



TOWN OF FAIRFAX

STAFF REPORT

January 13, 2016

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager *GT*
Jim Moore, Director of Planning and Building Services
Linda Neal, Principal Planner

SUBJECT: Discussion/consideration of legal non-conforming uses and structures as they pertain to residential second units and request the Planning Commission to make recommendations to the Council regarding the Second Unit Amnesty Ordinance and revisions to the Second Unit Ordinance to encourage the development and legalization of second units.

RECOMMENDATION

Discuss legal non-conforming uses and structures as they pertain to residential second units and request the Planning Commission to make recommendations to the Council regarding the Second Unit Amnesty Ordinance and revisions to the Second Unit Ordinance to encourage the development and legalization of second units.

DISCUSSION

At the November 4th Council meeting, a resident raised the concept of enlarging the living space of a legal non-conforming residential second unit. Staff suggested the Council could agendaize this topic for discussion at the January Council meeting.

Town Code § 17.016.010 states that, "it is the intent of the non-conforming use section of the Town Code (Code) 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".

The purpose of the Code is to eventually eliminate non-compatible uses being located next to one another such as the location of a longstanding manufacturing plant next to an area that has become housing. In addition, structures (e.g., houses) which do not meet current zoning standards would only be allowed to be maintained for their current use. Under the Code, owners can perform cosmetic upgrades or safety repairs such as foundation earthquake retrofitting, kitchen and bath remodels that do not result in plumbing or electrical remodeling, replacement of existing windows with energy-efficient windows, and installation of energy-efficient heating systems. However, owners may not expand or alter their properties to increase the discrepancy between the existing conditions and the current zoning standards.

Almost all communities have similar "legal non-conforming use" provisions. Staff recalls that this ordinance was adopted in 1973 to specifically address the expansion of homes in the hillside area. Prior to the adoption of Ordinance 352 in 1973, expansion of homes in hillside areas often occurred on steep sites accessed by severely substandard roads and in areas where many homes had little or no

private parking. Larger homes and units can accommodate more people, potentially leading to more cars, pedestrians, and bicyclists using the narrow, winding, and steep streets already crowded with on-street parking. Many of these homes did not meet the current zoning standards and, thus, were legal non-conforming uses. The expansions were exacerbating this situation by allowing the expansion of residential units without the required parking or roadway improvements.

Town Code does set forth a method to legalize the expansion of non-conforming properties. The properties can expand if they are able to bring the site into compliance with current regulations and/or if the Planning Commission can make findings to grant requested variances. It should be noted that the process to legalize non-conforming properties can be costly depending on the level of improvements needed to bring them into compliance.

The resident who requested the Council consideration of this policy has a legal non-conforming property at 107 Taylor developed with a single-family residence and a one bedroom apartment. His request is that Council should allow expansions of legal non-conforming second units since they are a form of affordable housing and would either expand the living space for existing tenants or opportunities for more tenants to live in the space.

We agree that second units are a form of affordable housing in Town. However, permitting the expansion of legal non-conforming second units as a method to increase affordable housing would not be the recommended approach. To increase non-conforming conditions would be counter to the Town's objective to ensure that when properties are improved they meet current zoning requirements. The Town goal should always be to encourage compliance with existing code requirements. The expansion or improvements could have impacts on the neighbors and general public that are not addressed or at least considered in the approval process (e.g., parking, emergency response, fire safety).

A more prudent approach would be to encourage the legalization of non-conforming existing second units. Specifically, Goal H-6 of the Housing Element states the Town will "Create additional opportunities for the development of second units". The two policies under the goal are: "Continue the Second Unit Amnesty Ordinance" and "New Second Unit Approach." The first policy recommends "extending" the amnesty ordinance (expired in 2010) with some revisions. The second policy would explore code revisions to modify and update the second unit approval process to both encourage more development of new and the legalization of existing second units. Possible revisions could include actions such as fee reductions, streamlined approval process, and relaxing parking and sprinkler requirements. With these ordinances in place, it should be easier for owners to legalize their second units. The Council can always evaluate the results at a later time to determine if additional code revisions should be considered to encourage more participation.

Staff anticipates the Planning Commission would begin consideration of these ordinances in the spring.

FISCAL IMPACT

None

ATTACHMENT

Town Code Chapter 17.06: Non-conforming Uses and Structures

[Print](#)

Fairfax, CA Municipal Code of Ordinances

CHAPTER 17.016: NON-CONFORMING USES AND STRUCTURES

Section

- 17.016.010 Definitions; purpose
- 17.016.020 Continuation and maintenance
- 17.016.030 Alterations and additions to non-conforming uses
- 17.016.040 Alterations and additions to non-conforming structures
- 17.016.050 Changes of use
- 17.016.060 Abandonment of a non-conforming use
- 17.016.070 Restoration of a damaged structure

§ 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.

(Prior Code, § 17.10.010) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981; Am. Ord. 696, passed 9-3-2002)

§ 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.

(Prior Code, § 17.10.020) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981; Am. Ord. 696, passed 9-3-2002)

§ 17.016.030 ALTERATIONS AND ADDITIONS TO NON-CONFORMING USES.

(A) No structure, the use of which is non-conforming, shall be moved, altered or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the non-conforming use.

(B) No structure partially occupied by a non-conforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the non-conforming use.

(C) No non-conforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site or another structure or site which it did not occupy on the effective date of the ordinance codified in this title or of the amendment thereto which caused it to become a non-conforming use, or in a way as to displace any conforming use occupying a structure or site.

(Prior Code, § 17.10.030) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981)

§ 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).

(Prior Code, § 17.10.040) (Ord. 352, passed --1973; Am. Ord. 486, passed --1981; Am. Ord. 605, passed --1991; Am. Ord. 696, passed 9-3-2002; Am. Ord. 742, passed 9-2-2009)

§ 17.016.050 CHANGE OF USE.

A non-conforming use of a structure or site shall not be changed to another non-conforming use, except under terms of use permit issued by Town Council.

(Prior Code, § 17.10.050) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981)

§ 17.016.060 ABANDONMENT OF A NON- CONFORMING USE.

(A) No building or structure which was originally designed for a use which is non-conforming under this title, where the use has ceased 12 months or more, shall again be put to a non-conforming use.

(B) No building or structure which was not originally designed for a non-conforming use, but used for same, which the non-conforming use has ceased for six months or more, shall again be put to a non-conforming use.

(Prior Code, § 17.10.060) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981)

§ 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.

(Prior Code, § 17.10.070) (Ord. 352, passed - -1973; Am. Ord. 486, passed - -1981; Am. Ord. 696, passed 9-3-2002)