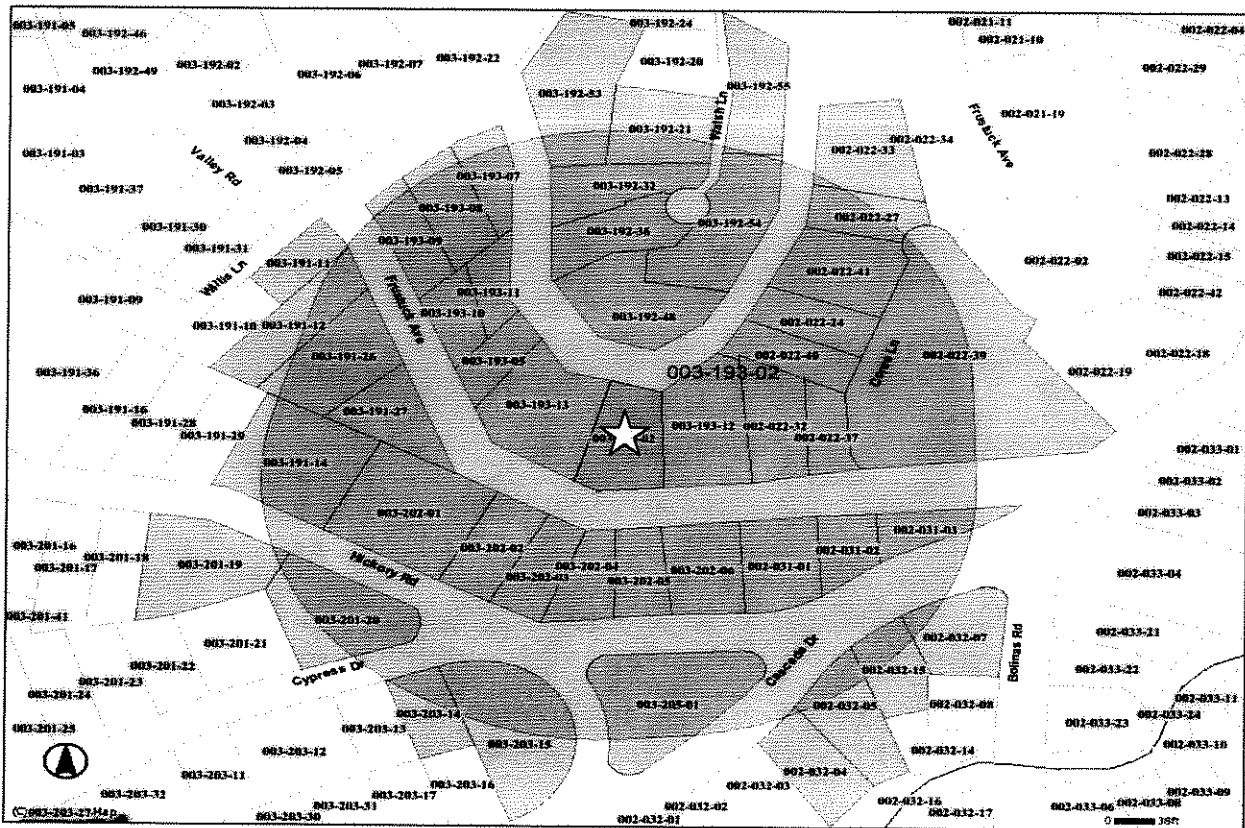


**TOWN OF FAIRFAX  
STAFF REPORT**  
Department of Planning and Building Services

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



**177 FRUSTUCK AVENUE**

## BACKGROUND

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

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

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

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

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

## DISCUSSION

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

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

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

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

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

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

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

### Vegetation

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

### Excavation

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

## **Parking**

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

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

## **Second Unit Regulations**

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

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

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

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

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

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

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

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

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

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

### **Precedent Setting Policy Issues**

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

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

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

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

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

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

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

#### **Ross Valley Fire**

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

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

Smoke detectors and carbon monoxide alarms shall be provided.

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

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

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

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

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

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

### **RECOMMENDATION**

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

#### ATTACHMENTS

Exhibit A – Applicant’s supplemental information

Exhibit B – Resolution No 09-56

Exhibit C - Minutes from the July 1, 2009 Town Council meeting and the February 19, 2009 Planning Commission meeting.

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

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

August 8, 2013

Via Email and Hand Delivery

Planning Commission  
Town of Fairfax  
142 Bolinas Road  
Fairfax Ca 94930

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

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

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

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

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

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

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



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

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

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

### **§ 17.048.010 PURPOSE.**

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

### **§ 17.048.090 EXCEPTIONS.**

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

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

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

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

### **Greatest Exception**

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

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

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

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

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

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

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

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

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

Thank you for your consideration.

John Owens & Diana Dullaghan

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

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	8943	8943
Size of structure(s) or commercial space (square feet)	2093	2653
Height and No. of stories	35' - 3	35' - 3
Lot coverage	1424	1424
No. of dwellings units	1	2
Parking <sup>1</sup>	No. of spaces	5
	Size of spaces	4x9'x19' 1x8'x16'

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

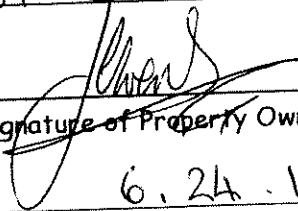
Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

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

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

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

Signature of Property Owner



6.24.13.

Date

Signature of Applicant

Date

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

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

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

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

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

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

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

## SUPPLEMENTAL QUESTIONNAIRE & DRB APPLICABILITY

### DESIGN REVIEW

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

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

### DESIGN REVIEW APPLICABILITY

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

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

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

#### 2. Multiple family Design Review

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

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

SUPPLEMENTAL QUESTIONNAIRE

VARIANCE

VARIANCE (S) REQUESTED:

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

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

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

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

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

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

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

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

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

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

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

## Variance - Additional information required.

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

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

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

1. — No physical change to structure.

2. Variances are consistent with variances granted for previous second units.

3. Financial hardship — previous 2nd unit applications were approved affording the applicants income from their units.

4. Fairfax is required to provide 108 housing units by 2014. This unit would be an affordable housing unit to house a needy person.



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

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

Same privileges granted to previous  
second unit applicants

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

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

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

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

**RESOLUTION NO. 09-56**

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

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

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

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

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

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

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

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

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

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


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

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

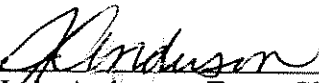
1. The Council upholds the decision of the Planning Commission, which denied the Use Permit application #09-02 for 177 Frustuck Avenue

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

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

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

Attest:

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

# 7/1/09 TOWN COUNCIL MINUTES

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

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

## Health Care Costs

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

## Other Budget Discussion

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

Mayor Weinssoff opened the public hearing.

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

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

Mayor Weinssoff closed the public hearing.

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

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

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

Roll Call Vote:

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

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

Planning and Building Services Director Moore presented the staff report.

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

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

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

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

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

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

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

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

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

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

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

Mayor Weinsoff closed the public hearing.

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

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

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

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

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

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

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

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

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

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

Roll Call Vote:

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

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

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

AYES: All

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

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

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

Commissioner Meigs was in agreement with Commissioner Goyan.

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

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

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

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

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

AYES: All

The Chair read the appeal rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

Commissioner Ketcham and Mr. Owens discussed the parking variance.

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

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

Chair Lacques opened the meeting to the public.

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

Chair Lacques closed the meeting to the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ayes: Meigs, Lacques, Ketcham,  
Noes: Ramsay, LaMotte

Motion passed.

Chair Lacques read the appeal rights.

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

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

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

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

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

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

Commissioner Meigs left the meeting at 10.35pm.

Discussion Items

Preliminary discussion on the Circulation Element.

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



Ross Valley Fire Department  
777 San Anselmo Ave  
San Anselmo, Ca 94960  
Ph. 415-258-4686

**FIRE DEPARTMENT PLAN REVIEW**

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

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

TYPE OF REVIEW: Planning E-mail: [Rbastianon@rossvalleyfire.org](mailto:Rbastianon@rossvalleyfire.org)  
Bldg. Dept. 07/1/13 Fire Dept. # 13-0213 Review No. 1  
Fire Department Standards can be found at: [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

Applicant\*: Planning  
Address: Fairfax Ca

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

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

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

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

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

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

Inspections required:

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

**EXHIBIT # D**



Ross Valley Fire  
Department

777 San Anselmo Ave  
San Anselmo, Ca 94960  
Ph. 415-258-4686

## FIRE DEPARTMENT PLAN REVIEW

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

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

TYPE OF REVIEW: Planning E-mail: [Rbastianon@rossvalleyfire.org](mailto:Rbastianon@rossvalleyfire.org)  
Bldg. Dept. 07/1/13 Fire Dept. # 13-0213 Review No. 1  
Fire Department Standards can be found at: [www.rossvalleyfire.org](http://www.rossvalleyfire.org)

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

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

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



# MARIN MUNICIPAL WATER DISTRICT

JUL 16 2013

RECEIVED

220 Nellen Avenue Corte Madera CA 94925-1169

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

July 15, 2013  
Service No. 62323

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

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

Dear Ms. Neal:

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

1. Complete a Standard Water Service Application.
2. Submit a copy of the building permit.
3. Pay appropriate fees and charges.
4. Comply with the District's rules and regulations in effect at the time service is requested.
5. Comply with all indoor and outdoor requirements of District Code Title 13 – Water Conservation. Plans shall be submitted, and reviewed to confirm compliance. The following are required:
  - Verification of indoor fixtures compliance
  - Landscape plan
  - Irrigation plan
  - Grading planAny questions regarding District Code Title 13 – Water Conservation should be directed to Water Conservation Department at (415) 945-1497. You can also find information about the District's water conservation requirements online at [www.marinwater.org](http://www.marinwater.org).
6. Comply with the backflow prevention requirements, if upon the District's review backflow protection is warranted, including installation, testing and maintenance. Questions regarding backflow requirements should be directed to the Backflow Prevention Program Coordinator at (415) 945-1559.

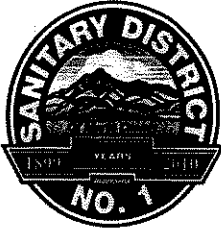
If you have any questions regarding this matter, please contact me at (415) 945-1532.

Sincerely,

Joseph Eischens  
Senior Engineering Technician

JE: mp

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



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

RECEIVED  
JUL 10 2013  
TOWN OF FAIRFAX

July 10, 2013

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

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

Dear Ms. Neal:

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

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

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

Sincerely,

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



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

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

**LETTER OF TRANSMITTAL**

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

**Date: June 27, 2013**

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

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

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

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

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

REMARKS: NO COMMENTS AT THIS TIME

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

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

*Attn: Sergeant Stuart Baker*

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REMARKS:           No Police Concerns SB          

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