total amount of project excavation from Common Sense Design*

General Plan Policy 5.3.0 - There should be minimal disruption by a project to factors such as consolidated ground material, vegetative cover and deep ground water table.

*The project will require 112.5 cubic yards of excavation and fill in order to install the drainage system and retention basin required by the Town Engineer, construct the foundation system and run utilities to the site. Therefore, excavation to consolidated ground material has been minimized and there will be no impact on the deep ground water table.*

2. The site planning preserves identified natural features.

*See # 1 and 3 above.*

3. Based on the soils report finding, the site can be excavated and developed without geologic, hydrologic or seismic hazards.

*See # 2 above.*

4. Vehicular access and parking are adequate.

*The proposed development complies with the Fairfax Parking Ordinance, Town Code Chapter 17.28.*

5. The proposed development harmonizes with the surrounding residential development, meets the design review criteria and does not result in the deterioration of significant view corridors.

*The residence has been designed to minimize the visual impacts as viewed from Frustuck Avenue. The residence has been stepped down the hillside and the sides of the structure have been articulated to minimize the impacts of the structure on the neighboring properties. The structure has also been designed to reach a maximum of 33' which is less than the permitted 35' foot maximum. The FAR and lot coverage of the residence, .28 and .19, are significantly less than the permitted maximums of .40 and .35.*

#### **Suggested Conditions of Approval**

1. This approval is limited to the development illustrated on the plans prepared by Common Sense Design, pages A1 through A6 revision date 3/5/04, the survey prepared by J.L. Hallberg, and the drainage and erosion control plan dated 3/3/04 by ILS Associates, Inc.

2. Prior to issuance of a building permit the applicant or his assigns shall:

a. Submit a construction plan to the Public Works Department which may include but is not limited to the following:

- Construction delivery routes approved by the Department of Public Works.
- Construction schedule (deliveries, worker hours, etc.)
- Notification to area residents
- Emergency access routes

b. The applicant shall prepare and file with the Public Works Director, a video tape of the roadway conditions on the construction delivery routes (routes must be approved by Public Works Director). This condition may also be waived by the Public Works Director.

c. The foundation and retaining elements shall be designed by a structural engineer

certified as such in the State of California. Plans and calculations of the foundation and retaining elements shall be stamped and signed by the structural engineer and submitted to the satisfaction of the Town Engineer.

d. The grading, foundation, retaining, and drainage elements shall also be stamped and signed by the site geotechnical engineer as conforming to the recommendations made by the project engineer.

e. Prior to submittal of the building permit plans the applicant shall secure written approval from the Ross Valley Fire Authority noting the development conformance with their recommendations.

f. The applicant shall secure a tree cutting permit from the Town prior to removal of any on-site trees over 24 inches in circumference measured 24 inches from the ground. To further minimize impacts on trees and significant vegetation, the applicant shall submit plans for any utility installation (including sewer, water, drainage) which incorporates the services of a licensed arborist to prune and treat trees having roots 2 inches or more in diameter that are disturbed during the construction, excavation, or trenching operations. In particular, any cross country utility extensions shall minimize impacts on existing trees. Tree root protection measures may include meandering the line, check dams, rip rap, hand trenching, soil evaluation, and diversion dams. Any trimming of trees shall be supervised by a licensed arborist. *Moritz Arboricultural Consulting make recommendation on how to ensure the continued good health of tree # 15 during and after construction and that he be on site during the project grading.*

g. Submit a record of survey subject to review by the Town Engineer prior to issuance of the building permit.

h. Pruning should be conducted when the trees are dormant. Deciduous trees should be trimmed during the winter and evergreen species during July and August.

3. During the construction process the following shall be required:

a. The geotechnical engineer shall be on-site during the grading process (if there is any grading to be done) and shall submit written certification to the Town staff that the

grading has been completed as recommended prior to installation of foundation and retaining forms and piers.

b. Prior to the concrete form inspection by the building official, the geotechnical and structural engineers shall field check the forms of the foundations and retaining elements and provide written certification to the Town staff that the work to this point has been completed in conformance with their recommendations and the approved building plans. The building official shall field check the concrete forms prior to the pour.

c. All construction related vehicles including equipment delivery, cement trucks and construction materials delivery vehicles shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on

a case-by-case basis with prior notification from the project sponsor.

d. Additionally, any proposed temporary closure of a public right-of-way shall require prior approval by the Fairfax Police Department and any necessary traffic control, signage or public notification shall be the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.

4. Prior to issuance of an occupancy permit the following shall be completed:

a. The geotechnical engineer shall field check the completed project and submit written certification to the Town Staff that the foundation, retaining, grading and drainage elements have been installed in conformance with the approved building plans and the recommendations of the soils report.

b. The Town Engineer shall field check the completed project to verify that the work has been installed as per approved plan.

c. The Planning Department shall field check the completed project to verify that all design review and planning commission conditions have been complied with including installation of landscaping and irrigation, if applicable.

5. Excavation shall not occur between October 1st and April 1st. The Town Engineer has the authority to waive this condition depending upon the weather.

6. The roadways shall be kept free of dust, gravel and other construction materials by sweeping the roadway, daily, if necessary.

7. During construction developer and all employees, contractor's and subcontractor's must comply with all requirements set forth in Ordinance # 637 (Chapter 8.26 of the Town Code), "Storm Water Management and Discharge Control Program."

8. Notwithstanding section # 17.38.050(A) of the Fairfax Zoning Ordinance, any changes, modifications, additions or alterations made to the approved set of plans will require a modification of this Hill Area Residential Development Permit. Any construction based on job plans that have been altered without the benefit of an approved modification of this Hill Area Residential Development Permit will result in the job being immediately stopped and red tagged.

9. No building permits shall be issued to expand this residence without a modification of the approved Hill Area Residential Development permit and approval by the Design Review Board.

10. The applicant or owner shall defend, indemnify, and hold harmless the Town of Fairfax or its agents, officers and employees from any claim, action, or proceeding against the Town of Fairfax or its agents, officers, and employees to attack, set aside, void, or annul an approval of the Planning Commission, Town Council, Planning Director, Design Review Board or any other department, committee, or agency of the Town concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and

hold harmless shall be subject to the Town promptly notifying the applicant or owner of any said claim, action or proceeding and the Town's full cooperation in the applicant's or owner's defense of said claims, actions or proceedings.

#### ATTACHMENTS

- Exhibit A - Town Code §§ 17.38.020(A), (B) and (D)
- Exhibit B - Town Code § 12.20.080
- Exhibit C - Town Code § 12.32.010(A)
- Exhibit D - Town Code §§ 17.28.020(C) and 17.28.030(A)(4)
- Exhibit E - Town Code § 17.24.080(A)
- Exhibit F - letter from project architect dated 3/9/04 verifying the excavation/fill amounts
- Exhibit G - Town Engineer's memorandums dated 3/5/03, 12/16/03 and 4/5/03
- Exhibit H - Applicant's supplemental information, photographs, geotechnical and hydrology reports, arborist's report and title report

## Chapter 17.38

HILL AREA RESIDENTIAL  
DEVELOPMENT OVERLAY ZONE

## Sections:

|           |                                                    |
|-----------|----------------------------------------------------|
| 17.38.010 | Purpose.                                           |
| 17.38.020 | Applicability.                                     |
| 17.38.030 | Development permit required.                       |
| 17.38.040 | Development permit—Procedural requirements.        |
| 17.38.050 | Uses permitted without a development permit.       |
| 17.38.060 | Referral to design review board.                   |
| 17.38.070 | Design review procedures.                          |
| 17.38.080 | Development permit application—Contents.           |
| 17.38.090 | Development standards.                             |
| 17.38.100 | Planning commission action.                        |
| 17.38.110 | Development permit—Required findings for approval. |
| 17.38.120 | Appeal.                                            |
| 17.38.130 | Reapplication.                                     |
| 17.38.140 | Expiration.                                        |
| 17.38.150 | Extension.                                         |

## 17.38.010 Purpose.

It is the purpose of the hill area residential development overlay zone to provide review of and standards for development proposed for undeveloped land in hill areas. It is the intent of this chapter to accomplish the following:

A. Encourage maximum retention of natural topographic features such as drainage ways, streams, slopes, ridgelines, rock

outcroppings, vistas, natural plant formation and trees;

B. Minimize grading of hillside areas;

C. Provide a safe means of ingress and egress for vehicular and pedestrian traffic to and within hillside areas;

D. Minimize water runoff and soil erosion problems during and after construction;

E. Prevent loss of life, reduce injuries and property damage and minimize economic dislocations from geologic hazards;

F. Ensure that infill development on hillside lots is of a size and scale appropriate to the property and is consistent with other properties in the vicinity under the same zone classification. (Ord. 352 § 26.00, 1973)

## 17.38.020 Applicability.

Properties zoned RS-6, RS-7.5, RD 5.5-7, RM or SF-RMP fall into the HRD overlay zone if they have any of the following characteristics:

A. The slope of the property is in one of the following categories as shown on Exhibit A of the Open Space Element, General Plan Maps, and development of the lot requires movement of more than the corresponding amount of excavation and/or fill or replacement of earth with foundation materials:

1. Zero to five percent slope, two hundred cubic yards,
2. Five to fifteen percent slope, two hundred cubic yards,
3. Fifteen to thirty percent slope, one hundred cubic yards,
4. Thirty-one percent slope, fifty cubic yards;

B. The property falls within a landslide hazard zone as shown on Exhibit 3, Open Space Element of the Fairfax General Plan:

17.38.020

C. Access to the property is via a private or public undeveloped roadway. An undeveloped roadway is an unpaved or paper road which must be improved;

D. The property does not meet the minimum building site requirements defined in Chapters 17.40 through 17.46 of this title. (Ord. 352 § 26.11, 1973)

**17.38.030 Development permit required.**

Except for uses listed in Section 17.38.050, land in the HRD overlay zone may not be used or developed until plans for development have been approved by the town and a hill area residential development permit is issued. (Ord. 352 § 26.20, 1973)

**17.38.040 Development permit—Procedural requirements.**

The procedural requirements for obtaining the hill area residential development permit are as follows:

A. Submission of a development plan to the planning commission;

B. Public hearing before the commission, with notice thereof given pursuant to the provisions of Section 17.02.070;

C. Approval of the hill area residential development permit pursuant to Section 17.38.110 of this chapter (subject to appeal to the town council under Section 17.38.120). (Ord. 628 § 12, 1994; Ord. 352 § 26.21, 1973)

**17.38.050 Uses permitted without a development permit.**

The following uses are permitted outright in the HRD overlay zone:

A. Additions to existing structures provided that the addition is not a fifty percent remodel as defined in Section 17.10.040 of this title;

B. Accessory structures under two hundred square feet in area;

C. Fences and retaining walls (under four feet);

D. Maintenance and repair of existing structures. (Ord. 352 § 26.23, 1973)

**17.38.060 Referral to design review board.**

Projects requiring a hill area residential development permit shall be referred to the design review board first. The design review board shall address the following issues:

A. The visual impact of the structure upon view corridors found to be significant;

B. The size, scale, siting and design of the proposed structure;

C. Materials and colors of the structure;

D. Landscaping. (Ord. 605 § 1 (23), 1991; Ord. 352 § 26.31, 1973)

**17.38.070 Design review procedures.**

Projects shall be reviewed pursuant to the procedures set forth in Chapter 17.12 of this title. A separate application for design review shall be required. (Ord. 352 § 26.33, 1973)

**17.38.080 Development permit application—Contents.**

The submittal shall include the following information:

A. Completed application made by owner or owners of the land involved, or any agent thereof, on forms prescribed by the town accompanied by fees established by resolution of the town council;

B. Topographical and boundary survey signed by a licensed surveyor showing:

1. Contours at five-foot intervals,

2. Property lines and dimensions.

3. Native vegetation (freestanding trees over six inches in diameter and all stands),

4. Existing structures including fences and retaining walls;

C. Site plan showing:

1. Location of structures including fences, driveways and retaining walls,

2. New on-site drainage facilities and necessary off-site improvements,

3. Easements existing and proposed; if none exist, a notation of this must be made,

4. Sanitary sewer, water and storm drainage lines labeled with their sizes,

5. Points of access;

D. Fairfax tree committee report and permit if tree removal is requested;

E. Report by a registered civil engineer specializing in soils and foundations, includ-

g:

1. Site soil drainage,

2. Relevant watershed boundaries,

3. Relationship of the proposed construction to drainage patterns in the vicinity and the cumulative effects of runoff,

4. Site geology and the safety of proposed construction,

5. Foundation adequacy;

F. A grading and erosion control plan;

G. Elevations, floor plans and roof plans;

H. Exterior finishes and materials;

I. Landscape plan delineating natural and planted areas and generic types of landscape materials to be used;

J. Profiles showing relationship between proposed structures and adjacent off-site improvements. (Ord. 352 § 26.41, 1973)

#### 17.38.090 Development standards.

The following standards shall apply to development in the HRD overlay zone:

A. Fire Management. Projects must comply with the town fire code.

B. Geologic Hazards. Construction shall not be permitted on identified seismic or geologic hazard areas such as on slides, on natural springs, or on identified fault zones, without approval from the town engineer, based on acceptable soils and geologic reports. Development shall be prohibited in areas determined by the town engineer to be geotechnically unstable based on a report by a licensed soils engineer where the planning commission determines that the corrective work would be inconsistent with the purpose and the intent of this chapter.

C. Topographical.

1. Graded slopes shall be sculptured and contoured to blend with natural terrain. Cuts and fills shall not exceed one foot or rise for each one and one-half feet of run without the approval of the town engineer.

2. The grading plan shall include preventative measures to reduce dust generation, protection of trees and other significant natural features.

3. Retaining structures shall be shown in plan and elevation. Height of retaining structures shall be minimized. Planting and choice of materials shall be used to visually integrate the structures with natural surroundings.

4. Erosion Control. Grading plans shall include erosion control and revegetation programs. Where erosion potential exists, silt traps or other engineering solutions may be required. The timing of grading and construction shall be controlled by the town engineer or other staff designated by the town engineer to avoid failure during construction. No initial grading shall be done during the rainy season, from October 1st through April 1st.



D. Ecological. Projects shall be designed to minimize disruption of existing ecosystems. Removal, changes or construction which will destroy important or rare vegetation and/or wildlife habitats shall be avoided.

1. Removal of any tree, as the term is defined in Section 8.28.020, shall be subject to issuance of a tree removal permit as required by Chapter 8.28 of this code.

2. In areas of diverse wildlife habitat as delineated on the General Plan Wildlife Habitat and Diversity Map, disruption of trees, shrubs and natural vegetative cover shall be minimized.

3. Riparian Environment. No development is permitted fifty feet either side of high water centerline measured perpendicular to the high-water mark away from the centerline. Water quality and natural conditions shall be maintained.

E. Landscaping shall minimally disturb natural areas and shall be compatible with native plant settings. Where appropriate use is determined by the commission, fire-resistant and drought-resistant species shall be utilized. Planting shall not obstruct views or alter solar energy access of nearby properties.

F. Circulation.

1. Roads shall be designed to meet the requirements of the town engineer as set forth in the Subdivision Ordinance, and the fire department as set forth in the Fire Code.

2. The planning commission may require parking areas to accommodate public and guest parking in addition to off-street parking for dwelling units. Off-street parking shall conform to the provisions of Chapter 17.28 of this title.

G. Design. Projects shall be designed to meet the criteria set forth in Section 17.12.040 of this title. (Ord. 605 § 1 (24), 1991; Ord. 352 § 26.50, 1973)

17.38.100 Planning commission action.

A. An application for a hill area residential development permit shall be acted upon by the planning commission within one hundred eighty days of the date the application is considered complete by the town.

B. Failure to Act. Failure of the planning commission to act on the application within one hundred eighty days constitutes denial unless a continuation is agreed to by the commission and applicant. (Ord. 352 §§ 26.60, 26.65, 1973)

17.38.110 Development permit—  
Required findings for approval.

Approval of a hill area residential development permit shall be pursuant to the following findings:

A. The proposed development is consistent with the General Plan, other adopted codes and policies of the town, and is consistent with the purpose and intent of this title;

B. The site planning preserves identified natural features;

C. Based on the soils report finding, the site can be developed without geologic, hydrologic or seismic hazards;

D. Vehicular access and parking are adequate;

E. The proposed development harmonizes with the surrounding residential development, meets the design review criteria and does not result in the deterioration of

significant view corridors. (Ord. 352 § 26.61, 1973)

#### 17.38.120 Appeal.

Appeal of the planning commission action to the town council is provided as per the procedures in Chapter 17.20 of this title. (Ord. 352 § 26.63, 1973)

#### 17.38.130 Reapplication.

In the case of denial, six months must lapse before a new application may be submitted for review. (Ord. 352 § 26.67, 1973)

#### 17.38.140 Expiration.

A hill area residential development permit shall lapse and become null and void one year following the date on which it became effective unless prior to the expiration of the one-year period a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the application. (Ord. 352 § 26.71, 1973)

#### 17.38.150 Extension.

A hill area residential development permit may be renewed one time for an additional period of one year, provided that prior to the expiration of one year from the date when the permit originally became effective, an application for renewal is filed with the planning department. The town council may grant an application for renewal where no change in the original application for or any condition of approval thereof is requested, but an application for renewal involving any change from the original application or approval conditions shall be treated as a new application and shall be subject to all applicable provisions of this

chapter. At the expiration of the renewal period a new application will be required if a building permit is not issued for the project. (Ord. 352 § 26.73, 1973)

12.20.080

**12.20.080 Permit to move over one hundred cubic yards— Required findings for approval.**

Notwithstanding any of the provisions of this chapter, no permit to excavate or fill shall be granted, where the application shows such excavation or fill to involve the movement of over one hundred cubic yards of material, unless and until approval of such application is given by action of the planning commission of the town. Such application, upon receipt, shall be referred to the planning commission for investigation and action, and before action of approval may be given, the planning commission must find:

A. That the health, welfare and safety of the public will not be adversely affected;

B. That adjacent properties are adequately protected by project investigation and design from geologic hazards as a result of the work;

C. That adjacent properties are adequately protected by project design from drainage and erosion problems as a result of the work;

D. That the amount of excavation or fill proposed is not more than is required to allow the property owner substantial use of his property;

E. That the visual and scenic enjoyment of the area by others will not be adversely affected by the project more than is necessary;

F. That natural landscaping will not be removed by the project more than is necessary;

G. That the time of year during which construction will take place is such that

work will not result in excessive siltation from storm runoff nor prolonged exposure of unstable excavated slopes. (Prior code § 20-10.1)

**12.20.090 Permit—Notice of issuance or denial— Appeal.**

The superintendent of streets shall forthwith notify the applicant of his action on the application, and if the applicant is dissatisfied therewith he may appeal to the town council by filing a written notice of appeal with the town clerk within thirty days after notice from the superintendent of streets, and shall, at the same time, deliver to the town clerk a list of the names and addresses of all owners of property within a radius of three hundred feet from the exterior boundaries of the proposed excavation or fill. (Prior code § 20-12)

**12.20.100 Appeal—Hearing.**

The appeal from the ruling on the application by the superintendent of streets shall be heard at the first succeeding regular meeting of the town council held more than twenty days after filing of the appeal. The town clerk shall mail notice of such hearing, at least ten days prior thereto, to all property owners within the radius of three hundred feet of proposed boundaries of the excavation or fill. The hearing on the appeal may be continued from time to time. At the conclusion of the hearing, the town council may deny the application or issue a permit therefor under such terms and conditions as it deems necessary to conform to the provisions of this chapter. The action of the town council shall be final and

## Chapter 12.32

TEMPORARY CARPORTS AND  
OTHER STRUCTURES IN PUBLIC  
RIGHTS-OF-WAY

## Sections:

- 12.32.010 Permitted when—  
Permit required.
- 12.32.020 Permit application—  
Requirements—  
Processing procedure.
- 12.32.030 Fee.

12.32.010 Permitted when—Permit  
required.

A. Upon certain portions of public streets and public rights-of-way in the town, not being used for vehicular or pedestrian travel, temporary carport and other structures may be erected and maintained by the owners of adjoining property, upon terms and conditions and for the time prescribed in a permit issued to such property owner by the planning commission upon application therefor.

B. It is unlawful for any person to erect or maintain any carport or other structure upon any portion of a public street or public right-of-way without a permit having been issued therefor as provided in this chapter. (Ord. 459 § 2 (part), 1979; prior code § 20-4 (part))

12.32.020 Permit application—  
Requirements—  
Processing procedure.

Any property owner contiguous to a public street or right-of-way, portions of which are not being used for vehicular or pedestrian traffic, where such owner has no suitable place on his own property or entirely on his own property for the erection or construction of a carport or other structure, may make application to the planning commission for permission to erect and maintain a carport or other structure on such public street or right-of-way, for such time and under such terms and conditions as the planning commission will permit. Such application shall be accompanied by detailed plans and specifications for the structure, showing the extent to which it encroaches upon any public street or public right-of-way. Upon filing of such application, the same shall be considered by the planning commission and acted upon. (Ord. 459 § 2 (part), 1979; prior code § 20-4 (part))

12.32.030 Fee.

At the time an application for an encroachment permit is filed, the applicant shall pay a fee in accordance with a schedule adopted by resolution of the town council. (Ord. 445 § 17, 1978; prior code § 20-4 (part))

## Chapter 17.28

OFF-STREET PARKING AND  
LOADING REQUIREMENTS

## Sections:

- 17.28.010 General requirements.  
 17.28.020 Exceptions.  
 17.28.030 Required parking spaces.  
 17.28.040 Standards for parking spaces.  
 17.28.050 Required loading spaces.  
 17.28.060 Standards for loading spaces.  
 17.28.070 Delineation.

## 17.28.010 General requirements.

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

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

C. No garage, carport or other accessory structure for parking use shall be located in the front yard setback except as set forth in Section 17.28.020. Uncovered parking spaces may be created in the portion of the required front yard setback not included in the side yard.

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

17.28.020. (Ord. 490 §§ 1 — 3, 1982; Ord. 486 §§ 3 — 4, 1981; Ord. 352 §§ 24.01 — 24.04, 1973).

## 17.28.020 Exceptions.

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

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

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

D. Lots which have a slope greater than fifteen percent on the general plan slope map or on a topographic map prepared by a licensed land surveyor, and which are downslope lots, are exempted from the covered parking requirement set forth in Section 17.28.010(D). (Ord. 490 §§ 4 — 6, 1982; Ord. 486 § 5, 1981; Ord. 352 §§ 24.11 — 24.14, 1973)

## 17.28.030 Required parking spaces.

Off-street parking spaces shall be provided according to the following

schedule, and where a parcel includes two or more uses, the parking requirements shall be the aggregate of the requirement for the various uses:

A. Dwellings, including one-family and two-family dwellings, apartments and mobile homes:

1. Studio units without separate bedrooms, one space,
2. One-bedroom units, two spaces,
3. Two-bedroom units, two spaces,
4. Units with three or more bedrooms, two spaces.

In addition to the required parking spaces set forth in paragraphs 1 through 4 of this subsection, one guest parking space is required when a legal on-street parking space is not available along the immediate frontage of the property. Availability is determined by whether a space of standard dimensions exists off the traveled portion of the roadway;

B. Hotels and motels, one space per guest room and one for each employee and manager;

C. Theaters and other places of assembly which are used daily or nearly daily, one space for every six seats;

D. Churches, auditoriums in high schools, colleges or universities, and other places of assembly which are not used daily or nearly daily, one space for every six seats;

E. Dance halls, commercial places of amusement, assembly halls without fixed seats and exhibition halls, one space per three hundred square feet of gross floor area;

F. Retail and personal service stores, three spaces for the first five hundred

square feet of gross floor area and one space for each additional five hundred square feet thereafter;

G. Offices and banks, three spaces for the first five hundred square feet of gross floor area and one space for each additional five hundred square feet thereafter;

H. Restaurants and bars, one space per each two hundred square feet of gross floor space;

I. Hospitals, one space per each three beds;

J. Convalescent homes and convalescent hospitals, one space per each six beds;

K. Industrial uses, including wholesale and storage, one space per two employees of the maximum shift;

L. Mechanical amusement device arcades and accessory uses, one vehicular parking space for each five amusement devices; two on-site bicycle spaces for each amusement device up to ten devices; and one on-site bicycle space per each amusement device in excess of ten devices. Bicycle parking shall be in bicycle racks or stands and shall not obstruct required exits. Bicycle parking may be required inside buildings if no acceptable outside area exists on site. Bicycle parking may be waived for adults-only establishments;

M. For uses not listed, required parking spaces shall be as provided by the applicable individual zone regulations;

N. Commercial parcels which are located in parking districts shall meet only parking requirements of that district. (Ord. 491 § 1, 1982; Ord. 490 § 7, 1982; Ord. 486 § 6, 1981; Ord. 352 §§ 24.21 — 24.22, 1973)

**17.24.050 Transfer of portion of lot.**

While any owner may transfer any lot which meets all of the foregoing conditions and circumstances at the effective date of the ordinance codified in this title, it shall be unlawful for any person to transfer a portion of his property where the grantee in such transfer receives a lot of less size than provided for in this title. (Ord. 352 § 21.23, 1973)

**17.24.060 Height limits.**

Height limitations stipulated elsewhere in this title shall not apply to the following: church spires; chimneys; bellfries; cupolas; domes; monuments; water towers; fire and hose towers; observation towers; distribution and transmission towers, lines and poles; windmills; smokestacks; flagpoles. (Ord. 352 § 21.31, 1973)

**17.24.070 Yards and open space.**

No yard or other open space provided about any building for the purpose of complying with the provisions of this title or any permit issued thereunder shall be considered as providing a yard or open space for any other building, and no yard or other open space on one building site shall be considered as providing a yard or open space for a building on any other building site. (Ord. 352 § 21.41, 1973)

**17.24.080 Projections into required yards.**

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

1. Cornices, canopies or eaves may project a distance not exceeding two feet.

2. Bay windows, balconies, decks and chimneys may project a distance not exceeding two feet.

3. Bay windows, balconies, decks and chimneys may project a distance not exceeding two feet unless greater projection is required by the building code of the town.

B. Projection allowed in this section shall not come closer than three feet to a property line unless otherwise allowed by variance. (Ord. 461 § 3, 1979; Ord. 352 §§ 21.51 — 21.52, 1973)

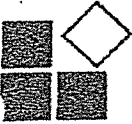
**17.24.090 Fences, walls, hedges and bulkheads.**

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

B. Fences, walls and hedges may be located in required yards as follows:

1. If not exceeding at any point four feet in height above the elevation of the surface of the ground at such point, they may be located in any yard or court;

2. If not exceeding at any point six feet in height above the elevation of the surface of the ground at such point, they may be located at any point to the rear of the front setback line. (Ord. 461 § 2, 1979; Ord. 352 §§ 21.61 — 21.62, 1973)



**Date:** Friday, April 9, 2004

**To:** Linda Neal, Senior Planner  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930

**From:** Pete Gang, Architect  
Common Sense Design  
145 Keller Street  
Petaluma, CA 94952

**Re:** Planning Application for:  
190 Frustuck Avenue  
Fairfax, CA 94930  
APN: 003-193-02

*fill = 16 cu yds*  
*cut = 96.5 cu yds*  
*total cut/fill = 112.5 cu yds*

Dear Linda,

This letter is in response to Ray Wrynski's Memorandum dated April 5, 2003 [sic] in which he requests revised calculations of earth movement quantities. Please refer to the attached "Excavation Calculations" (3 pp). Please note several points of clarification:

1. Because, by inspection, it is clear that the amount of excavation will exceed the amount of fill, I have done calculations only for the amount of excavated material. As shown, the quantity of excavated material is less than 100 cubic yards.
2. All excavated material in excess of fill needed (to backfill trenches, retaining walls, grade beams, tie beams, etc.) will be removed from the site.
3. The foundation system shown on Sheet #A-5 is schematic in nature and was drawn conservatively. Whereas the geotechnical engineer's recommendations (John C. Hom's letter dated May 23, 2001) call for "...grade beams or tie beams ... spaced no further than 20 feet apart in both directions," we have shown grade beams and tie beams spaced approximately 10 feet apart in both directions. The actual number of piers and actual length of grade beams and tie beams is therefore likely to be less than what is shown on Sheet #A-5.

Please do not hesitate to contact me if I can provide additional information or clarification in this matter.

Sincerely,

Pete Gang, Architect  
COMMON SENSE DESIGN

cc: John Owens and Diana Dullaghan

Common  
Sense  
Design  
145 Keller Street  
Petaluma, CA  
94952  
(707) 762-4838  
Architecture  
& Planning



EXHIBIT # F