



TOWN OF FAIRFAX

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

TO: Planning Commission

DATE: June 21, 2018

FROM: Ben Berto, Planning and Building Services Director

SUBJECT: Zoning Ordinance amendments to reduce maximum residence size

BACKGROUND

At its May 2 2018 meeting, the Town Council discussed the possibility of enacting zoning code amendments to reduce maximum allowable residential floor areas in Fairfax in order to preserve Town character, response to economic pressures, and manage environmental effects.

At the conclusion of the discussion, the Council directed the Planning Commission to consider a zoning amendment that would reduce the maximum allowable residential floor area somewhere in the 2,500-3,000 square foot range. The Council also directed that consideration be given to allowing replacement of structures that would be made non-conforming due to being too large, in the event of their destruction, and that the current floor area bonus for a residence incorporating Green Building Technologies be eliminated.

Based on Council's direction, Staff presented a report on maximum residential size to the Planning Commission at their May 17, 2018 meeting. The Commission discussed a wide variety of issues relating to this topic including: undeveloped residential properties, restoration/reconstruction of remodeled or damaged non-conforming structures, other jurisdictions' regulations, getting the word out about the proposed changes, accessory dwelling units relationship to such a regulation, accessory structures and habitable versus non-habitable floor area. At the end of their discussion, the Planning Commission directed staff to research the various issues and report back.

DISCUSSION

Maximum Residential Size

Several issues pertaining to maximum residential size were raised at the May Planning Commission meeting. These include:

Jurisdiction comparisons:

The following residential square footage maximums apply in other Marin jurisdictions:

<u>Jurisdiction</u>	<u>Maximum size</u>	Notes:
San Rafael	No limit in flat areas. 6,500 sq. ft. in hillside areas	
Corte Madera	No limit	Max size controlled by Floor Area Ratio (FAR)
Ross	No limit	Houses greater than 10,000 sq. ft. are discouraged
Sausalito	No limit	'Heightened' design review if project exceeds 80% of FAR or coverage limit
Larkspur	No limit	
Mill Valley	8,000 sq. ft.	7,000 sq. ft. residence, 500 sq. ft. garage, 500 sq. ft. ADU
Tiburon	8,000 sq. ft. residence, 500 sq. ft. garage	
San Anselmo	5,000 sq. ft.	
Belvedere	4,850 sq. ft.	Exception required for larger size, obtainable
Novato	4,000 sq. ft.	Additional area allowed through Design Review

Residential size category figures:

According to County Assessor's records, the approximate number of Fairfax single family dwellings/duplexes falling into various size categories (or larger) are as follows:

Equal to or greater than 5,000 square feet (sfd/duplex primary structures)	0
Equal to or greater than 4,500 square feet (sfd/duplex primary structures)	4
Equal to or greater than 4,000 square feet (sfd/duplex primary structures)	10
Equal to or greater than 3,500 square feet (sfd/duplex primary structures)	28
Equal to or greater than 3,000 square feet (sfd/duplex primary structures)	72
Equal to or greater than 2,500 square feet (sfd/duplex primary structures)	241
Equal to or greater than 2,000 square feet (sfd/duplex primary structures)	518

What is/is not counted:

Residential property square footage is based on the floor area of single family residences and duplexes, and square footages of accessory structures and oversized garages. Specifically, square footage calculations include:

- Garage area of greater than 500 square feet for a single family residence, and 800 square feet for a duplex
- Area(s) of any accessory structure(s)

In Fairfax, Staff was able to determine that there are approximately 264 garages with countable square footage. There was no reasonable method available to cross-tabulate the garage square footage to the areas of residences or duplexes on the same properties.

The property calculations also do not reflect the square footages of any accessory structures that are present on residential properties. While there are likely hundreds of such structures in Fairfax, these are not tracked by the County and thus are not available for calculations.

If the potential net increase in total square footage on sites from oversized garages and accessory structures were able to be factored in, the total number of residential properties would be higher than the numbers above show. The above Fairfax figures only provide a calculation of the estimated minimum number of residences of a particular square footage or larger.

Potential Options for Calculating Square Footage:

At the May 17 meeting, the Commission discussed what should or should not be counted as floor area in calculating floor area towards a maximum floor area square footage limit. If the goal is to maintain as much consistency as possible with current regulations, the bases for determining countable floor area would remain unchanged, i.e., all residential square footage, that over oversized garages, and the square footage of any accessory structure(s).

“Green” Building Technology: Zoning Ordinance Chapter 17.136 Floor Area lists a variance exception possible to maximum floor area for buildings employing “green building technologies”. An increase in the Floor Area Ratio of up to 10 percent over the .40 maximum FAR (or up to .50 FAR) is currently possible for property owners employing such technologies. The Town Council directed that this “green” building additional FAR allowance is no longer necessary, as State Building Codes now mandate many of the green building requirements

Options: Square footage calculation options include:

1. Leave the zoning code methodology for calculating residential square footage unchanged (i.e., just lower the maximum area)
2. Exclude a certain amount of square footage for accessory structures. This could be further predicated on factors such as: the accessory building not having utilities such as water, electricity, or containing “conditioned” airspace. Note: per State law, the area of an Accessory Dwelling Unit (ADU) cannot be counted towards maximum allowable square footage, although it currently can be factored into maximum allowable FAR.

Non-conforming structures:

If the Town lowering the maximum single-family residential and duplex square footage, it will create a host of residential properties with buildings that no longer conform to zoning because of their size. Assuming those structures were legally constructed, they would be considered legal non-conforming uses.

The minimum number of buildings that would then be considered non-conforming by virtue of various size limits is listed in the figures above. For example, if a 3,000 square foot maximum building size limited is adopted, at least 72 residential properties would be considered legal non-conforming.

The Town Council at their May 2 meeting expressed a willingness to help address the challenges faced by property owners whose residence (and potentially other structures) would become legal non-conforming due to a reduced maximum size limit.

Zoning Ordinance Chapter 17.016 (see attachment 1) contains the provisions that address how the Town addresses legal non-conforming properties. Current code provisions addressing legal nonconforming properties includes:

- The structure(s) may be routinely maintained and repaired.
- The structure(s) may not be moved, altered, enlarged, or reconstructed to increase the (in this case the floor area) discrepancy with the zoning requirements.
- The aggregate amount of construction, reconstruction, or alteration over the life of the structure cannot exceed 50% of the floor area of the building, or add a bedroom to the building, unless parking requirements are met, the work doesn't increase any nonconformity, and the building is not located in a Ridgeline or Floodplain zone.
- If up to 50% of the building is destroyed by a fire, natural calamity, etc., the structure may be reconstructed as it previously existed, provided that the work commences within 1 year and diligently pursued to completion.
- If more than 50% of the building is destroyed by a fire, natural calamity, etc., or is

voluntarily razed, the structure may not be reconstructed in a manner that increases any nonconformity, and the restoration must conform to Zoning Requirements to the greatest extent possible.

- In the case of a demolition, any discrepancy with zoning would require approval of a variance.
- Making variance findings to allow the expansion of any structure on a property that is over the floor area square footage limit would be very difficult.

Options: There are two main options for how to treat new legal non-conforming properties, including:

1. Keep the current zoning regulations for nonconforming structures contained in Chapter 17.016 Nonconforming Uses and Structures.
2. Amend Chapter 17,016 to provide owners of property owners with structures that become non-conforming due to size to maintain, replace, or potentially (slightly?) expand such structures.

Rationales for each option include:

Keep current non-conforming regulations Current code provisions have served the Town well in the period up to this contemplated ordinance. As noted above, the code currently contains several provisions that are ambiguous, and upon destruction/removal of more than 50% of a non-conforming structure restoration must conform to Zoning Requirements to the greatest extent possible. The long-term effect on properties with non-conforming structure(s) by size would be to reduce the building square footage to bring them into compliance with size limits.

Amend the non-conforming regulations Based on Assessor's records, there are currently no properties in Fairfax containing structures that exceed the current 5,000 square foot maximum floor area limit. Depending on what reduction the Town makes in the maximum allowable floor area square footage, anywhere from a few dozen to several hundred properties would be rendered legal non-conforming due to floor area.

In calculating the effects of a maximum floor area reduction on owners of such properties, it should be understood that none of the property owners were aware when they purchased such a property that such a legal non-conforming status and restrictions could occur. Future buyers of such properties should be informed of such a status and restrictions as they would be public information readily identifiable in ordinary real estate transactional due diligence and/or disclosure. While it could be argued that there may be a scarcity or boutique value in having residence square footage that is no longer attainable without an ADU, in Staff's opinion most lenders would be reluctant to lend on a value that is based on the full (non-conforming) square footage.

As noted above, the Town Council at their May 2 meeting expressed a willingness to ease the burden that owners of new legal non-conforming properties by virtue of home size would face were a reduction in maximum floor area to be adopted.

It seems reasonable to allow for the ongoing maintenance and (if need be) reconstruction of the structures on such properties. Options for code amendment in this regards include:

1. Allow for ongoing maintenance irrespective of percentage of overall floor area.
2. Allow one-for-one replacement regardless of cause (e.g., voluntary, involuntary, act of god) of structural removal.
3. Consideration of time frames required for completion of project (for example, make consistent with the preliminarily-proposed Town's overall project completion deadlines.
4. Determine whether to waive the Variance requirement for non-conformity due to maximum floor area exceedance.

Another area for further Planning Commission discussion is how to treat structures that would be legally non-conforming with respect to more than one zoning restriction. If the structure is currently legal non-conforming due to setbacks, for example, should the regulations still direct conformity with these requirements "to the greatest extent possible"?

Accessory Dwelling Units:

New State laws pertaining to Accessory Dwelling Units (ADU's) and Junior Accessory Dwelling Units (JADU's) restrict local governmental review of such units. An ADU/JADU would continue to be subject to most physical property development standards (except floor area) for the zoning district in which it is located, including but not limited to: maximum height, Floor Area Ratio and lot coverage. [Fairfax Muni. Code Section 17.048.060(M)]

The Floor Area Ratio (FAR) conformity requirement for ADU's provides a basis for ensuring that the scale of development on a site is consistent with Town restrictions. It should be noted that there is a legislative effort in Sacramento that would eliminate the FAR compliance requirement for ADU's.

Lot Coverage:

Questions were raised at the May Commission meeting about the interrelationship between Lot Coverage and Floor Area limits. The two restrictions act in a complementary, although independent fashion. Both serve to limit the total amount of development on a site. A Floor Area limit would apply to all countable square footage on a site, regardless of whether there were any multi-story structures. Lot coverage only counts ground coverage, thus a two story building with the same footprint (ground coverage) would have the same Lot Coverage as a one-story building with the same footprint. Much like FAR limits, Lot Coverage limits are a sliding scale, increasing in allowable size with increased the lot area.

Staff recommends that the current .35 Lot Coverage limit (35% coverage of the total lot area)

remain as is.

Public Notice:

At the May 17 meeting, the Commission expressed concern that there be adequate public notice to owners of property owners that may be affected by new square foot maximum residential size restrictions. The Commission had focused on a square footage minimum of 3,000 square feet. In order to capture the maximum number of property owners who might be directly affected by such a limit, staff sent individual notices to every owner of property which Assessor's records indicated contain a residence of 2,500 square feet or larger. This provides a noticing buffer for those properties that might also contain accessory structures or garages with countable floor area.

Accordingly, staff sent out 447 individual public notices, including all owners of property which records show have a primary residence or duplex that is at or exceeds 2,500 square feet, properties that records indicate has a garage that exceeded 500 square feet, and any vacant parcel of 7500 square feet or more. While some properties in Town that would be affected may not have been sent an individual notice, staff is comfortable that at this stage of zoning amendment discussion, the vast majority of potentially affected properties have been noticed.

Staff is also posting on the Town's website notice of the Planning Commission's consideration of a maximum residential size limit reduction, and is also placing a notice on Nextdoor.

When the Town gets to the stage of considering zoning ordinance amendment test, notice will also be placed in a paper of general circulation, consistent with legal requirements.

RECOMMENDATION

1. Provide guidance and direct staff to prepare zoning ordinance language on:
 - a. Recommendations for a maximum residential floor area square footage and related changes.
 - b. Potential categories that should count as part of the residential square footage maximum, **and feedback on treatment of accessory structures and their uses.**
 - c. Treatment of newly-created legal non-conforming properties due to maximum floor area exceedance, for factors including: work as a percentage of total floor area, cause of reconstruction/remodeling, limitations/provisions for expansion of existing uses, timeframe for completion of work, need for a variance.
2. Continue consideration of the potential zoning amendments to reduce the maximum residential floor area, to the July 19 Planning Commission meeting.

Attachment: Applicable Fairfax Zoning Ordinance provisions

Attachment:

Pertinent Existing Fairfax Zoning Ordinance provisions

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

The first provision defines the terms Floor Area and Floor Area Ratio. These 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.

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§ 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 be involved properties with structural floor area that is over the square footage limit is 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.

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§ 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).

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§ 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.