



TOWN OF FAIRFAX

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TO: Planning Commission

DATE: May 17, 2018

FROM: Ben Berto, Planning and Building Services Director

SUBJECT: Zoning Ordinance amendments to reduce maximum residence size

BACKGROUND

At their annual retreat on March 9, the Fairfax Town Council set as one of their top 10 goals to amend the zoning code to reduce maximum house size. This was re-emphasized at their May 2 meeting, where they cited concerns about resources required, community character, and noted that a residence could be considerably smaller than the current 5,000 square feet limit and still be a large home. Following this discussion, they unanimously voted to direct the Planning Commission to consider amending the Town's current 5,000 square foot limit on the total floor area of structures on a single family residential property.

The general consensus of the Town Council was that the floor area limit be reduced to somewhere in the 3,000 square foot range. Consideration should also be given to allowing replacement of such structures in the event of their destruction. The Council also opined that the current floor area bonus above current limits for a residence that incorporates Green Building Technologies should be eliminated.

This report starts discussion of a potential reduction in total structural floor area on single family (and duplex) zoned parcels.

Staff used County records to find residential properties containing a primary residence of 3,000 square feet or larger. The first run revealed that there were approximately 90 such properties. Owners/ tenants of those properties were sent a notice of this hearing.

Staff continues to work with County GIS staff to clarify the numbers of homes in various size ranges (see table further in report), and notes some limitations to the information available.

DISCUSSION

Fairfax Code

The Fairfax Zoning Ordinance currently contains several provisions relating to the maximum size of a residence.

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.

Effects on existing residential properties

One question in considering a reduction in allowable floor area is how many properties would it affect? Using the 3,000 square foot limit that the Council discussed, staff obtained a list of properties through the County database that shows primary structures containing 3,000 square feet or more. The list contains 90 addresses (which further evaluation has reduced to 72).

The following are approximate numbers (almost certainly undercounts) of the numbers of properties that would be rendered legal nonconforming by reducing the maximum structural floor area to the limit shown:

Equal to or greater than 4,500 square feet (all sfd/duplex primary structures)	4
Equal to or greater than 4,000 square feet (all sfd/duplex primary structures)	10
Equal to or greater than 3,500 square feet (all sfd/duplex primary structures)	28

Equal to or greater than 3,000 square feet (all sfd/duplex primary structures)	72
Equal to or greater than 2,500 square feet (all sfd/duplex primary structures)	198
Equal to or greater than 2,000 square feet (all sfd/duplex primary structures)	518

These figures demonstrate that the number of properties that would be affected increases rapidly as the potential maximum residential floor area square footage is reduced.

The above numbers on properties potentially affected by a reduction in the floor area likely undercounts the number of such properties. The reason is that the Marin Map GIS database used to generate the address lists excludes:

- The area of any garages, specifically garages that may exceed 500 square feet in area. This probably results in a slight undercount of the number of residential properties.
- Any information on the presence or size of any other accessory structures potentially on a property (i.e. sheds, studios, pool houses, etc.). This probably results in a more significant undercount.

The Inherent shortcomings of this data can be addressed in several ways. Once the Planning Commission has provided direction on the maximum square footage limit change that is desired, staff can attempt to develop a list of oversize garages, and include any properties that would be near, at, or over the square footage limit in the notice of potential zoning changes.

The Assessor does not keep track of accessory structures and their sizes. Staff can address the issue of the need to publically notice potential affected properties by widening the scope of the notice to include properties that are currently listed as containing structures that are a few hundred feet square feet below the potential floor area limit.

In addition to noticing properties that may be at or over whatever square footage limit the Planning Commission desires to notice, there are the unknown number of properties that would be below but near whatever future floor area limit is decided. The owners of such properties that would lose the ability to expand their residences probably will consider that loss of the ability to expand very important. They should be noticed of future hearings on this matter.

Regardless of the ultimate residential floor area maximum selected, it is important to notice owners of property that would be affected, for legal and fairness reasons.

Non-conforming structures

If the Town reduces the maximum residential floor area square footage, it will create some residential primary and accessory structures that are no longer considered legally conforming

to the zoning. The residential structures that would no longer conform to the maximum square footage would be considered legal non-conforming, due to their no longer conforming to maximum floor area limits.

Zoning Ordinance Chapter 17.016 (listed previously) contains the provisions that address how the Town addresses legal non-conforming properties. The manner in which the current code addresses 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 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.

The Town Council at their May 2 meeting expressed a willingness to help address the challenges faced by persons who would no longer have a residence and potentially other structures that complies with zoning requirements. As the zoning regulations are currently written, a property owner with legal nonconforming structure(s) have difficulty selling the property because potential buyers might have difficulties securing financing.

Accessory Structures

The Zoning Ordinance counts the floor area of any accessory structure(s) on the same lot as the residence, regardless of size, in the calculation of maximum floor area.

The floor area limit does not count the first 500 square feet of garage floor area on a single family residential lot, and the first 800 square feet of garage floor area for a duplex property.

New State laws pertaining to Accessory Dwelling Units (ADU's) and Junior Accessory Dwelling Units (JADU's) significantly restrict local government's ability to review such units. Although ADU/JADUs are no longer subject to discretionary review, any such unit would continue to be subject to all physical property development standards (except floor area) of the zoning district in which it is located, including but not limited to: height, lot size, floor area ratio and lot coverage. (Fairfax Muni. Code Section 17.048.060(M).)

RECOMMENDATION

1. Direct staff on recommended maximum residential floor area square footage changes.
2. In order to ensure adequate future noticing of potentially affected properties:
 - a. Obtaining (if possible) County records of garage areas for whatever properties are within 500 square feet of whatever floor area limit the Planning Commission directs staff to preliminarily apply as the maximum floor area.
 - b. Apply a square footage amount below the preliminary floor area square footage limit in order to include properties with accessory buildings, the existence and square footage of which cannot be determined. Staff recommends 300 square feet to capture this potential additional floor area.
 - c. Apply a square footage amount below the preliminary floor area square footage limit in order to include properties with structural square footage that may be below but approach the proposed square footage limit. Staff recommends 300 square feet to capture this potential factor.
3. Direct staff on whether the nonconforming building zoning section should be revised to:
 - a. Allow one-for-one reconstruction without consideration of how much maintenance is necessary relative to the floor area of the building
 - b. Allow for one-for-one reconstruction regardless of how much damage is incurred in the event of a natural disaster or voluntary demolition.
 - c. Eliminate the requirement for a variance if the previous circumstances occur.
4. Continue consideration of reducing the maximum residential floor area to the June 21 Planning Commission meeting.