

**TOWN OF FAIRFAX**

**STAFF REPORT**

**Department of Planning and Building Services**

**TO:** Fairfax Planning Commission  
**DATE:** March 15, 2018  
**FROM:** Planning Staff  
**LOCATION:** Town wide.  
**ZONING:** All Zones  
**ACTION:** Provide staff direction on Zoning Ordinance Amendments for recommendation to Town Council

**BACKGROUND**

At the February 15, 2018 meeting the Planning Commission discussed and then voted on which of the attached list of possible Zoning Ordinance amendments should be recommended to the Town Council (Attachment A). The staff used a reverse numbering system to determine the priority ranking (please note that some of the items received the same numerical ranking and are therefore labeled with a number and letter, i.e. 7a and 7b).

What follows in this report are brief discussions of each item including possible action that could be taken by the Commission to implement the suggested code change(s).

**DISCUSSION**

**(1) Consider an Ordinance limiting the time an application can remain incomplete.**

A search of other agency codes revealed that at least two, San Anselmo and the County of Marin, have similar ordinances:

**San Anselmo**

- **10-1.07 - Withdrawal of inactive applications.**

*The Planning Director has the authority to deem withdrawn any application filed under Title 10 Planning and Zoning, that has been inactive for 180 days or more. An application is inactive when requested materials, funds, or other information necessary to process the application are not submitted by an applicant or an applicant's representative. Once an application is deemed withdrawn, the applicant will be required to submit a new application, including fees, plans, exhibits and other materials, in compliance with this Title to secure a permit.*

## County of Marin

- **Expiration of application.** *If the information required by the Agency, for completeness review, is not submitted within the time limits listed below, the discretionary permit application shall expire unless the applicant requests an extension prior to the expiration date, and the Director grants the extension.*

**General time limit.** *An incomplete discretionary permit application shall expire 30 days following the date the Agency provides written notice that the application is incomplete, unless the Director grants extensions, not to exceed one year. This time limit shall not apply to Section 22.40.050.B.5.b (Initial Application Review for Discretionary Permits - Enforcement cases) below.*

**Enforcement cases.** *An incomplete discretionary permit application, submitted to resolve a code enforcement matter, shall expire 30 days following the date the Agency provides written notice that the application is incomplete, unless the Director grants extensions not to exceed a total of 90 days. See Chapter 22.122 (Enforcement of Development Code Provisions) for further information.*

**Time extension request.** *The applicant may request additional time to submit the information required by the Agency to determine completeness of the application. The applicant shall request an extension, in writing to the Director, prior to the expiration of the time limit for completeness, as stated in Section 22.40.050.B.5 (Initial Application Review - Expiration of application), above.*

**Resubmittal after expiration of application.** *In the event that a discretionary permit application expires, the applicant may submit a new application, and all required fees, to the Agency in compliance with this Development Code, and the application review process will begin again.*

There are several benefits to enacting a similar change to Fairfax's code:

- It minimizes the possibility that Town Code other governmental regulation may change mid-review, complicating the process.
- It minimizes the possibility of staff turnover during the project submittal. Although this hasn't been a significant problem in most instances in Fairfax, when it does occur it adds considerable uncertainty on both sides of a review process.
- Stale information. Many technical reports (engineering, etc.) contain expirations, some for the information received above.
- Lack of progress on an application is typically indicative of changed circumstances on an applicant's part that will significantly impact their ability to successfully pursue the project to successful completion. It is better to

withdraw/expire an application and have an applicant resubmit when circumstances permit completion in a timely manner.

**(2a) Change the Town definition of 50% remodel to match the Ross Valley Fire Department's Definition which is also contained in the Fairfax Building Code.**

### **Ross Valley Fire**

Fairfax Town Code § 15.041.015 [Buildings and Construction] reads "Substantial remodel shall mean the renovation of any structure, which combined with any additions to the structure, affects a floor area which exceeds fifty percent of the existing floor area of the structure within a twelve month period. When any changes are made in the building, such a walls, columns, beams or girders, floor or ceiling joists and coverings, roof rafters, roof diaphragms, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in computing floor areas for the purposes of applying this definition. This definition does not apply to the replacement and upgrading or residential roof coverings, repair or replacement of foundations, the installation of energy efficient windows of like size, or the removal of interior wall coverings solely for installation of insulation".

### **Zoning Ordinance**

Town Code § 17.008.020, [Zoning] Definitions, "Fifty Percent Remodel, the renovation of any structure that affects more than 50% of the existing floor area of the structure, expands that floor area by more than 50% or results in the addition of a bedroom, as measured in accordance with § 17.016.040 of this title". Section 17.016.040, clarifies that affects is defined as, "when any changes are made in the building, such as walls columns, beams or girder, floor or ceiling joists, roof rafters, roof diaphragms, foundation, piles or retaining walls or similar components, the floor area of all rooms affected by such changes shall be included in determining affected floor area".

The difference between these two definitions are subtle, but could result in differences in how a project is evaluated. The Buildings and Construction Chapter uses "substantial remodel" while the Zoning Chapter refers to "50% remodel" and also stipulates that the addition of a bedroom also graduates a project to the 50% level.

Ross Valley Fire uses the "substantial remodel" definition to trigger the installation of fire sprinklers in a home.

The Zoning Ordinance uses the "50%" remodel definition to trigger either the installation of additional parking on sites that do not meet the current parking requirements, or to require that the Planning Commission review the project. They may in turn grant a parking variance to allow the expansion without the provision of additional parking.

The code can recommended for amendment however the Commission desires. However, the consensus of the Commission and the Town Council at the time the Zoning definition was adopted in 2009 was that houses, particularly in the hillside areas, should not be increased in size or add additional bedrooms, without the

provision of conforming parking, or the approval of a variance based on findings by the Commission. Keep in mind that the State of California does not allow municipalities to limit the number of adults that can use each bedroom below two so every bedroom addition could result in 2 more adults driving to a site and trying to park their vehicles along the public roadways.

**(2a,b,c) Covered Parking, Tandem Parking and Parking in the Side Yard Setback**

Town Code § 17.052.010(D) requires, “At least one of the off-street parking spaces for a residential unit must be covered, except as set forth in § 17.052.020”. TC § 17.052.020(C) exempts properties from have a covered parking spot if they have a slope of greater than 15%, and slope down from the street access. See Attachment B for a visual depiction of what constitutes a 15% slope.” A 15% slope is fairly shallow, so many of the properties in Town are already exempt from the covered parking requirements. The state in it’s new Accessory Dwelling Unit Statute now directs that garages may be converted into Accessory Dwelling Units without discretionary review, and does not allow jurisdictions to require replacement parking to be covered, or in many (most) cases in Town, require any parking at all.

Rather than unduly burden the relatively few applicants who would be subject to the covered parking requirement under Town Code, staff recommends eliminating the covered parking regulation.

Historically, tandem parking and parking in the side yard setback were commonly found throughout the older housing developments in Fairfax. Craftsman style residences often had their driveways run alongside the house to a garage in back or along the side of the house. Driveways and garages were also often only 1 car in width.

The prohibition of tandem parking was put in place in 1973 but the Council minutes are silent on why this particular prohibition was included in the parking ordinance. The new State ADU regulations prevent jurisdictions from prohibiting tandem parking and from prohibiting parking in the side yard setback in conjunction with ADU’s. Many of the Town’s housing stock already has legal non-conforming tandem parking and parking in the side yard setback.

Staff can only guess that the tandem parking prohibition was included because it is easier to get out of parking spaces that are not blocked by other vehicles and jockeying cars around to get out of a blocked tandem space is not as easy as just pulling into and out of a dedicated perpendicular space. Perhaps some residents would park in the street rather than deal with the hassle.

Town Code also allows any required 3<sup>rd</sup> guest parking space to be in tandem with one of the required “main” parking spaces for a residential unit. The prohibition of parking in the side yard setback may have had something to do with vehicles in the early 1970’s being noisier and more polluting, emitting noxious fumes to (presumably) adjoining residences.

Insofar as the State does not allow any type of additional parking to be required for most ADU's in Town, and that tandem parking cannot be prohibited for such units, it again appears unfair to burden a resident with no ADU with more stringent parking requirements than a property with two dwelling units.

### **(3) Substandard Parcels**

In 1973 the Town adopted its current Zoning Ordinance which included hill area residential development regulations and increased all the setback regulations and minimum lot size and width requirements for all residential properties. The code change dramatically increased the minimum parcel sizes for all for sloped parcels. The result of the changes were that roughly 90 % of the residentially zoned properties in Town became legal non-conforming, either with respect to their lot sizes or their existing setbacks. At the same time the Town included code language in all the residential zone districts equivalent to the following code provision:

*Except as otherwise provided in §§ 17.044.030 through 17.044.050 of this title, a use permit or hill area residential development permit (HRD) must be first secured in the RS-6 zone for any use, occupancy or physical improvement of or on a building site failing to meet the following requirements:*

*(A) Minimum area of 6,000 square feet and minimum width of 60 feet with a slope of ten percent or less;*

*(B) The minimum building site area shall be increased by 300 square feet for each one percent increase in slope over ten percent to and including 15 percent; and the minimum width shall be increased by one foot for each 500 square feet of additional area required;*

*(C) Building sites having a slope of more than 15 percent, shall increase in area above 7,000 square feet, and a minimum width of 65 feet, at a rate of 1,000 square feet of area and three feet of width for each one percent increase in slope; and*

*(D) Fractions shall be disregarded and dropped in all computations made under this section.*

These changes have resulted in almost every single-residential project in Fairfax requiring some ministerial approval from the Planning Commission. As a result of this, Staff currently encounters only 1 to 2 permits per year that can be processed at a staff level.

Staff recommends that the Commission recommend allowing projects that comply with all the regulations for the zone district the property is located in, with the exception of lot width, to be administratively approved by staff. Compliance standards would include setbacks, height, FAR and lot coverage, and they would not be 50 % remodels. 50%

remodels and projects not complying with the regulations on substandard parcels or on parcels with substandard parking for the zone they are located in would still come before the Commission.

Examples of projects that have had to be heard by the Planning Commission in the last couple years, that could/would be processed by staff include: closet addition, window seat addition, bathroom addition, conversion of an existing porch into additional dining room space, and two entryway additions - one 18 square feet and the other 50 square foot in size, several fences, conversion of existing unfinished space to storage and slide repair retaining walls.

Changing the review of such projects to administratively by staff would:

- Result in the same level of regulatory review as currently, but would not involved a public hearing before the Planning Commission.
- Free up considerable staff time, and Planning Commission time, to focus on more substantive program activities such as being discussed elsewhere in this meeting's agenda.
- Reduce the time and expense burden on homeowners and other applicants, thereby reducing the incentive to install improvements without any necessary Town approvals.

As a side note, the Town Code regulation that triggers discretionary review for lot width should be considered for elimination in light of the regulatory and procedural burden it places on a significant percentage of property owners in Fairfax for no reason other than their parcel does not meet minimum width standards.

#### **(4) Tree Ordinance**

Staff is recommending that the Town Arborist review and make recommendations for possible amendments to Town Code Chapter 8.36. Amendments to be potentially considered include:

- 1) Staff review of tree removal permits that are submitted with a report by an ISA Certified Arborist that does not provide tree cutting services indicating a tree is diseased or dying to a point where it is not salvageable;
- 2) Staff review of tree removal requests where the tree is damaging a residence.
- 3) With pre-training, provide the Planning Commission with authority to review tree removal permits for projects they are reviewing that also involve proposed tree removals. Currently, the bifurcated review of all such projects results in a 'tail wagging the dog' situation wherein the Planning Commission has already approved a project that necessitates tree removal, and the Tree Committee is in the unenviable position of subsequently supposedly approving or denying a tree removal permit, denial of which would require a project to go back before the Planning Commission for amendment.

Staff is confident that the Planning Commission can competently make such decisions with adequate training and recommendations from appropriate ISA-certified professionals (and occasionally review/recommendations from the Town Arborist when necessary).

These changes would not reduce the level of review for any proposed tree removal, but would substantially reduce the procedural burden currently experienced by many applicants.

#### **(5) Permits That Could Be Processed Ministerially**

Fence height variances. With adoption of appropriate design standards, authorize staff to approve exceptions to the height limits and if the standards are met. For example, some people would prefer to step their fences down the hillside which often results in small portions of the fence exceeding the 6 foot setback. Also, we have residential properties adjacent to each other but at significantly different elevations. Limiting a side fence to 6 feet, currently measured from the lowest side of the fence, results in the higher properties only having a 4 foot side fence, resulting in a privacy impact on the downhill neighbor. The Commission should consider recommending code amendments to allow ministerial review/approval of fence height exceptions in these types of situations.

Encroachment permits. Structures such as uncovered parking decks, entry stairs and fences require Planning Commission approval if they encroach into the public right-of-way. Encroachment permits are revocable. If the Town ever needs the public right-of-way, structures approved in the right-of-way could be removed. Language can be crafted to allow staff encroachment permit review/approval where a structure meets standards (for example, steep slopes, where it would not eliminate an existing on-street public parking space, etc.)

Monument signs, entryway arbors connected to front fences, open shade arbors that exceed the permitted 15 foot height limit for accessory structures but otherwise meet the applicable setback regulations, etc. could be approved at a staff level.

Use Permits for the use of accessory structures as living space. The Town Code only allows accessory structures to be used as storage/tool sheds, garages, pool cabanas. The Town receives several applications per year from applicants wanting to build accessory structures for living space for uses that include home offices, art studios, yoga studios, meditation rooms, etc. Town Code could be amended to allow staff to review approve these types of structures provided they meet certain standards, (for example, minimal plumbing - only a ½ bath or utility sink).



## **(8) Discretionary Permit Expiration Periods**

Town Code sections 17.072.140 and 17.028.090 contain expiration time limits for Hill Area Residential Development Permits and Variances where an applicant does not obtain a building permit within 1 year of approval. The Town Attorney has recommended a similar expiration period be applied to all discretionary permits. Currently Use Permits, Design Review Permits, Excavation Permits and Sign Permits have no expiration language included in the Code, with the occasional result that projects are not completed in a timely manner and there is no penalty for not doing so.

### Additional considerations

All administrative decisions by staff are appealable per Town Code Chapter 17.036. Staff could also easily include language in the above streamlining code amendments that projects could be referred to the Planning Commission if they involve substantial policy issues or public controversy.

Encroachment Permits are revocable and applicants who are granted encroachment permits sign and notarize a revocable encroachment permit which staff records at the Marin County Recorder's Office prior to issuance of the building permit for any improvements in the right-of-way, to memorialize that the revocable nature of such permits is understood and agreed-upon

## **RECOMMENDATION**

Direct staff on recommendations and rationale for Zoning Code Amendments, for consideration by the Town Council.



**COMMISSION LIST OF ZONING ORDINANCE AMENDMENTS TO DISCUSS AND CONSIDER**

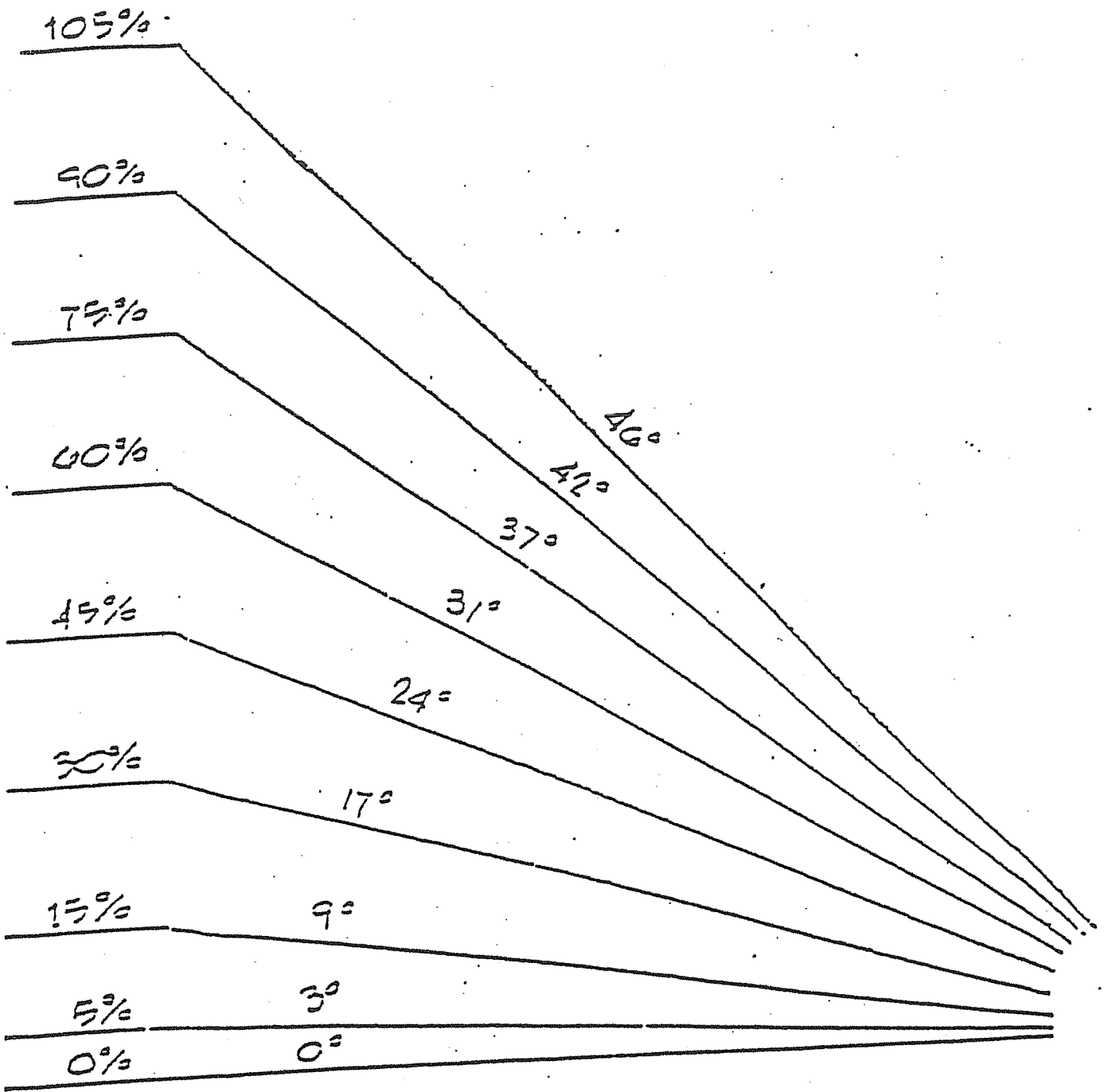
points 1 = 3 pts.  
2 = 2 pts.  
3 = 1pt.

SECTION TOPIC	PROPOSED CHANGES	CODE CHAPTERS/SECTIONS	STATUS	NOTES			
1 (13)	incomplete application time limits	Consider ordinance limiting the time an application can remain incomplete				NF(3), MN(2), CS (1)	6 points
2(a) (3)	50% Remodel	Change to match Ross Valley Fire Definition		use of the word "significant" instead of "50%" and eliminate "or the addition of a bedroom" language		EG (1), NF (2)	5 points
2(b) (6)	Covered parking	Consider eliminating the requirement	17.052.010(D)			EG (2), LK (1)	5 points
2(c) (7)	Tandem parking	Consider revising- currently prohibited except for the guest space	17.052.040(E)			EG (2), LK(1)	5 points
3 (10)	Preservation of open space	Consider adopting regulations requiring retention of natural areas				MN(1), LK(3)	4 points
4 (11)	Substandard parcels	Consider amending the requirement that all modifications require a Use Permit	17.076.050 RS7.5; 17.080.050 RS, 17.084.050 RD5.5-7; 17.088.050 RM	must include fiscal impact analysis		PG (1)	3 points
5(a) (5)	Tree Ordinance	Review to clarify and consider amending regs., consider including an over the counter process for certain tree removals	Chapter 8.36			LK (2)	2 points

5(b) (9)	Solar	Include site specific report for application and consider requiring installation based on site specific reports				PG(2)	2 points
5(c) (12)	Common agenda items	Consider making items commonly heard ministerial	17.044.080, fences; 12.32.020, encroachments; 17.064.060, signs; 17.076.050(A), 17.080.050(A), 17.084.050(A) & 17.088.050(A)(1), residential sites with 10% or less slope and stable soils; 17.020.030(B);		fence height, encroachment, driveways (width and second drives), signs, use permits for additions under 500 s.f. on sites with under a 10% slope with stable soils), design review for minor exterior changes, etc.	NF(2)	2 points
5(d) (16)	Use Permits & Design Review Permits	Include an expiration date for use permits and DRB permits that are not activated via issuance of a business license/building permit			Variances expire in 1 yr. if construction is not started on the project.	CS (2)	2 points
6 (8)	Green Building	Consider adopting a Town specific ordinance		Building Code currently includes green regulations		PG (3)	1 point
7 (4)	Accessory dwelling unit ordinance	Decreasing min. and increasing max size limits, eliminating survey requirement, eliminate/decrease	Chapter 17.048	all regs superseded by state law, TC considering code to comply with state law		MN (3)	1 point

		parking requirement					
8 (21)	Lot Coverage	Include impervious surfaces to match definition	17.008.020, Definitions, 17.40.010, Lot Coverage			EG (3)	1 point
DISCUSSION ITEMS							
<p>Require a solar analysis for projects and if possible, require solar installations</p> <p>Discuss possible ordinances to preserve the natural state of the area</p> <p>Fourth story Ordinance and its analysis</p> <p>Pastor/Willow traffic issues</p>							





## SLOPE LEGEND

2:1	= 1/2	= 50%	= 26.6°
1.5:	= 1/1.5	= 66.6%	= 33.7°
1:1	= 1/1	= 100%	= 45°
H:V	= V/H	= Vertical	= Rise
		= over	= over
		Horizontal	Run