



TOWN OF FAIRFAX

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

TO: Planning Commission

DATE: July 19, 2018

FROM: Ben Berto, Planning and Building Services Director

SUBJECT: Zoning Ordinance amendments to consider reducing maximum residence size

BACKGROUND

Following the Town Council's introduction of a potential reduction in maximum allowable house size at its May 2, 2018 meeting, the Planning Commission reviewed available options at their May 17 and June 21, 2018 meetings.

At their May 17 meeting, the Commission discussed a wide variety of housing size-related issues including: undeveloped residential properties, restoration/ reconstruction of remodeled or damaged non-conforming structures, other jurisdictions' regulations, getting the word out concerning the proposed changes, accessory dwelling units relationship to such a regulation, accessory structures and habitable versus non-habitable floor area. The Commission continued their discussion to the June meeting.

At their June 21 meeting, the Commission evaluated other Marin residential size regulations, numbers of non-conforming residences created with different maximum residence size limits, countable floor area for various types of structures on a residential property, State mandated exemptions from floor area consideration, and options for treatment of non-conforming structures.

In order to ensure adequate public notice, 447 potentially affected property owners were directly noticed for the June Commission meeting. A number of property owners spoke at that meeting.

DISCUSSION

No Consensus On Maximum Residential Size

Following the public comment period at the June 21 meeting, the Commission addressed the basic question of whether the Town's current 5,000 square foot residential limit (plus 500 square feet of garage area) should be reduced. There was no Commission consensus to do so

(see June meeting minute comment separately in this agenda's packet for Commission comments). A roughly equal number of Commissioners felt that there should be no reduction as felt there could/should be a reduction to the 3,500-4,000 square foot range.

Maximum Residential Size Limit Reduction Issues

Factors involved with the Planning Commission's review of a potential reduction in maximum residential floor area include:

- Properties that would be newly rendered legally nonconforming with respect to maximum residence size.
 - Current zoning provisions in Chapter 17.16 regarding nonconforming structures are vague and subject to different interpretations. For example, §17.016.070 references both 50% floor area and 50% percent of cost of restoration as non-conforming provision triggers.
 - Chapter 17.16 would need to be extensively rewritten to clarify how to treat properties that would be newly legally nonconforming with respect to structural floor area.
 - Extensive, detailed records would need to be researched and kept about what properties are affected and potentially qualify for special consideration. This would be a new administrative burden.
- It is unclear what problem(s) a lower maximum residential square footage limit would address.
 - The character of the Town remains much as it has been for decades.
 - Threats to the Town's character are vaguely articulated.
 - Large homes serve large and/or multi-generational families.
 - The Town's current array of regulations and policies (see following bullet point) have avoided significant problems with residential size.
 - Newer homes are significantly more energy efficient than older homes.
 - Demand for ancillary residential services (gardening, housekeeping, nannies, etc.) doesn't appear to be directly connected to home size.
 - A smaller maximum residence size cap will not address or assist with housing affordability or traffic issues.
- The Town's current regulations and policies have served the Town well.
 - Current maximum floor area, floor area ratio, and coverage limits appear to serve adequately in relating size of a residence to a lot. All but the largest properties are precluded from building large residences.
 - Based on Assessor's records, no property in Fairfax is legally non-conforming due to exceeding the maximum floor area limit.
 - Design Review, Hillside Land Development, Variance, and Use Permit requirements adequately address potential issues including mass, bulk, visibility, grading, runoff, etc.
- Other approaches besides reducing maximum residence size could be effective in

controlling/limiting large residences.

- Residences above a certain size could be discouraged, with heightened review criteria.
- The Town has previously considered maximum house size.
 - The 2000 to 2002 effort resulted in the current 5,000 square-foot maximum floor area and floor area ratio limits.
- Residents in attendance at the meeting were largely opposed to a reduction in maximum allowable floor area
 - Concerns raised included: the impact of such a program on property values, impacts on large or multigenerational families, what threat is this addressing, and new residences are more energy efficient than smaller older residences.

Planning Commission consensus

The Commission reached consensus in a number of areas:

- Up to a 120 square foot accessory building (shed) that is not served by any utilities should not count against the maximum residential floor area size limit.
- The green building technology additional floor area provisions contained in Zoning §17.136.040 (B)-(D) are no longer necessary. There are numerous provisions applicable to new residences and major remodels in California Energy Codes that largely address energy efficiency requirements.

Other Options

If there continues to be interest in reducing the maximum floor area of structures on properties in single-family and duplex zoning districts, there are several options for the Town to consider:

1. Make no changes to the Zoning Ordinance.
2. Develop Zoning Ordinance language that would discourage residential construction (additions or new buildings) above a certain total floor area. For example, there could be special findings relating to visibility, runoff, grading, tree removal, etc., that would have to be met for structures on a residential property to exceed a certain total square footage. This could be via a Special Exception process.
3. Amend Chapter 17.016 to allow owners of property owners with structures that become legal non-conforming due to size to maintain, replace, or potentially (slightly?) expand such structures.
4. Amend Chapter 17.016 to declare any conforming structures with respect to floor area that exist as of a particular date to continue to be deemed conforming, allow those structure and properties to be expanded consistent with existing regulations, and apply the lower maximum floor area limit only to new construction on undeveloped residentially-zoned lots.
5. Hire outside professional assistance to explore for determining the best fit of maximum house size regulations.

Rationales for each option include:

1. The existing regulations appear to be working well in avoiding approval and construction of out-of-scale residences. Why fix what seemingly isn't broken?
2. Discouraging additions or new structures above a certain net total square footage would avoid the issue of creating a class of properties that are considered "non-conforming", while increasing the likelihood that additions or new structures would remain within certain square footage limits unless a series of findings can be made. Examples of such heightened findings could include minimal or no visibility from public offsite viewing areas, minimal tree removal, no additional offsite runoff, and minimal soil grading and/or importation or offhaul.
3. Allowing owners of new "legally nonconforming" properties (due to exceeding a new floor area maximum) to remodel, reconstruct, or possibly slightly expand (within limits) floor area would help address fairness issues - they could keep or potentially slightly increase what they have – while instituting a reduced maximum floor area that would apply to builders on undeveloped parcels would know ahead of time.
4. Creating bifurcated conforming/nonconforming system of splitting how certain properties are classified based on whether they were developed before or after a certain date would allow owners of existing developed properties to avoid being designated "non-conforming". The Town would have to create a list of track which properties are undeveloped as of a certain date and apply the new reduced maximum floor area limit to only those properties.
5. The Town held multiple hearings over a two-year period between 2000 and 2002 on maximum house size. The Planning Commission is on its third hearing on the topic of maximum residential size. If/when any changes to existing zoning requirements are considered, there will be at least one additional hearing before the Town Council, and then additional hearings to consider zoning amendment language. Basic questions such as what issues or problems the reduced floor area maximum are intended to address remain to be clearly articulated. A survey of Fairfax residents might also be advisable.

The Planning Commission and planning staff have a number of competing high priority work items that are likely to be very time consuming. In the event additional work such as described above is desired, staff recommends hiring an outside professional to assist in further articulating options, polling the public, conducting focused workshops, and developing options and recommendations to decisionmakers.

SUMMARY/RECOMMENDATIONS

Staff requests the Planning Commission forward to the Town Council which of the above-listed options is recommended.

Attachment: Applicable Existing Fairfax Zoning Ordinance provisions

Pertinent Existing Fairfax Zoning Ordinance provisions

The Fairfax Zoning Ordinance currently contains several provisions relating to the maximum size of a residence, as follows:

The terms Floor Area and Floor Area Ratio are contained in **Chapter 17.008 DEFINITIONS**, as follows:

FLOOR AREA. Of single-family residences and duplexes, 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 500 square feet in size for single-family residences and 800 square feet for duplexes shall also be included. Any basement area, as defined herein, is not included.

FLOOR-AREA RATIO, SINGLE-FAMILY RESIDENCES AND DUPLEXES. The floor area, as defined above, of any single-family residence or duplex divided by the area of the lot.

Other Zoning Ordinance provisions directed specifically at floor area include **Chapter 17.136, FLOOR AREA**, as follows:

§ 17.136.010 PURPOSE.

(A) It is the purpose of this chapter to impose a maximum limit for the floor area of single-family residences and duplexes (B) It is the intent of this chapter to accomplish the following:

(1) To preserve the quality of life and small town and rural character in the neighborhoods of Fairfax by limiting the size of new or renovated residences; (The size limitation shall be based upon a ratio between the floor area of residential structures and building lot size. The establishment of an overall maximum limit on floor area size of 5,000 square feet for any residential structure shall serve to ensure the continuity and ecological sustainability of residential development in Fairfax.)

(2) To limit negative environmental impacts from the development of new residential structures or expansion of existing residential structures through the establishment of a uniform standard limiting the size of residential structures on a lot; (Variances related to the implementation of green building technologies and the use of permeable surface materials, further encourages the development or redevelopment of ecologically sustainable residential structures in Fairfax.)

(3) Provide a standard that serves to protect property values through the preservation of views, neighborhood character, scenic resources and environmental quality;

(4) Ensure that property owners can adequately develop or re-develop their properties for residential uses in a manner that correlates with lot size and the overall

level of potential negative impacts on or off-site; and

- (5) Minimize water runoff and soil erosion problems during and after construction.

...

§ 17.136.030 MAXIMUM FLOOR AREA.

Maximum floor area for single family residences and duplexes can be no greater than 0.40 for any lot. The maximum floor area of single-family residences or duplexes will be limited by a maximum floor area limitation not to exceed 5,000 square feet for any lot regardless of lot size, based upon the area of a map as defined on the Assessor's Map provided by the County of Marin Tax Assessor's Office.

17.136.040 VARIANCES.

A variance to the maximum floor area requirement may be granted to prevent or minimize inconsistencies with the floor area ratio of adjacent or neighboring properties, and to assist with the provision of adequate off-street parking, or when no significant increase in building bulk results; provided that, the granting of such an exception would not be a grant of special privilege or be inconsistent with the intent of the General Plan or the Zoning Ordinance. Granting of a variance requires the review and approval of the Planning Commission. Variances that meet all of the above conditions may be granted by the Planning Commission, but shall not exceed the maximum floor area ratio for a given property by more than ten percentage points.

(B) Variances related to the implementation of "Green Building Technologies" and based upon the current town green points application may be granted by the Planning Commission. The town's Green Points Application shall be updated on an as needed basis by the Fairfax Department of Planning and Building Services. Green Building-related variances are incentive-based intended to encourage the protection of environmental resources. As such any increase in square footage beyond the maximum FAR for a given property is at the discretion of the Planning Commission.

(C) One point may be granted to a project for each Green Building category, with each green point being equal to a floor area percentage of 0.01. Green Building variances shall not exceed the maximum floor area ratio for a given property by more than ten percentage points. Examples of Green Building Technologies are as follows:

- (1) An exceptional incorporation of passive solar design;
- (2) An exceptional incorporation of a photovoltaic system; (A system that produces 75 percent of a residence's energy needs or that achieves ten percent energy savings above Title 24 requirements.)
- (3) A significant incorporation of recycled or energy efficient "Green" Building materials including, but not limited to the following:
 - (a) Foundation materials;
 - (b) Framing materials;
 - (c) Siding materials;
 - (d) Roofing materials;

- (e) Sheathing materials;
- (f) Window glazings;
- (g) Paints;
- (h) Insulation;
- (i) Flooring materials;
- (j) Counter materials; and
- (k) Other material reviewed and approved by the Fairfax Department of Planning and Building Services.

(4) Use of permeable surface materials.

(D) A variance and Green Building-related variance can be applied for, and granted simultaneously at the discretion of the Planning Commission. However, the maximum floor area ratio for a given property may not be exceeded by more than 15 percentage points if both a hardship variance and a green building variance are granted simultaneously.

Provisions in the Zoning Ordinance that would affect properties with structural floor area that is over the square footage limit are found in **Chapter 17.016 NONCONFORMING USES AND STRUCTURES**, as follows:

§ 17.016.010 DEFINITIONS; PURPOSE.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

LEGAL NON-CONFORMING USE.

(1) A use of a structure or land which was lawfully established and maintained prior to the adoption of the ordinance codified in this title, but which, under this title, does not conform with the use regulations of the district in which it is located. This chapter is intended to limit the number and extent of non-conforming uses by prohibiting their enlargement and their reestablishment after abandonment and by prohibiting the alteration of the structures they occupy and their restoration after destruction. Eventually certain classes of non-conforming uses are to be eliminated.

(2) A structure which was lawfully erected prior to the adoption of the ordinance codified in this title, but which, under this title, does not conform with the standards of coverage, maximum floor area, yard spaces, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located. While permitting the use and maintenance of non-conforming structures, this chapter is intended to limit the number and extent of non-conforming structures by prohibiting their being moved, altered or enlarged so as to increase the discrepancy between existing conditions and the standards prescribed in this title, and by prohibiting their restoration after destruction. Eventually all non-conforming structures of nominal value are to be eliminated or altered to conform.

§ 17.016.020 CONTINUATION AND MAINTENANCE.

(A) A use lawfully occupying a structure or a site on the effective date of the ordinance codified in this title or of amendments thereto which does not conform with the use regulations for the district in which the use is located shall be deemed to be a non-conforming use and may be continued, except as otherwise provided in this chapter.

(B) A structure lawfully occupying a site on the effective date of the ordinance codified in this title or of amendments thereto which does not conform to the standards of coverage, maximum floor area, front yard, side yards, rear yard, height of structure or distances between structures prescribed in the regulations for the district in which the structure is located shall be deemed to be a non-conforming structure and may be used and maintained, except as otherwise provided in this chapter.

(C) Routine maintenance and repairs may be performed on a structure or site, the use of which is non-conforming and on a non-conforming structure.

...

§ 17.016.040 ALTERATIONS AND ADDITIONS TO NON-CONFORMING STRUCTURES.

(A) No non-conforming structure shall be moved, altered, enlarged or reconstructed so as to increase the discrepancy between existing conditions and the standards of coverage, floor area, front yard, side yards, rear yard or height of structures prescribed in the regulations for the district in which the structure is located without a variance issued under Chapter 17.028.

(B) The aggregate amount of construction, alteration, enlargement or reconstruction on any nonconforming building or structure, or on any building or structure located on a nonconforming property during the life of the building or structure subsequent to October 2, 2009 shall not:

(1) Affect more than 50% of the floor area of the building or structure or expand that floor area by more than 50%; or

(2) Result in the addition of a bedroom to such residential building or structure. For the purposes of this paragraph, when any changes are made in the building, such as walls, columns, beams or girders, floor or ceiling joists, roof rafters, roof diaphragms, foundations, 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.

(C) The restriction in this division shall not apply:

(1) To projects that are limited to replacing windows and/or doors, installation of insulation to achieve greater energy efficiency, cosmetic floor or wall coverings, roof repairs that do not change the configuration of the existing roof, earthquake preparedness improvements or projects to generate alternative energy; or

(2) When all of the following conditions exist:

(a) The off-street parking requirements of Title 17 are met or a variance for an exception has been granted;

(b) The work does not increase an existing or create any new nonconformity; and

(c) The structure or building is not located in an area that is subject to the provisions of either Chapter 17.060 (Ridgeline Development) or Chapter 17.068 (Flood Zones).

...

§ 17.016.070 RESTORATION OF A DAMAGED STRUCTURE.

(A) Whenever a structure, the use of which does not conform with the regulations for the district in which it is located, or a structure which does not comply with the standards of coverage, floor area, front yard, side yards, rear yard, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located, is destroyed by fire or other calamity, or by act of God or by the public enemy, to the extent of 50 percent , as defined in § 17.016.040(B), the structure may be restored and the non-conforming use may be resumed, provided that restoration is started within one year and diligently pursued to completion.

(B) (1) Whenever a structure, the use of which does not conform with the regulations for the district in which it is located, or a structure which does not comply with the standards of coverage, floor area, front yard, side yards, rear yard, height of structures or distances between structures prescribed in the regulations for the district in which the structure is located, is destroyed by fire or other calamity, or by act of God or by the public enemy, to a greater extent than 50 percent , or is voluntarily razed or required by law to be razed, the structure shall not be restored in a manner that would increase the non-conformity relative to the previously existing structure and the restoration must be in conformity with the requirements of Title 17, the Zoning Ordinance, to the greatest extent possible.

(2) Any discrepancy relative to conformity requires the approval of a variance by the Planning Commission.

(3) Evidence of the status of the previously existing structure shall be based on floor plans of record retained at the Fairfax Department of Planning and Building Services or other evidence reviewed and approved by the Director of the Department of Planning and Building Services.

(C) The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the structure to its condition prior to the damage or partial destruction, to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by or shall be reviewed and approved by the Planning Director.