

- Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any Master Plan, or other plan or policy, officially adopted by the City.
- Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety or welfare of the community.

Town Code § 17.052.020(D) exempts down-sloping lots such as the project site from having covered parking. Further, the Town Council approved the existing house on appeal with the condition that the parking be uncovered after holding two public hearings on the matter.

Town Code § 17.032.020(C) indicates that the Planning Commission may deny a Use Permit.

The applicant had not presented any information to the staff by the time of the writing of this staff report showing any change in the topography or physical layout of the site, surrounding residences or the adjacent public right-of-way that would result in a covered parking structure being of some benefit to the general public.

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to deny Use Permit # 08-44 based on the following findings and advise the applicants of their right to appeal the action within 10 days to the Fairfax Town Council.

### **Suggested findings for denial in keeping with the previous action taken by the Town Council are as follows:**

1. The Town of Fairfax held the following public hearings on a proposed residence on this site that included a garage:
  - An April 15, 2004 Planning Commission meeting
  - A May 20, 2004 Planning Commission meeting
  - A June 8, 2004 Town Council meeting
  - An August 3, 2004 Town Council meeting

Public testimony was taken at all of these meetings. After taking into consideration all the public comments and the information provided by the applicants and their attorney, the Town Council approved the existing residence only after the covered parking was removed from the proposal. Therefore, the approval of the garage at this point would be inconsistent with the previous entitlements and conditions granted by Town Council on August 3, 2004 and would thus be a grant of special privilege and would contravene the doctrines of equity and equal treatment.

2. The construction of a garage on this deck would cause excessive or unreasonable detriment to adjoining properties or premises based on testimony taken at the above referenced public hearings and as evidenced by the ultimate action taken by the Town Council on August 3, 2004, approving the residence specifically with only an uncovered parking deck.
3. The August 3, 2004 decision contained a specific condition that the parking area be an uncovered parking deck, approval of this use permit, after that decision would be inconsistent and contrary to those objectives, goals or standards pertinent to the particular case.
4. Approval of the Use Permit would be in conflict with Town Code § 17.052.020 which exempts properties on down-sloping lots from having covered parking in order to maintain view corridors and to avoid visual obstructions to those using the public roadway.
5. Approval of the use permit will not be in the public interest or for the protection or enhancement of the safety or welfare of the community.

#### **ATTACHMENTS**

- Exhibit A – Minutes from the 4/15/04 and 5/20/04 Planning Commission meetings
- Exhibit B – Minutes from the 6/8/04 and 8/3/04 Town Council meetings
- Exhibit C – Minutes from the 9/8/04 Design Review Board meeting
- Exhibit D – Letter from Applicant's attorney dated 10/2/08
- Exhibit E – Letter from the Applicant's attorney dated

# Minutes from the 4/15/04 Planning Commission meeting

Commissioner Craine said their first variance allowed the applicants to build in their setbacks so he felt the suggested finding that states that the project would not be closer to the rear and side property lines should not be included.

Commissioner Herbert said he felt that finding could be deleted.

Mr. Asleson said the garage existed when he bought the property and that he just put a second floor on top of the existing garage.

M/S Craine-Herbert motion to approve application # 04-15 based on the findings and conditions in the staff report with one exception, which was to remove finding number one in the staff report.

Commissioner Madsen suggested an amendment to the conditions which would state that if the applicant can obtain a letter from the neighbors at 84 Willow showing that they have no objections to a window on that side of the addition that the Commission would lift the condition for a high window.

Commissioner Craine did not accept the amendment.

## ROLL CALL

AYES: Herbert, Madsen, Shaiken, Craine, Meigs, Chair Arguimbau

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**190 Frustuck (address changed to 177 Frustuck);** request for a Hill Area Residential Development permit and an encroachment permit to construct a 2,523 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Jana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).

Senior Planner Neal read the staff report. She then said the Town had received a petition from the neighbors in the area concerned with the size of the proposed house, the accuracy of the survey and the placement of the garage. She said the Commission could continue the item so that the property line dispute could be resolved.

Commissioner Craine said maybe the driveway could be lowered to lower the house on the site.

Commissioner Herbert asked if staff had the numbers available to compare the size of the neighbor's home to the proposal.

Senior Planner Neal said staff did not have those numbers available.

John Owens, applicant, said he has had the property surveyed twice, that each survey produced the same results, that he picked up the recorded survey for his property and the abutting property at the County and that the surveys matched perfectly. He said the story poles have been up since November; that they sent a letter of introduction and colorized elevations to the neighbors in the area and they had not heard any dissenting comments until a few days ago. He said in regards to views; his wife was invited into the house above the site and the proposed house would not be visible from their house; that he has been in the house next door and the proposed house would not be visible from that house either, that the only thing you could see from that property is the garage from their side yard.

Commissioner Meigs asked the applicant if they had considered less decking so as to remove fewer trees.

John Owens said the property is fairly steep so the decks would be the only useable outdoor space.

Commissioner Meigs asked if the length of the driveway could be decreased.

John Owens said the driveway is as steep as allowed by the Town's Engineer and that the driveway length was determined by the parking requirements of the Town.

Chair Arguimbau asked the applicant if he agreed with attachment #1 of the neighbor's submittal.

Mr. Owens said no he did not. He said their proposal is not the 3,382 square feet sited in the submittal and that he had no way to verify the square footage of the neighboring homes or the lot sizes.

Pete Gang, architect for the applicant, said he worked to craft a design of a fairly challenging site which would minimize the impacts on the site and respect the concerns of the neighbors. He said the house is designed so as not to block light, views of the far hills or Mt. Tamalpais from the neighboring homes. He said the site is zoned for a single family home; that growth is inevitable and that in fill is a good way to guide growth.

Commissioner Meigs asked the architect if he had considered the amount of trees to be removed in developing the site.

Pete Gang, architect for the project, said the house could be located lower on the lot, but it would require a lot more excavation. He also said they tried reducing the foot print of the project but that it did not make a significant difference in the amount of trees that would need to be removed.

Chair Arguimbau asked the architect what square foot options were considered for the house.

Pete Gang said the target size was 1800 to 2000 square feet. He said the average new home is well over 2000 square feet and that this proposed home is smaller than the average new home.

Bill Myles, 189 Frustuck, expressed concern about the location of the driveway. He said there used to be a mirror on that curve several years ago because it is a dangerous curve; that the lot is much wider at the bottom and the house should be built from the lower portion of the lot; that he did not think that the proposal met the setback requirements and that the deck is too close to the neighbors deck which would bring down her property value.

Christa McKee, 31 Gregory Dr., said she was a previous neighbor of the applicants. She said that they are very kind, quiet and generous people and that they make great neighbors.

Joan Mariah, 175 Frustuck, said she was shocked when she saw the story poles for the garage because several trees would need to be removed and she wondered if the applicants could move the house over to save some of the trees.

Bruce Bunnell, 170 Frustuck, felt the house should be built from the lower portion of the lot; that the average house is 14,000 to 15,000 square feet; that more trees and limbs would need to be removed for fire safety and that if this proposal is built he would have to look at the roofline instead of trees.

Ann Sheldon, 165 Frustuck, said that Frustuck is a densely built narrow road; that attention needs to be placed on the garage approach, which she felt would be unsafe as proposed and that the house should be built from the bottom of the site.

Niccolo Caldararo, 165 Frustuck, said the house is too large and therefore out of character for the neighborhood; that there is a property lines dispute; that he felt the driveway approach is unsafe and that there are enough concerns about the proposed project that he felt the application should be denied.

Liz Wickham, 11 Byron Circle, owner of the project site, said she and her husband purchased the property with the intention of building their home there, that she had heard from Mr. Bunnell who told her that the neighbors in the area were interested in buying the property to preserve it as a greenbelt; that after much discussion she and her husband decided to offer the property to the neighbors; that they sent an offer letter out to the neighbors but never received a response. She said that shortly after that her husband accepted a job offer in southern California and that they would no

longer be building their home there.

Steve Keston, 50 Redwood, said the lot is not open space; that it is a private lot, designated for a single family home; that the net loss of trees after replanting would be five trees; that the staging of the project construction was approved by the Town Engineer and the Public Works Director and that the house was placed on the site so as to minimize the impacts on the site.

Peter Ramsey, 130 Mono, said the applicant has spent a great deal of money to design a project that complies with the Town's zoning requirements and to minimize the impacts on the site and on the neighboring properties; that the proposal should not be denied because of an alleged property line dispute which has not been substantiated.

Commissioner Meigs said after listening to the comments of the neighbors it seemed that the proposal is out of character with the neighborhood. She also said there might be ways to redesign the project so that so many trees did not have to be cut down.

Chair Arguimbau said he also felt the house maybe out of character for the neighborhood. He also said that he was not sure the Commission could make the findings that the amount of excavation proposed is the minimum amount possible while allowing the applicant substantial use of the property.

Commissioner Madsen said a 2090 square foot house maybe a little large for Fairfax but that it is not an unreasonably large house; that the garage cannot be placed anywhere else on the property, so even if the house was reduced the number of trees that would need to be removed would be about the same. He said he thought it made sense to create storage space under the garage but that it would increase the amount of excavation needed for the project.

Commissioner Herbert said the applicants are trying to preserve the privacy screening and will be adding more trees; that in the future would provide additional screening. He cautioned people not to get too fixed on the way the lot will look on the day the arborist removes the trees. He said the lot was designed for a single family home and the owners have an entitlement to build something on the lot. He also said building from the bottom of the site would have a greater impact on the sites natural topography and would require a lot more excavation and that the proposal meets all of the planning requirements.

Commissioner Meigs wanted to point out that it would take years for the newly planted trees to replace the native oaks that would be removed.

Commissioner Shaiken said many neighbors feel the project is out of character with the neighborhood and that it is rare that the Commission gets so much opposition to a project. He said although it was a difficult decision he was leaning towards continuance.

Commissioner Herbert said there is no proof that there is a property line dispute. He suggested continuance of the project so that the property line dispute could be addressed and the size of the neighboring homes and lots could be verified.

Commissioner Craine said if the project was continued there would need to be direction for mitigation. He also said he thought it would be a good idea for the applicants and the neighbors to get together to try to find a solution that everyone would be happy with.

Chair Arguimbau said he felt the Commission could not make all the required findings to grant this application at this time and he thought the project should be continued.

Commissioner Madsen said that the continuance should be short so that the applicant does not miss the building season.

M/S Herbert-Madsen motion to continue the application until the applicant is ready to resubmit.

Commissioner Herbert suggested that the neighbors communicate with the applicant and also gather any information they thought would have relevance to the proposal, such as evidence of a property line dispute.

AYES: Herbert, Madsen, Shaiken, Craine, Meigs, Chair Arguimbau

NOES: None

**Residential Second Unit Ordinance;** review and action on a proposed amendment to Chapter 17.26 of Title 17, adopting regulations for the establishment of residential second units and incorporating a process for the review of applications at the ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act of 1970 as amended per section 16061(b)(3).

Planning Director Kirkey read the staff report.

Commissioner Herbert said on page five, sentence N does not have an ending.

Planning Director Kirkey said it should have the word "metered" on the end of the sentence.

Chair Arguimbu asked staff how the size limits were determined.

Planning Director Kirkey said by looking at the previous ordinance and also the ordinances that other communities in Marin County have adopted. He said the proposed ordinance requires that the second unit is large enough that someone could reasonably live there and would comply with the building code standards but sets a cap of 700 square feet to insure that the unit remains affordable.

Peter Ramsay, 130 Mono, said he felt the requirement that the second unit's size is limited to a maximum square footage of 30 percent of the square footage of the primary residence is arbitrary. He said that requirement would cause some people with currently illegal second unit to unnecessarily go through the variance process to legalize those units.

M/S Shaiken-Madsen motion to approve the ordinance amending Title 17 of the Town Code regarding residential second units.

AYES: All

NOES: None

#### DISCUSSION ITEMS

Discussion of house size regulations pertaining to slope development requirements, lot coverage definition and potential "tear down" ordinance.

It was the consensus of the Commission to continue this item.

#### PLANNING DIRECTOR'S REPORT ON TOWN COUNCIL MEETING AND/OR ON-GOING ITEMS

There was no report from the Planning Director at tonight's meeting.

#### ADJOURNMENT

M/S Madsen-Herbert motion to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

ny Kasuya  
Administrative Assistant

# Minutes from the 5/20/04 Planning Commission meeting.

There was no public comment at tonight's meeting.

## COMMISSIONER COMMENTS/REQUESTS

There were no Commissioners comments at tonight's meeting.

## CONSENT ITEMS

There were no consent items scheduled for tonight's meeting.

## PUBLIC HEARING ITEMS

**190 Frustuck Avenue (address subsequently changed to 177 Frustuck Avenue);** request for a Hill Area Residential Development, Excavation and Encroachment permits to construct a 2,523 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).

Senior Planner Neal read the staff report.

Commissioner Herbert asked if staff had an opportunity to verify the square footage of the neighboring homes.

Senior Planner Neal said staff has no way to verify the size unless staff went out and measured the square footage of each home.

Commissioner Meigs asked staff the square footage of the decks.

Senior Planner Neal said the decks would be 688 square feet including the stairs that connect the decks.

Commissioner Meigs asked if that is included in 2,093 square feet called out in the staff report.

Senior Planner Neal said no the 2,093 square feet is just the living space.

Commissioner Madsen asked if staff would be able to verify the square footage of the neighboring homes if it became necessary.

Senior Planner Neal said that has never come up before and staff would have to check with Town Attorney Brecher to see if that was legally possible.

Planning Director Kirkey said what is before the Commission is an application for a Hillside Residential Development Permit (HRD). He said that this application meets most of the zoning requirements for the site; that the only question before the Commission is does the project meet the requirements for a HRD application.

Commissioner Meigs asked how many trees would be saved by building an uncovered parking deck.

Senior Planner Neal said the number of trees removed would be the same.

John Owens, applicant, said covered parking is typical in the neighborhood; that no trees would be saved by having uncovered parking; that eight of the last nine new houses approved in Town had covered parking. He said the house would be set down the hill so only one foot of the roofline would be visible from the street and that the arborist has found a way to save seven additional trees on the site. He said he went to the County Assessors office and made copies of the records for the neighboring homes and that most of the homes sited in the petition from the neighbors are larger than

claimed on the petition, some of them significantly larger. He closed by saying most projects in Fairfax require a variance or a use permit but that his proposal meets all of the zoning requirements.

Commissioner Herbert said in the submittal from Mr. Owens there are several alternative placements for the house and the garage. He asked Mr. Owens how he felt about the different alternatives.

John Owens said his architect could probably answer that question better.

Chair Arguimbau indicated to Mr. Owens that in his comparisons of house and lot sizes it appears the proposed house at 190 Frustuck would be the largest.

John Owens said yes that is correct; but the Commission needs to keep in mind the comparison of lot size to house size.

Chair Arguimbau said of the recently approved new homes in Town it appears that all of them are smaller with the exception of 96 Forrest Ave.

John Owens said many of the new homes were on much smaller lots and that the project at 96 Forrest Ave. is the most comparable.

Chair Arguimbau asked if the alternate placements of the house were of the same size house.

John Owens said yes and the number of trees that would need to be removed with the different placements of the house would be only one or two trees.

Commissioner Madsen asked the applicant if he had considered uncovered parking.

John Owens said no because most of the homes in the neighborhood have garages and also he said uncovered parking is unsightly because everything is exposed.

Commissioner Madsen said having uncovered parking might be a compromise, which would make the neighbors happy.

John Owens said he would consider modifying the proposal with uncovered parking.

Commissioner Meigs said the Commission advised you to meet with the neighbors to try and find a workable solution.

John Owens said they set up a meeting; that only three people showed up and the only suggestions the neighbors had was that the house should be built from the bottom of the site.

Commissioner Meigs asked the applicant if he has considered reducing the size of the decks.

John Owens said because of the steepness of the lot the decks would be the only usable outdoor space.

Pete Gang, project architect, said they met with the neighbors last week; that they went with the intent to hear their ideas and suggestions; that their main suggestion was to build the project from the bottom of the site which he said would greatly disturb the natural topography of the site.

Commissioner Herbert asked Mr. Gang to compare and contrast the alternate placements of the house for desirability and feasibility.

Pete Gang said they tried alternate building sites during the design process; that the main concerns were minimizing the impacts on the site and the neighbors and that they pushed the project as far to the west as possible to minimize the impact on the adjoining neighbor.

Commissioner Madsen said the story poles are at the northern fence line. He asked Mr. Gang if that was the correct.



Pete Gang said yes the north fence greatly encroaches on the applicant's property.

Commissioner Shaiken asked Mr. Gang if they would be willing to consider an alternate design with less storage and uncovered parking.

Mr. Gang said he can't answer for his client but he thought that might be acceptable.

Chair Arguimbau asked if a smaller footprint was considered in the design process.

Mr. Gang said 2000 square feet is average for a new home; that they considered different layouts with approximately the same size square footage; that the mass of the structure comes from the parameters of the site because it is a relatively steep lot. He also said they designed a trellis system for the side of the garage and when the vines are grown it will break up the appearance of the mass.

Ray Moritz, project arborist, said testing for Sudden Oak Disease is usually done visually; that when taking specimens from the trees you have to dissect a significant section of the tree for testing and that specimen testing produces 90% false negative results so it is not productive. He said the alternative placements of the house were not superior from an arborist perspective. He also said that they determined that seven of the trees on the site are in decline; that they would probably fall down within five to seven years. He said that they are in an area of the site the owners will not use and they are not in an area where they would fall on the neighboring structures or the street so they decided to leave them standing.

Commissioner Herbert asked Mr. Moritz if they were going to be planting more trees on the site.

Mr. Moritz said yes they would be planting trees near the rock outcropping at the lower portion of the lot and along the upper portion near the street to replace the trees that are in decline and will probably die within the next five to seven years and also near the deck for screening.

Commissioner Meigs asked Mr. Moritz if the replacement trees would be native trees.

Mr. Moritz said several of them would be a species of Madrones, which are native trees.

Bill Miles, 189 Frustuck, said he has lived in the area for 25 years; that the house would be 30 feet high and that the neighbor immediately abutting the site would lose much of the privacy from her deck and that he thought the house should be built from the bottom of the site.

Commissioner Herbert asked Mr. Myles if he felt there was still a survey dispute.

Mr. Miles said yes.

Commissioner Herbert said at the last meeting the Commission had asked the neighbors who claimed that there is a survey dispute to get proof of a survey dispute and bring the results to the Commission; otherwise the Commission has no real reason to believe there is an actual survey dispute.

Commissioner Shaiken said if there is a survey dispute the Commission needs evidence that there is a survey dispute. That the Commission had asked folks to bring proof of a survey dispute forward and no one has.

Niccolo Caldararo, 155 Frustuck, said the footprint and elevation of the house would make it the biggest house in the neighborhood; that it is out of character for the neighborhood; that he has a letter from Frank Howard Allen stating that the other home in the area would decline in value if the project was built; that out of six homes near the site only one has covered parking and that the house should be built from the bottom of the site.

Chair Arguimbau asked if the problems would be minimized if the storage under the parking area were deleted and if the garage was changed to an uncovered parking deck.

Niccolo Caldararo said yes.

Commissioner Madsen said the neighbors knew there was an undeveloped lot in the area and the Town Engineer and staff have continually said this is the best placement of the house on the site to minimize the impacts of development.

Bruce Bunnell, 170 Frustuck, said he also felt the house should be built from the bottom of the site. He drew up an alternative plan for the house, which he presented to the Commission, with the house and parking lower on the site, which he felt, would be less invasive on the neighbors.

Commissioner Madsen asked Mr. Bunnell if he felt an acceptable compromise would be to change the garage to uncovered parking and reduce the storage under the parking structure.

Mr. Bunnell said no.

Michelle Digregorio, 170 Frustuck, expressed concern about the location of the driveway approach and also said she felt the house was too large for the neighborhood.

Steve Wasserman, 1 Meadow, said he felt the house was a reasonable size for the area; that he felt a closed garage would be aesthetically more pleasing and better for the neighborhood; that the proposal is under or meets all of the zoning requirements; that the lot has been empty for years and that of course the project is going to have some impact on the neighbors.

Mark Coppel, 215 Frustuck, said both the upper and lower portions of the lot are on dangerous curves with the upper curve slightly more acute but that neither is very safe; that parking is tight in the area; that many trees would need to be cut to develop the site and he felt the neighbors should buy the lot to preserve the quality of the neighborhood.

Steve Pickey, said the Commission has given incredible scrutiny to the proposal; that he sees no supporting evidence for the claims of the petition; that he is hearing that the house does not fit into the neighborhood but the petitioners did not include the house and lot sizes of all the house sited in the petition. He asked the Commission to give the same scrutiny to the petitioner's petition as they have given to the applicant's project.

Ann Sheldon, 165 Frustuck, said her house is not as large as the applicant claims it is; and that she felt the house is out of character for the neighborhood.

Steve Keston, attorney for the applicant, stated that Mr. Owens received Mr. Bunnell's drawing last night; that the parking shown on Mr. Bunnell's drawing would be in the Town's right-of-way; that the stairs up to the house would require on going expensive maintenance; that building from the bottom of the sight would require extensive excavation; that the applicant got two surveys of the property and that each of the surveys produced the same results; that they both match up with the abutting neighbors survey; that there is no proof of a survey dispute and that the neighbors fence is encroaching on the applicants property.

Chair Arguimbau asked Mr. Keston if he had a problem with the Commission relying on the information the applicant had provided regarding the lot and house sizes of the neighboring homes.

Mr. Keston said no because that information came from the Marin County Tax Assessors offices. He also said that lot is plotted out for a single family home; that growth is inevitable and he felt in fill development is a good solution.

Commissioner Shaiken said an acceptable compromise seems to be reducing or eliminating the storage space and having a carport.

Commissioner Meigs expressed concern about the safety of the driveway approach and also the number of trees that would need to be removed for the project.

Planning Director Kirkey said the Public Works Director and the Town Engineer both reviewed the proposal and both of them felt the site lines were adequate for the driveway approach.

Commissioner Herbert said the driveway would create a space for people to pull off the road if needed; that a mirror could be added at the curve; that the house would not make the curve more blind and that the same number of trees would need to be removed for a parking deck or a garage. He said he walked all of Frustuck Avenue and that most of the houses or garages on the street are built right up to the road. He said he feels that garages are aesthetically more pleasing than carports; that requiring the applicant to have uncovered parking may not be the best solution. He said building from the bottom of the site would require heavy excavation; that the house is sited down the hillside from the street so that it would have less visual impact than the neighboring homes and that the proposal is the best design for the site that the Commission has seen.

Commissioner Hailer said she has a degree in economics and she respectfully disagreed with Mr. Caldararo because usually improvements of adjacent properties increases the value of adjacent properties not decrease it. She also said the biggest issue seems to be the impact on the privacy of the abutting neighbor; that she felt the size is not out of character with the neighborhood and that the proposal meets or exceeds all of the zoning requirements and she agreed with Commissioner Herbert that this design is the best one the Commission has seen for the site.

Chair Arguimbau said if this house were built it would be the largest house in the neighborhood; that he thought the Commission had directed the applicant to reduce the size of the house, so that there would be less impact on the neighbors and less trees would have to be removed and the applicant did not do that and that he felt the application should be rejected as presented.

Commissioner Madsen said he did not remember the Commission directing the applicant to reduce the size of the house; that he thought the Commission had asked the applicant and the abutters for clarification, that he did not feel a 2000 square foot house was unreasonable; that the project would impact the abutting neighbor but that the lot is a developable zoned for a single family home.

Commissioner Shaiken said he felt the house size is out of character with the neighborhood and that he could not vote to approve the project as submitted.

M/S Herbert-Madsen motion to approve application #04-14 with the modification that the garage sited on the plans is changed to an uncovered parking deck and subject to the findings and conditions in the staff report.

Chair Arguimbau said he did not feel changing the garage to uncovered parking would solve the problem.

Commissioner Meigs felt the square footage of the proposal should be reduced.

Commissioner Hailer asked how much of a square footage reduction would be acceptable. She felt the Commission should give the applicant some quantifiable number and clear direction to work with.

Chair Arguimbau said it is out of character with the neighborhood.

Commissioner Hailer asked if it would be acceptable if the house were smaller than or equal to the largest house in the neighborhood.

Chair Arguimbau said yes.

Commissioner Herbert said if the storage were deleted from the project it would be smaller than the largest house in the neighborhood.

ROLL CALL

AYES: Herbert, Madsen, Hailer

NOES: Shaiken, Meigs, Arguimbau

Chair Arguimbau said since the vote was a tie vote the application is denied. He then said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

Commissioner Meigs recused herself after this item.

**308 Forrest Avenue;** request for a Variance to construct a deck, access stairs and hot tub within the required side yard setbacks; Nancy Reid, owner; Art Chartock, applicant; application # 04-18; Assessor's Parcel No. 002-105-18; Residential Single-family RS 6 Zone; CEQA categorically exempt per § 15305(a).

Senior Planner Neal read the staff report.

Art Chartock, architect, said the hot tub location would be tucked out of the way and would not disturb the landscaping that is currently in place. He also said the stairway the owners would like to build would allow them to access the creek for maintenance.

M/S Madsen- Hailer motion to approve application # 04-18 subject to the findings and conditions in the staff report.

Chair Arguimbau suggested amending the motion to include a condition that a 24-foot setback from the top of the creek bank will be maintained.

Commissioners Madsen and Hailer accepted the amendment to the motion.

YES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at the Town Hall within 10 days. He said if there is no appeal the decision becomes final.

**38 Willow Avenue;** request for a Use Permit to construct a 120 s.f. laundry room addition onto an existing 1,129 s.f. single-family residence located on a 4,000 s.f. property; Rosemarie Goldstein, owner; Dan Check, applicant; application # 04-19; Assessor's Parcel No. 001-234-07; Residential RD 5.5-7 Zone; CEQA categorically exempt per § 15301(e).

Senior Planner Neal read the staff report.

Dan Check, applicant, said the homeowner would like to add on a small addition to their home so that they can have a laundry room on site.

M/S Madsen-Shaiken motion to approve application # 04-19 subject to the findings and conditions in the staff report.

AYES: All

NOES: None

Chair Arguimbau said this is the decision of the Planning Commission and any interested party may file a written appeal at Town Hall within 10 days. He said if there is no appeal the decision becomes final.

# Minutes from the 6/8/04 Town Council meeting

Maurice Weitman, 145 Canyon Road, stated that the Friends of Corte Madera Creek never tested the creek on Canyon but tested below and above Canyon.

Merv Van Dyke, 170 Canyon, asked about the number of residents on Canyon necessary to sign up for sewer to have it go forward.

Mayor Egger closed the public hearing.

Mayor Egger stated that there were two small lots for sale, a 23-acre lot for sale and another larger lot for sale in the area; that the Town could pre-zone the land outside Fairfax above Canyon, and suggested a one unit to four acre minimum for the area.

Planning and Building Services Director Kirkey explained the pre-zoning process.

M/S, Ghiringhelli/Brandborg, Motion to approve Ross Valley Sanitary District's request to go forward with the Notice of Intention upon the formalization of the agreement and the signing of the agreement between the Ross Valley Sanitary District and the Town.

AYES: All

Mayor Egger adjourned the meeting for a 15-minute break at 9:04 p.m.

190 Frustuck Avenue (Address Changed to 177 Frustuck Avenue) : appeal of Planning Commission denial of a request for a Hill Area Residential Development Permit to construct a 2,093 s.f. single-family residence with a attached 430 s.f. garage with a 430 s.f. storage area beneath; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application #04-14; Assessors Parcel No. 3-193-02; Residential Single-Family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b).

Planning Director Ken Kirkey presented the staff report with a recommendation to hear the public testimony to consider the merits of approving the project with the condition that parking needs be addressed with a carport rather than the proposed garage and that the storage area be eliminated or reduced in size, noting that a Planning Commission motion to approve the project had failed in a tie vote, thereby denying the project.

Mayor Egger opened the public hearing.

John Owens, applicant, said he had submitted five alternate floor plans and was assured that the current plans met the Fairfax code. He said the square footage of the deck was not 800 square feet., but just over 600 square feet, and that the excavation did not exceed 500-700 cubic yards. He also said that the April 15, 2004 Planning Commission staff report indicated that the commission was concerned with the size and mass of the house and requested the plans be revised reducing the size of the house. He suggested the Council check the May 20<sup>th</sup> Planning Commission minutes, denying the statement was ever made. He then urged the council to approve the project.

Peter Gang, project architect, described the combined setback requirements and stated that they were crafted with specific direction from the Town's Senior Planner. He said during the May 20<sup>th</sup> Planning Commission meeting the three opposing members were most concerned with the mass of the project, that the applicant had offered to use a carport rather than a garage and to reduce the size of the storage area, but the project was still denied. He then said the direction from the Planning Commission was very vague and that they just didn't like the project.

Councilmember Ghiringhelli asked Architect Gang if he believed the house fit in with the rest of the neighborhood and why.

Mr. Gang stated he felt the house fit with the character of the neighborhood and that it would enhance the neighborhood.

Mayor Egger opened the public hearing.

Bill Madsen, Planning Commissioner, 109 Porteous, reported that he had sent a letter to the other Planning Commissioners about an incident at a recent Commission meeting that he believed to be in violation of the Brown Act, read from the letter and asked that it be made a part of the record, stated that he believed the decision to deny the project had been made prior to the Planning Commission meeting, and urged the council to make their decision based solely on its merits.

Chris Lang, 177 Canyon Road, former Planning Commissioner, said public perception sometimes became reality, that rules were in place to guide us, that the HRD process allowed flexibility, that the perception that the house was too big could be mitigated, and suggested landscaping to soften the impact.

Joan Mariah, 175 Frustuck, said that her only objection to 190 Frustuck was the removal of trees to clear for a driveway and garage. She also said if it were possible to move the driveway and garage over to some extent to save the trees and benefit both properties.

Lisa Grigsby, daughter of Joan Mariah, stated she obtained dimensions of the trees to be removed. She then proceeded to hand out a copy of a letter from her mother addressed to Mayor Egger with photos expressing her dismay which also included a letter from a realtor who suggested removal of the trees could devalue Mrs. Mariah's property approximately ten to fifteen percent.

Bruce Bunnell, 170 Frustuck, said the house was extremely invasive the way it was designed, that he wanted to have all the alternatives explored, that he was not trying to prevent construction but that he would prefer to see the carport, garage, and storage on the lower level of the lot to save the trees, which is what Fairfax was all about. He also said Joan Mariah offered to give up a portion of her own property to allow the project to continue and save the trees. He then recommended the project be denied and re-submitted.

Councilmember Brandborg stated that she had a problem with the neighbors designing the house.

Mark Copel, 215 Frustuck, said the neighborhood was having quite a reaction to the proposed development of the property, that anyone would be troubled if a 40-50 ft. wall was erected in their neighborhood, and that his recommendation would be to build the house in the middle of the lot to prevent loss of quality of life.

Michele DeGregorio, 170 Frustuck, stated that she could live with the design if the garage was moved.

Councilmember Ghiringhelli asked if the applicant would lose his view by moving the garage and Mayor Egger responded that moving the garage would not eliminate the view.

Steve Kesten, attorney representing the applicant, said the applicant was entitled to build on his property. He said his client had not only experienced impropriety but had received threats as well. He also said the project would not affect surrounding property values except perhaps to improve them; that it was probably the lowest impact residence proposed in Fairfax in the past four years; and that it was his belief that the project would enhance the street.

Steve Wasserman, Meadow Way, stated that he was representing Bob Klock, a resident across the street from the project, who wanted to go on record as having no objections to the project. He stated that he was not sure that building a garage would require extensive excavation and that it would require the applicants to walk up hundreds of steps, that it would be better to have a garage, that vines could be grown to camouflage the garage, and that a 3 bedroom, 2-bath house was a reasonable size for a house.

Steve Kesten, Attorney for the applicant, stated that parking at the bottom of the property would require 100 steps criss-crossing the property, that the neighbor who had alleged a property dispute had built on the applicant's property, that the house as designed would harmonize with the neighborhood, that the Town Engineer had approved of the design, that the Town should encourage infill housing, that it was probably the lowest impact house built in Fairfax in years, that the Town Council didn't have the benefit of the arborist's opinions that were available at the Planning Commission meeting, that it was in conformance with the Floor Area Ratio ordinance, and that it was a modest house that would fit in.

Laurie Hailer, Planning Commissioner described improprieties in procedure that she had observed at a recent meeting of the Planning Commission, stated that she was not addressing the merits of the project, but behavior of several planning commissioners at the May 20<sup>th</sup> meeting. She stated that at that meeting, several planning commissioners said they would approve the project if changes were made and then didn't vote to approve the project when proposed changes were agreed to by the applicant.

Mayor Egger closed the public hearing.

Mayor Egger stated that it had not been the original intention of the combined setback requirements in the ordinance to change back and forth along the property.

Councilmember Ghiringhelli stated that it seemed like the applicants took all the necessary steps and worked with the staff through the process and that it would benefit the neighborhood and was legal.

Councilmember Brandborg stated that, although trees would be cut down, trees would also be planted, that Mr. Moritz was a very conservative arborist, and asked about whether or not the applicants had agreed to provide a carport rather than a garage.

Planning and Building Services Director Kirkey responded that there had been no decision on a carport rather than a garage, that it had been a suggestion from staff and that there had been lengthy discussion about the issue at the Planning Commission.

David Picchi, attorney for the applicant, stated that there had been a discussion about the elimination of the garage but with the same footprint for a carport.

Mayor Egger stated that when it was heard by the Town Council on appeal it was heard "de novo" and the entire application was before them like a new application. He stated that the slope ordinance required a larger lot, that the project didn't meet the setback requirements, that the code required that the garage be moved over ten feet, that he objected to the 52-foot bulk height, that the carport could be built on the right of way, and there was no vote on the application with the required findings.

Vice Mayor Tremaine expressed concern with the carport/garage and its location, stated that he would like to have an interpretation of the sideyard setbacks and see how setbacks had been interpreted in the past.

Attorney Brecher stated that the code didn't speak to the interpretation of the combined sideyard setbacks but that he was inclined to agree with the Planning Director's opinion allowing them to be staggered.

Vice Mayor Tremaine stated that he didn't have the information he needed to make a decision, that he would like a carport rather than a garage, that regardless of how the setbacks were interpreted, the deck off of the garage could be reduced in size, that he had no problem with the house itself, that the Planning Commission needed to deal with the inclusion of decks in the Floor Area Ratio (FAR) ordinance, and that he would like to see a reconfiguration of the garage to a carport and to have it moved over.

In response to a question from Mayor Egger, Town Attorney Brecher stated that compliance with the State Streamlining Act was not a problem since the clock stopped while an appeal was pending on the project.

Councilmember Bragman stated that he agreed with Vice Mayor Tremaine that the project would be in Ms. Moriah's lap.

M/S, Ghiringelli/Brandborg, Motion to overturn the Planning Commission denial of the HRD Permit and Encroachment permit related to the proposed project at 190 Frustuck Avenue.

Roll Call Vote: Bragman: NO, Brandborg: AYE, Ghiringhelli: AYE, Tremaine: NO, Egger: NO

M/S, Tremaine/Bragman, Motion to continue the appeal to the next meeting with a request to town staff for information regarding how setback requirements had been applied in the past and with a request to the applicant to provide drawings of a proposed carport rather than a garage moved over, with the garage deck reduced in size with story poles erected to reflect the changes and a drawing of an uncovered parking deck for consideration.

Town Attorney Brecher said he would be willing investigate how setback requirements were applied in the past and the consensus of the Council was to have him do so.

Steve Kesten, attorney for the applicant, said he would be willing to agree to extend the waiver of the Streamlining Act for thirty days.

AYES: ALL

Second Reading and Adoption of Ordinance No. 704, an Ordinance of the Town of Fairfax amending Chapter 17.26 of Title 17 of the Fairfax Town Code, adopting regulations for the residential second units and incorporating a process for the review of applications at ministerial level; Categorically exempt from the provisions of the California Environmental Quality Act (CEQA) as amended per Section 16061(b)(3)

George de Tuncq, 39 Ridge Road, stated that the Uniform Housing Code was referred to in the ordinance, that the Code was quite inclusive; that there were over 300 properties in Fairfax on the Assessor's Roll that had second units; asked if the standards would be the same for old and new units; and that an exception was made to the sewer requirement in the ordinance. He began a more detailed review of the requirements and was cautioned by Vice Mayor Tremaine that, due to the lateness of the hour and the fact that he had already been given more than the allotted time for a speaker and that his list of questions had been submitted at 7:30 p.m., that it wasn't reasonable to spend more time on his concerns.

Planning and Building Services Director Kirkey stated that the ordinance complied with State law, was much the same as the interim ordinance, and that, at the time of resale of the property, second units were required to comply.

Mayor Egger informed Mr. de Tuncq that he could help make sure that the codes were enforced.

M/S, Tremaine/Ghiringhelli, Motion to waive further reading of Ordinance No. 704, An Ordinance of the Town of Fairfax, amending Chapter 17.26 of the Title 17, of the Fairfax Town Code, adopting regulations for the



# Minutes from the August 3, 2004 Town Council meeting.

## Annual report from Fairfax representative to the Marin Commission on Aging, Nancy Peters-Janover

Nancy Peters-Janover presented the annual report of the activities of the Marin Commission on Aging. She stated in her report that Marin County's population was aging faster than the rest of the nation; that there were over 34,000 citizens over 65 in Marin and almost 10% of the population of Fairfax; that informative workshops on a variety of topics of interest to seniors had been conducted throughout the County; that the annual Senior Information Faire would be held; and that the mission of the Division of Aging was to promote the quality of life and independence of disabled and older adults in Marin County.

## Interview and appointment of candidate for full three-year term to July 31, 2007 on the Volunteer Board

Sonya Stanley appeared before the Council and stated that she had been the treasurer of the Board for the last six months, that it had been a pleasure to be on the Board, and that she looked forward to continuing to serve.

M/S, Tremaine/Brandborg, Motion to appoint Sonya Stanley to serve on the Volunteer Board for a full three-year term to July 31, 2007.

AYES: Bragman, Brandborg, Tremaine, Egger  
NOES: None  
ABSENT: Ghiringhelli

## PUBLIC HEARINGS

190 Frustuck Avenue (address changed to 177 Frustuck Avenue); continued consideration of an appeal of the Planning Commission denial of a request for a Hill Area Residential Development Permit to construct a 2,093 s.f. single-family residence with an attached 430 s.f. garage; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application # 04-14; Assessor's Parcel No. 3-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per sections 15303(a) and 15305(b)

Councilmember Bragman recused himself and stated that it was because he was in a contract with a party at 50 Hickory Road that was within 500 feet of the property at 190 Frustuck.

Planning and Building Services Director Kirkey presented the staff report and noted that the applicants had produced a revised submittal for the project based on the requested changes which included changing the proposed 430 sf garage to a 400 sf carport; reducing the size of the storage area beneath the carport from 430 sf to 400 sf; moving the proposed stairway to the westerly side as requested by a neighbor; with alternative designs for the roof of the parking structure; with the deck on the easterly side of the parking structure to be shifted 8 feet to the west and reduced in size; and with the proposal for additional planting of vegetation on the easterly side of the property to provide more screening for the adjacent property.

Mayor Egger opened the public hearing.

John Owens, 6 June Court, stated that he had submitted revised plans to the Town by July 23<sup>rd</sup> and had subsequently met with Joan, the next door neighbor at 175 Frustuck. As a result of the meeting, they had saved two more trees; agreed to plant six 15-foot trees; reduced the size of the decks; provided extra screening; agreed to install a carport rather than a garage; and had moved the parking structure over eight feet.

Art Chartock, Architect representing Joan Mirah, 175 Frustuck, stated that his role was to work to reduce the impact of the new structure. This had been accomplished by moving the stairs to the West side, saving and planting trees, moving the deck 15 feet from the property line, and adding screen lattice.

Daniel Tey, representing John Owens, asked that the points enumerated in a letter distributed and authored by Art Chartock be added as conditions of approval for the project. He referred to an arborist's report indicating that all the trees between the properties were healthy and that four mature oaks were to be saved.

Viccolo Caldararo, 165 Frustuck Ave., stated that the neighborhood had expressed concerns about the size of the structure and the coverage of the proposed building; that an exception for required parking should not be made; that the blind curve was not taken into consideration for the location of the parking structure; suggested a deed restriction to prohibit building over the parking structure; stated that the property owners planned to build two structures on the property; and that parking could have been provided down below to be safer.

Stan Schriebman, 51 Hickory, stated that the size of the house wasn't a factor, that there were bigger houses on the street, some bigger and some smaller.

Martin Copell, 215 Frustuck, stated that there was no guarantee that the 400 square foot parking structure would remain as a parking structure and no guarantee that many people wouldn't live in the large house with many cars; that the parking structure on a blind curve was a bad idea; and that there was still going to be a large structure close to the neighbor.

Bruce Burnell, 170 Frustuck, stated that Joan had worked with the Owens, but that nobody had talked to him and he and his wife lived across the street from the project; stated that the project would stick up and stick out; that he was pleased that they had tried to amend the plans for the project; that Joan was willing to offer an easement on her property to allow them to place the driveway at the bottom of the property; that how the house would be built was of concern to him; and that he would like to hear from the owner.

Steve Kesten, attorney for the applicants, stated that Mr. Burnell had stated early on that he wanted to keep the lot undeveloped and that he wanted to derail the project. He reviewed the testimony given in support of the project, noted that four parking spaces were being provided when only three were required, and stated that the plans had been with the Town for six months and available to all the neighbors to review during that time. He further stated that every effort would be made to keep the trees, that changes had been made to the project to protect the trees, and that trees increased the value of property as well as providing privacy.

Dan Tey for Joan Moriah, stated that an arborist would be retained and would guarantee the survival of the trees as a condition of approval; that her arborist stated that the trees were healthy, and that the term "every effort" to retain the trees was not good enough.

Bill Miles, 189 Frustuck, stated that the owner's phone number was not listed making it difficult to contact them; that he had put an in-law unit in his house 10 years previous and that tandem parking was not counted to meet the required parking; that the proposed parking was on a town right-of-way; that it was a very busy street, like Cascade Drive, that to back out onto the street was dangerous; that he had a storage area under his carport and was required to record a deed restriction so the applicant should have to do the same; that parking should be built at the bottom of the hill and that trees had died on his property and could also die on the applicant's property.

Lisa Rigsby, Joan's daughter, stated that her mother was willing to offer an easement on the lower part of her property for parking.

Mayor Egger closed the public hearing.

Councilmember Ghiringhelli stated that he was impressed with how the neighbors had worked together; that the Council had given direction to the applicants and that they had responded to that direction; that the neighbor had hired a local architect to help resolve the remaining issues, and that they had done a great job of working together to reach solutions.

Vice Mayor Tremaine asked if there was a document that outlined the terms of the agreement, was referred to the letter from Mr. Chartock that outlined suggested conditions of approval, and was told that the listed conditions were perhaps not specific enough regarding the trees.

Vice Mayor Tremaine stated that the applicant had followed the direction of the Town Council and had worked with the immediate neighbor to resolve their differences; that if construction were to harm the trees, the trees would be replaced; that a deed restriction was not unreasonable; and that there wouldn't be a roof on the carport.

Councilmember Brandborg stated that there were many carports on Frustuck that hadn't been converted and that, without a roof on the car deck, conversion wouldn't be a problem.

Mayor Egger stated that the overall height of the structure was his concern; that if the cover on the structure were removed to reduce the height, he would agree with Vice Mayor Tremaine.

M/S, Ghiringhelli/Brandborg, Motion to uphold the appeal overturning the Planning Commission's denial of the project and to approve the project based on the revised submittal and with the following conditions: 1) the parking structure to be an uncovered parking deck; 2) with a deed restriction to be recorded to prevent conversion of the storage area beneath the parking structure into living space; 3) with any tree(s) identified for retention and subsequently harmed during construction to be replaced with suitably mature tree(s); 4) All trees identified in the June 18 and August 2, 2004 plans to be retained; 5) with six 15-foot trees to be planted as proposed; 6) conditions 2-10 outlined in the April 15, 2004 Staff Report; and 7) conditions 1,2,3 and 5 acknowledged as part of the accepted revisions to the development plan outlined in a letter from Architect Art Chartock to the appellant and submitted to the Town Council.

#### Roll Call Vote:

Brandborg: AYE; Ghiringhelli, AYE; Tremaine: AYE; Egger: AYE (Bragman, recused)

Mayor Egger adjourned the meeting for a break from 9:15 to 9:25 p.m.

#### Adoption of Resolution No. 2335, A Resolution of the Town Council of the Town of Fairfax declaring a fiscal emergency

Town Administrator Bengyel presented a report and stated that the tax proposed to go before the voters would be a special tax, not a general tax, and would therefore require a 2/3 majority and would not require a declaration of fiscal emergency.

Councilmember Brandborg asked why no numbers were presented to indicate how much money would be raised by such a tax and stated that, since the proposed ballot wording listed all the departments, it didn't seem like a special tax.

Town Administrator Bengyel, stated that, although at first all the areas to be impacted were listed, that, on further consideration, he thought it would be better to just use it for public safety and emergency services.

Councilmember Ghiringhelli stated his opposition to any new tax.

Mayor Egger determined that it was the consensus of the Council to not adopt a resolution declaring a fiscal emergency.

#### Adoption of Resolution No. 2337, A Resolution of the Town Council of the Town of Fairfax calling for an election

Vice Mayor Tremaine stated that they shouldn't declare a fiscal emergency; that they should go with a special tax that required a 2/3 vote; that the Town was in a fiscal emergency because of the State take-aways; and that they had to convince 2/3 of the voters that the tax was necessary.

# Minutes from the 7/8/04 Design Review meeting

Acting Chair Trimm closed the Public Hearing.

Boardmember LaMotte thanked the architect for the professional presentation and stated it makes the Board's job much easier. The house will be a nice addition to the neighborhood.

Boardmember Deal thanked the architect for the fantastic presentation and stated the model and color renderings were very helpful. The style of the house will be compatible with the surrounding neighborhood. He did not want them to use a lot of hard paving and suggested cobblestones for the driveway. He liked everything else about the project.

Acting Chair Trimm asked about the large, wet spot near the back of the property. Mr. Graham stated he was not aware of any well or natural spring in that area but they will check it out.

Boardmember LaMotte asked why they were removing the apple tree. Mr. Graham stated it was old and dying.

Boardmember Kerhleim stated she was pleased with the design and was happy it was below the height limit.

Acting Chair Trimm thanked the architect for the professional presentation and stated the use of the color palette on the drawings was very helpful. This will be a nice addition to the neighborhood.

M/S, LaMotte-Deal, motion to approve application #04-35 based on the findings and conditions set forth in the staff report plus the following condition: 1) The applicant shall submit plans for an irrigation system along with the Building Permit Application.

AYES: All

Senior Planner Neal stated there was a 10-day appeal period.

**190 Frustuck Avenue (address changed to 177 Frustruck); design review of a 2,523 s.f. single-family residence and 430 s.f. cardeck; John Owens and Diana Dullaghan, applicants; John Wickham, owner; application #04-14; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; CEQA categorically exempt per Section 15303(e).**

Senior Planner Neal presented the staff report. She stated the Planning Commission denied the project at their May 20<sup>th</sup> meeting. The applicant appealed the denial to the Town Council. The Council conditionally approved the redesigned project at their August 3<sup>rd</sup> meeting.

Acting Chair Trimm opened the Public Hearing.

Mr. John Owens, architect, presented the proposal. He stated they plan to construct a 2,093 square foot residence with an attached 400 square foot uncovered car deck and 400 square foot storage underneath. The house will not be visible from below. They moved the parking structure 15 feet from the neighbor's fence. They plan to use the following materials: 1) fire proof, pre-colored, concrete shingles, 2) windows and trim will be painted dark red, 3) the roofing will be a dark brown metal, 4) the decking material will be trex, 5) the hand-rails will be galvanized metal pipes.

Ms. Lisa Grespea, Frustuck Avenue, stated she would like to make sure the applicants comply with the Town Council's conditions. Mr. Owens stated that all the conditions were noted on the plans. Ms. Grespea expressed concern about maintaining the health of the trees. Senior Planner Neal stated this was standard procedure in the Town of Fairfax.

Mr. Niccolo Caldararo, Frustuck Avenue, stated the project was out of character with the neighborhood in terms of the size of the house and the size of the lot. The project would be located close to the property lines and would diminish the neighbor's views. He stated the parking structure, which would be located on a blind curve, would be hazardous. It would also be located too close to a hydrant. He stated the parking should be located at the bottom of the hill. He was concerned that the guest parking would be located in the public right-of-way. He stated this was unfair, unsafe, and out of character. Acting Chair Trimm asked Senior Planner Neal to respond. Senior Planner Neal stated most of the parking decks in the area were in the right-of-way because the roads were not paved to the full width of the right-of-way. This was very common on hillside lots. The Ross Valley Fire Authority has approved the plans. Boardmember LaMotte asked Mr. Caldararo if he had seen the revised plans. Mr. Caldararo stated he reviewed the revised plans at the Town Council meeting and he was still opposed to the project.

Boardmember Deal asked if the proposal would max out the FAR. Senior Planner Neal stated the proposal had a .28 FAR and the limit was .40. This configuration was approved by the Town Council, the Fire Department, the Town Engineer and the Public Works Director.

Acting Chair Trimm closed the Public Hearing.

Acting Chair Trimm acknowledged the growing concern about larger homes being built in Fairfax. She stated there was a fire hydrant at the bottom of the property and the project would not block anyone's view of Mt. Tamalpais. The original plan was changed to accommodate some of the neighbor's concerns.

Boardmember LaMotte stated the issue of fire and roadway safety was not in the purview of the Board and has been addressed by the appropriate departments. This is an unusual neighborhood and the applicant has made changes to the original design to mitigate the original concerns.

Acting Chair Trimm stated the original plans were changed to accommodate the neighbor's concerns. The proposal meets all the legal requirements.

Boardmember Deal asked about the type of shingles that will be used. Mr. Owens stated they plan to use the 12-foot long and not the large 4' X 8' panels. Boardmember Deal made some suggestions about using flashing between the shingles. Boardmember Deal had questions about the metal roof, the building materials, the awning, and the mesh panel that will go between the railings.

Boardmember Kerhlein stated they have addressed the neighbor's concerns and the proposal would be a significant improvement. She liked the fact that the project hugs the hillside and was significantly under the height limit on one side. She liked the choice of materials.

Boardmember LaMotte stated she was glad to see the use of fire resistant materials. She had some concerns about erosion control during construction. Mr. Owens stated there was an extensive grading and engineering plan that would address this concern. Boardmember LaMotte stated she would like to see some native grasses (plugs, not seed) and plants used on the hillside. She recommended they use California Fescue.

M/S, Kerhlein-Deal motion to approve application #04-14 based on the findings and conditions set forth in the staff report, the conditions set forth at the August 3<sup>rd</sup> Town Council meeting, the revisions cited in the July 29<sup>th</sup> letter from Rushton-Chartock Architects, and the following additional conditions: 1) the applicants shall plant native California Fescue (plugs) for erosion control, 2) the applicant shall submit an irrigation plan along with the Building Permit Application.

AYES: All

Acting Chair Trimm stated there was a 10-day appeal period.

**94 Forrest Avenue; design review of a 1,465 s.f. single-family residence; Rushton-Chartock Architects, applicant; George Khouri, owner; application #04-36; Assessor's Parcel No. 002-191-31; Residential Single-family RS 6 Zone; CEQA categorically exempt per Section 15303(a)**

Senior Planner Neal presented the staff report.

Acting Chair Trimm discussed the recommendations made by the Planning Commission at their August 19<sup>th</sup> meeting.

*Excerpt from the April 15, 2004 Planning Commission Staff Report*

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 waved 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.

**LAW OFFICES OF ALAN M. MAYER, INC.**  
A Professional Corporation

Telephone: 415-457-4082  
Facsimile: 415-457-6439

Attorney at Law  
1120 Nye Street, Suite 200  
San Rafael, CA 94901

E-Mail: Mayerlaw1@aol.com

October 2, 2008

VIA FACSIMILE ONLY

Anne Welsh  
Town of Fairfax  
Planning Department  
142 Bolinas Road  
Fairfax, CA 94930

Re: 177 Frustuck Avenue, Fairfax

Dear Ms. Welsh:

My understanding with regard to the status of the Owens application to the Fairfax Planning Commission for their property at 177 Frustuck Avenue is that plans were submitted to the Town on August 14, 2008. As of this time the Owens have not received any written communication from the Town informing them that there are any problems with the documentation which was submitted. The Town had 30 days in which to ask for additional documents or to notify the applicant that the submissions were incomplete. After that 30 day period the submission is deemed complete as a matter of law according to the Streamline Permit Act.

A public notice was sent out by the Owens on September 23, 2008. A copy of that notice is enclosed and was sent out to all of the appropriate neighbors in a 300 foot radius of the property.

My understanding is that the law provides that the Town of Fairfax has 60 days from September 23<sup>rd</sup> in order to make a final determination on the application that was submitted to the Planning Department. If you believe this to be incorrect in any way, please let me know citing the appropriate code sections that the Town is relying upon.

As you know, it is the Owens position that no variances are needed for this project. We have been through this before and you have numerous documentation from the Owens

EXHIBIT #

**E**

Anne Welsh  
Town of Fairfax  
Planning Department  
October 2, 2008  
Page 2

specifically outlining why the garage proposed to be built, which is attached to the main structure, is not a "detached" structure.

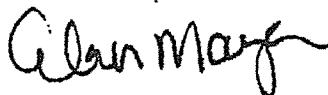
Since the garage is an integral part of the main structure and not detached, it does not need a height variance as the building is three stories. You have previously supplied me with a definition of "detached building" citing prior code section 17.04.084. This would apply to a building that has "no party wall in common with another building". The Owens do not content that the garage is a detached building. To the contrary, it is not detached. It is not a separate building. It shares common walls, including foundations and roofs, with the rest of the building. If you are aware of any definition that would say this does not comprise an integral part of the building, I would be more than happy to review it. Just let me know what it is. The Town of Fairfax's position that because there is a "cut out" in the area between the garage portion and the rest of the house makes the garage portion "detached" is simply untenable and without any basis in any definitions within the Town codes. Again, if you are aware of any, please let me know what they are.

If there are any other variances besides the height variance which the Town of Fairfax believes are needed, please let me know what they are along with any ordinance or code specification to support the Town's position.

Any hearing in front of the Planning Commission at this point is merely to receive public comment and either approve or disapprove the plans that have been submitted. The issue of variance is not one to be considered by the Planning Commission since no variance is required.

Please let me know when the public hearing will be held. Thank you for your courtesy and cooperation.

Very truly yours,



Alan M. Mayer

AMM:kh  
cc: Client

Public Notice

September 23<sup>rd</sup> 2008

Dear Homeowner/Resident,

We are writing to inform you that a Planning Application for the addition of a garage at 177 Frustuck Avenue, Fairfax, was filed on February 20<sup>th</sup> 2008 with the Town of Fairfax.

This is the same garage we applied for in our 2003 application, when 177 (fka "190") was an empty lot.

If you have any questions or concerns contact John Owens or Diana Dullaghan at 456-8064.

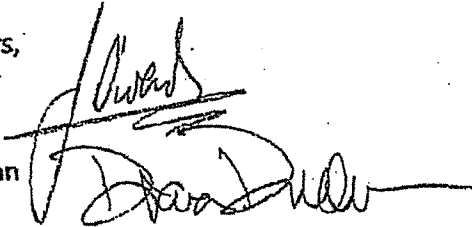
We would like to avoid the ugly fight than ensued with our house application, and also with the recent house application for 183 Frustuck .

A public hearing has not been scheduled to date. If you want to contact the Planning Department they can be reached at 453-1584, or Town Hall at 142 Bolinas Road, Fairfax.

Very truly yours,

John Owens

Diana Dullaghan

Handwritten signatures of John Owens and Diana Dullaghan. The signature for John Owens is written over the printed name, and the signature for Diana Dullaghan is written below it.

# TOWN OF FAIRFAX

OFFICE OF THE TOWN ATTORNEY

142 Bolinas Road, Fairfax, CA 94930  
Telephone 415.453.1584 Facsimile 415.453.1618

## MEMORANDUM

**TO:** Ann Welsh, Planning Director  
**FROM:** Jim R. Karpiak, Town Attorney  
**CC:** Michael Rock, Town Manager  
**DATE:** October 15, 2008  
**SUBJECT:** Process for 177 Frustuck

---

You asked me to articulate the reasons that the application of John Owens and Diana Dullaghan for development of a garage at 177 Frustuck should be processed as an application for a new use permit from the Planning Commission as opposed to having the Town Council consider a modification or revision of the entitlements for the property approved in 2004.

Under the Town Code, the decision of the Town Council on an appeal is final, and there is no provision for the Town Council later to modify entitlements. Instead, the function of considering modifications to existing permits is assigned to the Planning Commission pursuant to Section 17.024.080 of the Code. Section 17.024.110 provides that the process to be used for modification is the same process that is used for new use permits under Section 17.032. As a result, whether one deems this to be a request for a modification or a permit for a new project, the process to which the applicant is entitled in the Code is through the Planning Commission.

In my view it is better to consider this a new project, however, because the project contemplated by the 2004 entitlements is completed and already received signoff from the Town. As a result, the applicants would have a good case in saying that they have a right to have the garage application considered independently and evaluated on the basis of the facts and circumstances existing now, without reference to the situation in 2004 upon which the Town relied in making its 2004 decisions.

Of course, the decision on the Planning Commission will be subject to appeal to the Council, so the Council may eventually consider this application.

Please let me know if you have further questions.



**COPY**

# TOWN OF FAIRFAX

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

## NOTICE OF APPEAL

RECEIVED

OCT 23 2008

TOWN OF FAIRFAX

### FOR STAFF USE

Date: 10/23/08 Fee: \$ 105.00

Appl.# \_\_\_\_\_

Receipt# 1-29050

Recvd. By: \_\_\_\_\_

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 and Diana Dullaghan

Mailing address 177 Frustuck Ave zip: 94930 Day phone 4154568064

Property Address: same

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # 08-44

Planning Commission denial of Use Permit

The following are my reasons for appeal:

see attached 3 pages.

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 22 day of October, 2008

SIGNATURE OF APPELLANT: Diana Dullaghan

(4/94)

**TOWN OF FAIRFAX**  
**PUBLIC NOTICE REQUIREMENTS**  
**FOR ALL LAND USE ENTITLEMENTS**

Public notice is sent to property owners, residents and businesses for all land use entitlements including the following:

Zoning Change Amendments, Design Review, Variance, Use Permit, and Hill Area Development Permits. The area to be noticed is any parcel within 300 feet of the boundary line of the property that is the subject of the application.

When filing your application include a Notification Map and a Mailing List and Mailing Labels and stamps for property owners and residents to be notified as described below. The applicant is responsible for the accuracy of these materials. Erroneous information may require re-mailing or re-scheduling of the public hearing. When you file your application please sign and submit the attached affidavit stating that the required map, mailing list and labels have been prepared following these instructions.

The applicant prepares and provides the following:

1. A neighborhood notification map, mailing list and mailing labels
2. Postage stamps for each label
3. Completes the affidavit certifying the accuracy of the mailing list
4. Posts the site with an 11 inch x 17 inch Notice Form provided by the Planning Department.

If the approval of an application is delayed by unresponsiveness of an applicant, the address list and labels may have to be redone to ensure their accuracy.

Once Planning staff determines that an application is complete, they send a notice of completeness and provide the poster for the applicant. The poster is to be filled out by the applicant to describe the project. The poster is to be waterproofed and posted in a clearly visible location along the street frontage of the property at least 10 days prior to the public hearing.

The Planning Department provides the notices, reviews the mailing information provided by the applicant, and mails the notice.

**Mailing List:**

List the Assessor's Block and Lot Numbers for all lots within the Notification Map with the Names and Mailing Addresses of all the property owners and the Mailing Address for all residents and businesses. Include yourself and anyone else you wish notified. Please count the addresses and provide a stamp for each label.



Submit self-adhering **Mailing Labels** with this information, one name and address per label. For property owners, use the names. For residents and businesses, you may use either their name or "Occupant". Property Owners are those in the latest Assessors Tax Roll, available at the Marin County Assessor's Office

For Residents or Businesses you can get the number of dwellings or businesses on a lot from the property owner or building manager, or by counting the mail boxes, doorbells and any businesses. You may also use the reverse telephone directory at the library, use addresses shown on the mailbox, doorbell or reverse telephone directory, including any letter suffixes (134, 134A) or fractions (249, 249 1/2). If a doorbell or mailbox has a name but no separate street or apartment number, use that name for the mailing labels. There is usually a Resident anytime the Property Owner in the Townwide Tax Roll has a different mailing address.

In addition, a list of apartment/ multifamily renters is available on disk or in hard copy from the Planning Department. This list is an additional resource for creating the mailing list. Where the address of the owner differs from the location address of the property to be noticed, labels should be created for both owners and residents.

**Affidavit of Preparation of Notification Map,  
Mailing List and Mailing Labels for Public  
Notification for Land Use Public Hearing**

I, Diana Dullaghan, do hereby declare as follows:  
(print name)

1. I have prepared the **Notification Map, Mailing List and Mailing Labels for Public Notification** for in accordance with Planning Department guidelines. *Mailing label list was provided by town of Fairfax.*
2. I understand that I am responsible for the accuracy of this information, and that erroneous information may require re-scheduling the public hearing.
3. I have prepared these materials in good faith and to the best of my ability.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED ON THIS DAY, Oct 22, 2008 in the Town of Fairfax, California.

Diana Dullaghan  
Signature

October 21, 2008

Council Members  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930

Re: 177 Frustuck Avenue, Fairfax

Dear Council Members:

The reasons for my appeal of the Planning Commission decision include the following.

1. The actions of the Planning Commission are arbitrary and capricious. To start with, Commissioner Megs recused herself from the hearing at the outset turning the meeting over to Commissioner Lacks. Commissioner Megs was requested to recuse herself because of her bias. Incredibly, when there was three members in favor and three members opposed, she then cast a deciding vote against our application.
2. The Commission stated that it believed our request for a 400 square foot garage constituted a grant of special privilege when all of the information presented to the Commission was to the contrary. The Commission acknowledged that the property immediately next door, at 183 Frustuck, was granted permission to build a 575 square foot garage, which is almost 45% larger than the one we have proposed. In fact, the information provided to the Commission was that almost two-thirds of the homes in the neighborhood have covered garages (22 out of 35) and over 80% have covered parking (29 out of 35). There was absolutely no showing by anyone that any special privilege would be provided by the granting of the permit and if anything the doctrines of equity and equal treatment would be contravened by the denial of the permit rather than the granting of it.

3. The second reason given by the Commission in its denial was that the granting of this garage would cause excessive or unreasonable detriment to adjoining property owners. A petition was submitted to the Commission showing that every adjoining property owner approved of this project. There was not a single property either adjoining our's or even adjoining one of the adjoining property owner who disapproved of this project. A petition of 17 names of our direct neighbors in favor of the project was submitted to the Commission, yet ignored by the Commission. The Commissioners relied upon action taken by the Town Council on August 3, 2004 to say that adjoining property owners would be unreasonably affected when in fact at this point in time all of the adjoining property owners, after seeing the new designs of the project, are in favor of it.
4. The Commission next cited denial of the permit based on the garage being inconsistent and contrary to objectives, goals or standards of the Town of Fairfax. To the contrary, all of the information provided to the Council was that the granting of this permit would be consistent with everything that the Town is trying to achieve. The granting of permission for the garage would make the property more secure and present a more pleasing view for the neighborhood. Garbage cans would be able to be kept inside of enclosed structures. Automobiles and tools and equipment that often would be stored in my truck would be behind closed doors. In addition, by being able to store tools and equipment in a closed garage, it would avoid having to bring this property up and down over 20 stairs on a virtual daily basis.
5. The Commission cited that approval of the use permit would be in conflict with Town Code 17.052.020. To the contrary, there is absolutely nothing in Ordinance Section 17.052.020 which is inconsistent. The Town of Fairfax actually requires covered parking and garages and this ordinance merely makes it permissible for properties on a downslope to avoid that construction at the property owners option.
6. The Commission stated that view corridors would be affected and that visual obstructions would occur to those using the public roadway. There is absolutely no testimony of any kind given at the hearing to support this finding.
7. The Commission stated that granting of the use permit would not in the public interest or for protection or enhancement of the safety or welfare of the community. Absolutely no testimony was given to support this finding. To the contrary, providing a closed garage enhances the safety and welfare of the community. Testimony was supplied to the Commission to support this.

8. Each of the Commissioners who voted against approval specifically stated that they wanted the Town Council to decide this hearing and that this was one of the reasons for their negative votes. They stated that they believed they did not have the power or authority to treat this application as a new application when in fact the advice received from the Town's attorney was to treat it as a new application.
9. The Commission totally ignored the changes and circumstances which exist between the filing of this new application and the prior denial of the garage by the Town Council in 2004. The design of the garage is different than previously submitted. The voice of the neighbors and particularly the adjoining property owners is now all in favor of this project when it was previously against it under a different design and other project have been approved including the one next door at 183 Frustuck that would show that the denial of a garage would be inequitable and singling out this property owner where the Town has already shown that there is no reason to deny garages in this neighborhood and in this specific view corridor.



# TOWN OF FAIRFAX

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

October 17, 2008

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

## NOTICE OF PLANNING COMMISSION ACTION

RE: 177 Frustuck Avenue; 08-44

Request for a Use Permit to convert an uncovered parking deck to an enclosed garage structure which was previously denied by the Town Council on appeal; Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens, applicant/owner; CEQA categorically exempt, § 15301(e).

Dear Ms. Dullaghan and Mr. Owens,

At its meeting on October 16, 2008, the Fairfax Planning Commission denied the above referenced application.

### RIGHT TO APPEAL

You and/or any interested citizen have the right-of-appeal to the Town Council from any action of the Planning Commission within ten days of that action. Contact the Planning Department staff at the Fairfax Town Hall for further information on how to appeal a Planning Commission decision.

If you do decide to appeal, please note that additional sets of plans and/or other previously submitted information may be required for the appeal hearing.

If you have any questions regarding the Planning Commission action please do not hesitate to contact the Fairfax Department of Planning and Building Services.

Sincerely,

Linda Neal  
Senior Planner

EXHIBIT #

3

Commissioner Ramsay said that the structure could be useful habitable space without a bathroom, since plumbing would indicate a more intensive use. He does not believe the owner should be denied the use of the building as habitable space, and he is in favor of the parking variances

Chair Meigs is in agreement with the increase of space and the conversion of the structure, and indicated that a Deed Restriction should solve the concerns of the neighbors. However, she agrees with staff that the parking variance should be denied.

Commissioner La Motte noted that the structure would convert from one non-conforming space to another, and she is concerned that the homeowner is being held accountable for a possible future illegal use of the building. She favors the project, including the Deed Restriction.

**MOTION:** Moved by Lacques to deny Use Permit and Parking Variance No 08-43, at 51 Meernaa Avenue, based on the following reasons: The recommendations of the Police Department; the nature of the neighborhood and limitations on parking and traffic; the project as proposed could create a four-bedroom house with only two parking spaces or a second unit with only two parking spaces, where three are necessary; the proposed study addition is within the setback area, which would overburden the property and neighborhood.

The motion died because of the lack of a second.

**MOTION:** Moved by Ketcham, second Goyon, and passed, to approve Use Permit and Parking Variance No 08-43, at 51 Meernaa Avenue with the following conditions: That the Use Permit be granted to allow an art studio to be made habitable without plumbing; a Deed Restriction be recorded to prevent further development; that a Parking Variance be granted for reasons that the existing conditions will not change; that additional safety hazards would not be created by the granting of the Variance.

Commissioner Lacques added the amendment that the existing bathroom plumbing and fixtures in the artists studio will be abated, and La Motte added the condition that screening or landscaping be added between this property and the neighboring property, if feasible, to soften the view.

**AYES:** Goyon, Ketcham, La Motte, Ramsey, Hamilton  
**NOES:** Lacques, Meigs.

Chair Meigs advised the audience of any citizens right to appeal the Commission action if they are dissatisfied within 10 days.

## **2. 177 Frustuck Avenue; 08-44**

**Request for a Use Permit to convert an uncovered parking deck to an enclosed garage structure which was previously denied by the Town Council on appeal;**

**Assessor's Parcel No. 003-193-02; Residential Single-family RS 6 Zone; John Owens, applicant/owner; CEQA categorically exempt, § 15301(e).**

Planner Neal gave the staff report. She noted that a previous application had been denied by the Planning Commission, but approved on appeal with amendments, which she discussed in more detail.

Ms. Neal explained how the Slope Ordinance affected this project, and she said that the proposed garage needs a Use Permit for reasons she explained. She noted that properties that slope down from the road are exempt from the covered parking requirement. She went on to state that staff recommends the Commission uphold the decision of the Town Council and deny the garage based on the findings contained within the staff report, which include the approval of the garage at this stage would be inconsistent with the previous decision made by the Town Council.

In response to the Chair, Ms. Neal noted that the conditions requested by the Town Council have been met with the exception of a recorded Deed Restriction that was not undertaken. However, the applicant has indicated that he would submit the Deed Restriction.

In response to a Commissioner, Ms. Neal said that staff had not deemed story poles necessary, but that they can be erected should the Commissioners wish.

In response to Commissioner Goyan, Ms. Neal explained the changes to the design, noting that the garage has been redesigned and the parking pushed away from the neighboring lot.

In response to Chair Meigs, Planning Director Ann Welsh explained that a Use Permit is being sought on the advice of the Town Attorney. He thought this a more suitable action because the previous project had been finalized.

Commissioner Hamilton and Ms. Neal discussed lot size, with Ms. Neal noting that Use Permits are often sought due to the small size of lots in town.

In response to Commissioner La Motte, Ms. Welsh said that a new project has been presented, but the Commission should bear in mind the conditions of the previous permits should they wish to change them.

General discussion followed on project applications.

Following discussion between Commissioner Lacques, the Chair and Attorney Mayer, who was representing the applicant, the Chair said that she can remain impartial to the project and would continue to act as Chair.

Attorney Mayer, representing the applicant, confirmed that this is a new hearing and the conditions have changed. The neighbors now support the project, and he discussed other

reasons why the Use Permit should be granted, noting that other homes in the neighborhood enjoy the use of a garage. Furthermore, the garage will not affect the use of the project and a garage is desirable for reasons of safety.

In response to the Chair, Mr. Mayer discussed the reasons he believes the new structure should not be considered detached from the house.

Planner Neal and Commissioner Ketcham discussed the Deed Restriction pertaining to the storage unit under the parking deck.

Commissioner Goyon and Mr. Mayer discussed the construction of the foundation, and Chair Meigs discussed the height of the garage with the applicant.

In response to Commissioner Hamilton, the applicant discussed the redesign of the project, noting that this is a lower structure and there is sufficient space for storage at the rear of the garage and no loft is proposed. He discussed storage with Commissioner Ketcham.

In response to the Chair, Planning Director Welsh discussed the reasons why the applicant's Attorney advised that the structures should be considered attached. These reasons are recorded in the staff report and Ms. Welsh noted that the roof and foundation of the parking are attached to the house.

Senior Planner Neal noted that the Code defines detached structures, only, not attached.

Commissioner Hamilton noted that the Council have already stipulated that a garage was not to be constructed, and Ms. Welsh said that the Town Attorney advised that this project should be considered as a new application.

Commissioner Lacques noted that a project had been approved with a cardeck only.

The hearing was opened for public comment.

Niccolo Caldararo, 165 Frustruck, opposes the project because the lot is not conforming and the building is going to be taller than originally approved; that it will be larger and block views of Mount Tamalpais. He believes that if exceptions are continually being made, then the laws are ineffective, and that a decision has already been reached. Other homes have carports and those with garages tend to be screened. He believes that the house is too large for a small lot.

William Madsen, 109 Porteous Avenue, said that the project has changed, and he noted that a larger structure has been built next door to the applicant since the original application was submitted. He supports the project.



Shane Deal, 44 Belle Avenue, supports the project, as do many people in the community. It is a new project and design, and he noted that the project does not require a variance. It will improve the owner's life.

Frank Egger, 13 Meadow Way, discussed the problems associated with the project in the original application when a garage was proposed, and he noted that the conditions allowing only a parking deck should remain in place.

In response to the Chair, Planning Director Welsh discussed the planning process advised by the Town Attorney for this project.

General discussion on the application between staff and Commissioners followed. Staff advised the Commission that they need to make findings in order to approve the project.

Commissioner Ramsay said that the size of the house is reasonable and that the original decision was unfair to the applicant for reasons he explained. He believes it is unreasonable to deny the garage because others have garages and the proposal is of a reasonable size and should not affect the views of the neighboring properties to a great degree.

Commissioner La Motte believes that decisions made previously should usually be adhered to, but that the Town Attorney has advised this should be considered a new project. She believes that the garage addition is modest and supports the project with the finding that a special privilege would not be granted if the garage were allowed, and noted that the project meets setback requirements.

Commissioner Goyon feels there is an obligation to uphold the previous Town Council's decision, and that the neighbors most impacted do not appear to oppose the project. He has concerns about the construction, but believes that the garage is a reasonable size. However, the decision affects the whole Town, not just the neighboring properties.

Commissioner Lacques addressed view impacts, noting that the site is on the hillside where a garage would be highly visible. This was considered in the earlier application when it was denied and the property has not changed. A plan was submitted without a garage, and he believes that it is important for the Commission to preserve the integrity of the planning process by not reversing a key condition relating to the success of the previous application. He supports the staff's recommendation to uphold the decision of the Town Council to approve the residence with an uncovered parking deck.

Commissioner Ketcham said that the Town Council has made a decision that the Planning Commission is now being asked to reverse, and the response previously was perhaps based on the area not being as developed as it has subsequently become. He is concerned about view impacts and believes that the decision of the Town Council should be upheld, since the decision to deny a garage was specific.

Commissioner Hamilton believes that the feelings of the neighbors have been considered, which is important in the approval process. She expressed concern that the house and garage were not considered to be detached, which would have called for a height variance to be sought for the garage addition. She is also concerned that a garage has already been denied.

Chair Meigs believes that the Town Council made a decision that a garage should not be built on the property, which should be upheld by the Planning Commission.

The Commissioners discussed the height issue.

Commissioner Goyon expressed concern that plans showing the lowered garage height were not submitted prior to the meeting to allow the Commissioners to give it proper consideration. The applicant has tried to appease his neighbors with this design, but story poles would have been helpful.

General discussion followed on the way to move forward. Commissioner Ketcham said that it is more appropriate for the Town Council to make a decision for reasons he explained previously.

MOTION: Moved by Lacques, second Ketcham, and passed, to deny Use Permit Application 08-44 based on staff's recommendations and adopting their findings in the Staff Report, and adopting further findings that the project will impact the view corridor because the property is a hillside development; that it contradicts the prior decision of the Town Council to allow a cardeck in lieu of a garage; that it represents a piecemeal project by presenting it separately for consideration and attempting to change the design of the project at a later hearing.

Amended by the Chair to strike the piecemeal finding, which was accepted by Commissioner Lacques.

Hamilton would like to strike the view shed; that denial is based on the understanding that the Town Council has already made a decision. Lacques believes that view findings are specific and he denied Hamilton's amendment.

AYES: Goyon, Lacques, Ketcham, Meigs

NOES: La Motte, Ramsay, Hamilton,

#### DISCUSSION ITEMS

#### 3. Discussion of Revisions to Draft Mixed Use Design Guidelines

The Commissioners discussed the presentation of the materials.

#### APPROVAL OF MINUTES

Minutes from the meeting of September 18, 2008 will be reviewed at the November 20, 2008 meeting.

#### COMMISSIONER COMMENTS AND REQUESTS

There were no commissioner comments or requests.

#### ADJOURNMENT

Moved by Goyan, second by Meigs, and unanimously passed to adjourn the meeting at 11.10pm.

Respectfully submitted

Joanne O' Hehir  
Minutes Clerk



# TOWN OF FAIRFAX

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

## AGENDA

ADJOURNED FAIRFAX TOWN COUNCIL MEETING  
Fairfax Women's Club, 46 Park Road  
Wednesday, November 19, 2008 at 7:30 p.m.

7:30 PM – CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA AND AFFIDAVIT OF POSTING

### MEETING PROTOCOL

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

The Town Council will review the agenda at 10:00 P.M. to ascertain which items will be heard that evening and which, if any, will be continued to another meeting. Any matter not started by 11:30 P.M. will be continued to an adjourned or regular council meeting unless the Council votes to suspend this rule. Please turn all cellular phones off or place in silent mode.

### ANNOUNCEMENTS

New members welcome on the General Plan Advisory Committee  
New members welcome on the Fairfax Youth Commission, Ages 14 to 19, Ross Valley residents  
Vacancy on the Measure F Oversight Committee  
Vacancy on the Open Space Committee for an unexpired term to June 30, 2012  
Vacancy on the Parks and Recreation Commission for an unexpired term to April 30, 2009  
The deadline has been extended from October 15 to November 30, 2008 for the Fairfax Floodgate Grant Rebate Program for local businesses

**OPEN TIME FOR PUBLIC EXPRESSION (3 minute time limit per person)** - If you wish to address the Council, please approach the podium and state your name and address. Individuals have 3 minutes to speak, 5 minutes if representing a group. This is the time set aside for individuals wishing to address the Council on matters not listed on the agenda. State law (Government Code Section 54954.2) provides that Council is not permitted to take action and strictly limits the right of the Council to discuss any unagendized item unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

### INTERVIEWS AND APPOINTMENTS

1. Interview and appointment of candidate(s) to the General Plan Advisory Committee – Town Clerk

## PRESENTATIONS

2. Presentation of the Town's New Traffic and Speed Measuring Collection Device, Chief of Police
3. Presentation by Will Rigney, Director of External Affairs for AT&T on *Project Lightspeed*

## PUBLIC HEARINGS

4. Appeal of Planning Commission decision on Use Permit application #08-43 to deny installation of bathroom facilities in detached accessory structure at **51 Meernaa**, Residential Single Family, RS-6 Zone, Assessor's Parcel No. 002-092-19; Keith Hennessey, owner/appellant ; and Adoption of Resolution No. 2593, A Resolution of the Town Council of the Town of Fairfax Upholding the Decision of the Planning Commission on an Appeal of a Condition of Approval of a Project at 51 Meernaa Avenue - Planning
5. Appeal of Planning Commission denial of Use Permit Application #08-44 to construct a garage on an existing parking deck located at **177 Frustuck Avenue**; Residential Single Family, RS-6 Zone, Assessor's Parcel No. 003-193-0; John Owens and Diana Dullaghan, owners/appellants, and Adoption of Resolution No. 2594, A Resolution of the Town Council of the Town of Fairfax Making a Determination Regarding the Appeal of the Decision of the Planning Commission on a Project at 177 Frustuck Avenue - Planning

## REGULAR AGENDA

6. Update on code compliance issues and possible abatement concerning vacant commercial building (formerly the New Albion Bookstore) (oral report) – Building
7. Proclamation establishing Days of Remembrance to recall the aerial pesticide sprayings for the Light Brown Apple Moth, Bragman
8. (A) Second Reading and Adoption of Ordinance No. 738 An Ordinance of the Town Council of the Town of Fairfax Repealing Ordinance No. 736 (Approving the Marin Energy Authority Joint Powers Agreement and Authorizing the Implementation of a Community Choice Aggregation Program) – Town Attorney  
  
(B) Second Reading and Adoption of Ordinance No. 739, An Ordinance of the Town Council of the Town of Fairfax Approving the Revised Marin Energy Authority Joint Powers Agreement and Authorizing the Implementation of a Community Choice Aggregation Program – Town Attorney
9. Second Reading and Adoption of Ordinance No. 740, An Ordinance of the Town of Fairfax amending Sections 8.36.050 and 8.36.110 of the Town Code to require Town-initiated tree removals to obtain permits and adding a noticing requirement for emergency removals – Town Attorney

## REPORTS FROM TOWN OFFICIALS

COUNCIL REPORTS AND COMMENTS (Brief announcements and reports on Councilmember activities, including reports from meetings attended at Town expense)

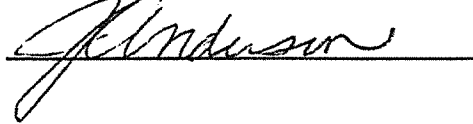
## ADJOURNMENT

If any of the matters described above are challenged in court, you may be limited to raising only those issues you or someone else raised at any public hearing described on this agenda, or in written correspondence delivered at, or prior to, this Council meeting. If you need an accommodation to attend or participate in this meeting due to disability, please contact Town Hall

at 453-1584.

Materials related to an item on this Agenda submitted to the Council after distribution of the agenda packet are available for public inspection on the public counter at Town Hall in a folder next to the agenda packet. Such documents are also available on the Town's website at "townoffairfax.org" subject to staff's ability to post the documents before the meeting.

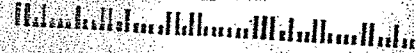
I, Judy Anderson, Town Clerk of the Town of Fairfax, County of Marin, State of California, do hereby certify that I posted a copy of this Agenda at three public places in the Town of Fairfax, to wit: 1) Bulletin Board, Town Hall Offices; 2) Bulletin Board, Fairfax Post Office, and 3) Bulletin Board, Fairfax Women's Club and that each of said postings was completed on the 14th day of November, 2008

A handwritten signature in cursive script, appearing to read "J. Anderson", is written over a horizontal line.

In an effort to make our agendas available in a more timely and efficient manner, we have created a noticing list for the distribution of Town Council agendas via email. If you would prefer to receive Town Council agendas via email, please provide your email address to the Town Clerk at [janderson@townoffairfax.org](mailto:janderson@townoffairfax.org)

# ROSS VALLEY NEWS

AUTO\*\*SCH 5-DIGIT 94960  
 DIANA DULLAGHAN  
 177 FRUSTRUCK AVE  
 FAIRFAX CA 94930-1906



VOLUME 55, ISSUE 43

A.M.

## Ross Valley In Brief

### Memorizing Mamet

The Ross Valley Players are holding auditions Sat., Nov. 1, and Sun., Nov. 2, for their upcoming production of David Mamet's "Glengarry Glen Ross," directed by James Dunn. The play opens Jan. 16, 2009, and plays through Feb. 22 at the troupe's Barn Theatre in Ross.

Winner of the 1984 Pulitzer Prize, "Glengarry Glen Ross" follows four small-time real estate salesmen pushing plots of land on reluctant buyers and trying to make a living by any means necessary, from lies and bribery to threats and intimidation. Drawing partly on Mamet's personal experiences in a Chicago real estate office, "Glengarry Glen Ross" is considered by many a masterpiece of American theater.

Dunn is auditioning non-equity actors for the play's cast of seven men, ranging in age from 25 to 50s. All parts are open. Actors should be prepared to read from the script and sides will be provided.

For an audition appointment, call Robert Wilson at 461-8927. For more information, go to [rossvalleyplayers.com/auditions](http://rossvalleyplayers.com/auditions).

### Bountiful Marin

Marin Master Gardeners present the new documentary "Hidden Bounty of Marin," a portrait of nine West Marin farmers and ranchers. The 30-minute video captures the daily lives of these

# Four-year ordeal to build a garage still unsettled

Jessica Segura  
Marinscope Newspapers

What does it take to build a garage in Fairfax?

For John Owens and his wife, Diana Dullaghan, four years of asking that question has been met with futility.

Last week, the Fairfax Planning Commission again denied the couple's application to convert an uncovered parking deck into an enclosed garage structure.

"Out of 37 homes, 23 of them have garages in this neighborhood," said attorney Allen Mayer, who is representing Owens and Dullaghan. "Almost two-thirds of the people in this community have a garage."

Owens and his wife have been fighting to get approval to build a garage on their Frustruck Avenue property since 2004, when the Fairfax Town Council overturned the Planning Commission's denial. In August of 2004, the commission denied Owens' application to convert the parking deck into a garage because it didn't see a need for it, also taking into consideration the many neighbors opposed to his request.

But as one neighbor said, it is no longer 2004, and Owens' neighbors opposing his garage is not the issue anymore. On the contrary, said neighbor Shane Deal, Owens now has the support of the community.

"They have 17 signatures, and that shows they are part of the community," said Deal. "We should give him the garage because he is part of

rules online and found that we didn't have to go through this restrictive process," he said. "We put in our application on Feb. 20 and the town charged us a number of different fees, which included Hillside Residential Development (HRD), Hillside Residential Permit and design review. The HRD is the most difficult permit of all. It's the most scrutinizing permit and it requires civil engineering, structure engineering, landscape plans, lighting plans and story poles."

A story pole is a blueprint of what the residents are requesting to be approved. The blueprint must be visible to the public and neighbors and must be put exactly where the building would take place. The blueprint must also be posted 10 days prior to the meeting, said Owens.

In Owens' case, he said he placed his story poles on Oct. 7, precisely where he had planned to build his garage.

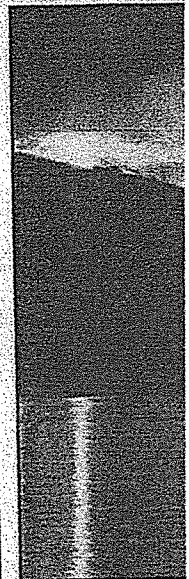
Fairfax Senior Planner Linda Neal pondered why Owens and his wife were asked to submit story poles by Planning Commissioner Pam Meigs if they had met all the conditions at the commission meeting.

"They have all been met — but one — and we usually don't require story poles," Neal said. "But being that this project has gone back and forth, we are requesting story poles."

Neal was referring to the fact that the debate over this project dates back to 2004.

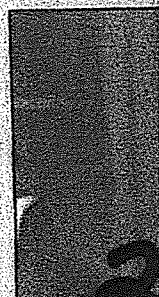
"I feel that this is pushing

## Ang



Angel Island State Park recent fire that because of the wind specific cause. Five acres of the 740-acre road will reopen and tram and service by the fire. Areas visitors. The fire and eventually on east side of the Bay Area. Low fire blaze's intensity. Refunds are being

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garage because he is part of the community.” Deal felt very strongly about the Planning Commission’s failure to grant his neighbor the right to build the proposed garage, and he had no problem speaking up on behalf of Owens at the Planning Commission meeting last week. Deal said the Planning Commission didn’t have a problem giving him the green light to build a two-car garage, but is giving Owens a hard time, which makes no sense to him.

Deal said all Owens wants is a small garage, 20 by 20 feet, to store work equipment, which Deal said is much smaller than the garage he is building in the same neighborhood.

“Owens isn’t getting any younger, and at 53 years old, he shouldn’t have to walk up and down those stairs every day and night to bring his tools up to his house,” Deal said.

Owens is a contractor, his job for 22 years. He said he simply wants a garage so that he can use it for one thing: to store his tools.

The application process is a thorough one, said Dullaghan, who also said that she feels they’ve been getting the runaround since they first turned in their new application in February to the Planning Commission.

Owens agrees, and said the commission has treated the couple extremely unfairly throughout this whole process. He said that the list of demands was endless, and the requirements seemed very unusual to him, so he started doing research on laws and regulations and requirements to see what he could find on his own.

“I read the town code and

“I feel that this is pushing it,” said Brannon Ketcham, planning commissioner. “I feel we should respect the Town Council’s decision. I think it’s important that it is their decision to make.”

Another reason Owens was not given the green light by the four commissioners who voted against him was that they felt the matter should be placed again in the Town Council’s hands.

“My main point is that we have done our work, we have spent numerous hours talking to the neighborhood,” Meigs said. “Let the council make the decision on this.”

But not every commissioner agreed with Ketcham and Meigs.

Planning Commissioner Terry Goyan said she could see the pros and cons of Owens wanting to build a garage on his property, “but it also does seem the garage is reasonable in size.”

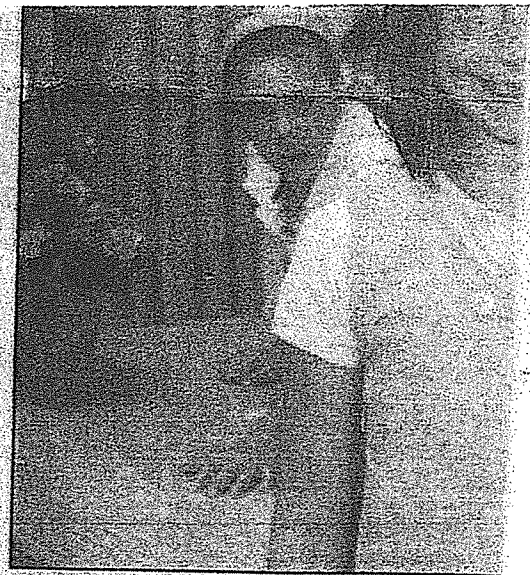
Planning Commissioner Peter Lacques strongly disagreed. “The garage is very visible and will block the view of Mount Tam.”

The meeting was concluded with the Planning Commission announcing that Owens lost, once again, in his ongoing battle to build his garage, and that the issue would be turned over to the Town Council.

But that isn’t stopping Owens or his wife from further pursuing permission to build their garage.

“We are going to appeal to the Town Council,” Owens said. Dullaghan agrees with her husband, and said she knew this was coming, which is why they hired an attorney.

“We hired an attorney because if they don’t approve it, then we’re going to sue,” said Dullaghan.



San Domenico School third-grader Amy Wentzel holds 10-inch bundles of her own hair, to be donated to children suffering from long-term medical-related conditions. Hannah Fowler and Ashley Thompson chose to challenge set forth by homeroom teachers Mary students to “Think globally and act locally.” San Domenico service learning project that’s personally relevant making a difference in the life of another. The project year and supports the many ways San Domenico

## Body found : may be a bac

Chris Rooney  
Marinscope Newspapers

The search for a San Rafael man reported missing last week ended badly, as the body of John David McCormick was found in Kentfield.

McCormick, 55, was reported missing Oct. 9, and his car was found later that night parked on Crown Road in Kentfield.

Family members told

police that McCormick had been upset over financial situation. Search crews spent a day combing the hills and trails of Kentfield and Phoenix Lake. McCormick was found just as he was wrapping up the dark terrain made recovery effort.

A Marin County Search and Rescue team located McCormick

**WIPEOUT**  
RESTAURANT

Eat...Drink...Surf.

Don't Wait!  
Book Your Holiday Party or Group Event at  
Private Room & Special Menus Available  
Bon Air Center 461-7400 (former Chevys location)

Burgers

Pizza

Tacos

Fresh Fish

Full Bar

Private



and our programs," said Harrington. "We hope that people will continue to donate."

— K. Dunleavy

were worried and we weren't even sure it we could stay open."

Loyster said she was thankful she lived in a caring, supportive community. "The community rose up in support of the library and

tions from loyal sponsors. The George Lucas Educational Foundation gave \$100,000 and the Ross Valley Rotary Club has given the library \$3,500 each summer for the past two years for summer reading programs," Loyster said.

# Four-year wait results in new garage

Jessica Segura  
Marinscope Newspapers

Persistence paid off for John Owens and Diana Dullaghan of Fairfax.

After a lengthy process involving more than one level of local government, the couple finally received the green light from Fairfax's Town Council to convert their parking deck into a 20-by-20-foot garage.

The couple walked out of the meeting at the Fairfax Women's Club satisfied after the council gave them the go-ahead by a 2-1 vote on Nov. 19. Councilman Larry Bragman recused himself and David Weinsoff was not at the meeting.

The Planning Commission

had denied the plan, causing Owens' appeal to the Town Council. The couple had been fighting for four years to get the garage approved.

Owens, 53, who works in construction, will now have a garage adjacent to his Frustuck Avenue home to store his tools.

A neighbor speaking on his behalf at a previous meeting said Owens shouldn't have to tote the tools — some of them bulky and heavy — up and down 20-plus stairs.

"The past 10 months were a big waste of resources because the end result was inevitable," said Owens of the ongoing saga.

Owens said he thought he finally got the green light

"because the town couldn't come up with any legal reason to prevent us from building."

His claim seemed to have merit, as the Town Council couldn't find a legal reason to turn away Owens' appeal. No local ordinances or design codes were being broken.

Mayor Mary Ann Maggiore and council member Susan Brandborg felt the plans had come a long way since 2004, when first presented to local officials.

"I feel we are looking at a new application," said Brandborg. "A garage is better than a port. I support approving the application appeal."

Maggiore echoed

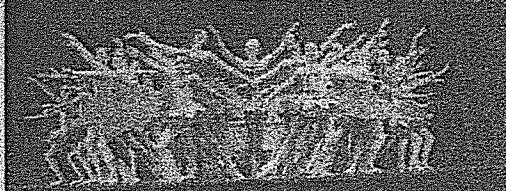
Brandborg's sentiments, but Councilman Lew Tremaine was not willing to change his opinion from the first time he saw the garage plans. "I can't vote for this — new project or not," he said. "I disagree and will not vote on this for the same reason I denied Owens' application four years ago."

Despite the victory, Owens couldn't help but feel that "it was just a long drawn out process, and a waste of the Town Council's money."

Even though the couple received the council's approval to move forward, they still have one step to go.

"The next step for us is to apply for a building permit," said Owens.

## Stapleton Ballet



Photos by Abigail Tarschis

20th Anniversary production of the holiday classic

# Nutcracker

Sat & Sun, Dec. 6 & 7  
1:00 p.m. & 5:00 p.m.

Marin Veterans  
Memorial Auditorium

Tix: 415.4  
stapletonsc

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

November 3 , 2013

Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

Outcome of 3.20.2008 denial of garage and 8.25.08 rejection of patio

March 20 2008 Notice from Ms. Neal that our Planning application for a garage and second unit were incomplete. The letter asked for eighteen items to be corrected ( basically an outright effort to make it impossible to pursue our garage). After months of wasted time it was determined that twelve of the items were not required by Town Code and were eliminated as requirements. The two most significant of the eighteen requests were for a height variance , and a Hillside Residential Development Permit. These were not required and eliminated. The garage was eventually approved without any special requirements or variances. This was only after the Town Attorney had recommended in public meetings not to pursue the attached / detached issue which required the height variance due to the Town not having any code to support Ms. Neal's theory.

August 2008 We applied to construct a patio on the lower part of our property. We applied for a building permit over the counter with engineered plans. Ms. Neal became involved and viewed the patio as a " retaining wall with a fence on top" stating that we would need to go before the Planning Commission for a variance. After months of wrangling the actual Town Code was upheld ( by Anne Welsh Planning Director, Larry Kennings interim Planning Director, and Mark Lochaby Building Official ) and we built a landscape accessory structure ( patio) with a 42" guardrail permitted over the counter by the Building Official with no variance.

Best regards,

John Owens & Diana Dullaghan