



TOWN OF FAIRFAX

STAFF REPORT

February 6, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services
Garrett Toy, Town Manager *GT*

SUBJECT: Second reading and adoption by title only of an ordinance amending Town Code Chapter 17.112 PDD Planned Development District Zone, which amends Section 17.112.040 (B) to establish a maximum residential density based on an objective development standard of parcel slope

RECOMMENDATION

Read by title only and adopt an “Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.112 PDD Planned Development District Zone.”

BACKGROUND

The Planning Commission (PC) began its discussion of objective development standards at its November 15th meeting, and continued that discussion, focusing on possible changes to Planned Development District (PDD) Chapter 17.112, at their December 20, 2018 meeting. The Commission unanimously voted to approve a resolution recommending an amendment to Section 17.112.040(B) of the PDD Chapter which focused on establishing a maximum density based on parcel slope.

As clarification, the materials provided to the PC contained other amendments to the PDD zone regarding objective development standards, *but the PC took no action regarding those other amendments*. The PC agreed with staff that such revisions are a much longer-term undertaking and it would be prudent to first establish maximum residential densities in PDD zones based on parcel slope.

DISCUSSION

The Council introduced this ordinance at its January 23rd meeting, amended to add a recital (underlined in the attached ordinance) to indicate that the maximum density amendment is not intended to affect any restrictions or approvals (e.g., open space restriction) on a parcel in the PDD zone. Tonight, is the second reading and adoption. If adopted, the ordinance would take effect in 30 days.

At the Council’s January 23rd meeting, staff reported that the Town’s PDD zoning district currently lacks objective development standards and density limits. Thus, the PC must determine appropriate densities based on *subjective* and general discretionary determinations, such as site topographic and geological conditions. As a result, State laws (e.g., SB 35 and the Housing Accountability Act) have the potential to severely constrain the Town’s ability to review and regulate housing projects that might be proposed in the PDD zoning district. Attached is a map showing the current PDD zoning districts.

This ordinance establishes an *objective* density limit based on parcel slope *to prevent development* that has limited or no discretionary review for potential impacts. Specifically, the amendment provides the PC with the ability to consider additional factors to further restrict density on a parcel.

The maximum density limits recognize that remaining large, undeveloped PDD-zoned areas are largely steeply sloped (i.e., 30+% slope). Steeply-sloped parcels typically have several inherent development issues such as site stability, drainage, and visibility. The PC found that other large, similar steeply-sloped parcels (i.e., 30%+ slope) in Town feature UR-7 or UR-10 zoning, which allows only one residential unit per 7 or 10 acres, respectively. The PC recommended that the most steeply sloped sites should have a density that is consistent with the most restrictive residential zoning designation available in Town which is UR-10 (i.e., 1 unit per 10 acres).

The ordinance adds a density table to Chapter 17.112.040 (B) and slightly modifies the existing language in 17.112.040 (B) and Section (C) (see attached redline for revisions). The sliding scale increases density as the slope decreases (i.e., 20%-29%- 1 unit per 5 acres, 10-19%- 1 unit per 2 acres). While there is no current zoning designation for 1 unit per 5 acres or 1 per 2 acres, the PC indicated that its proposed densities based on slope better reflect the inherent development issues (e.g., drainage) that face steeply sloped sites.

With regard to slopes of less than 10%, the current PDD process for setting density based on a variety of factors such as geological, topographic, and hydrological conditions of the site would continue to apply. The PC will be discussing objective development standards such as grading, parking, and building areas at a future meeting. Those discussions will also include establishing density limits for parcels with slopes of less than 10%.

At the Council meeting, staff reported that in response to residents' comments that some vacant parcels with PDD zoning had development restrictions, staff had researched Town minutes, planning files, and County records, but found no such development restrictions (e.g., open space easement) placed on the undeveloped, vacant parcels in the PDD zone. We will report at the meeting our efforts to locate the precise development plan. Staff will also report on our review of the Town's minutes regarding the PDD zones, CC&R's and recorded parcel maps for Canon Village, and the preliminary title report for the Meadowlands parcel, which we hope to receive prior to this meeting. As we stated at the January 23rd meeting, the planning files from 40-50 years ago do not contain the precise development plans for the PDD parcels in question. Most likely these documents were either destroyed by flood or lost over time. We continue to encourage the public to share any documentation with us that could assist with further research into the matter.

The proposed amendment only sets a maximum density based on slope and does not affect the other provisions of the current PDD ordinance.

FISCAL IMPACT

None at this time.

ATTACHMENTS

- A. Map of PDD zones
- B. Redline of 17.112.040
- C. Zoning Ordinance

TOWN OF FAIRFAX Zoning Map



TOWN OF FAIRFAX
142 HOLINAS ROAD, FAIRFAX, CALIFORNIA 94930
(415) 453-1584 / FAX (415) 453-1618

ZONING DISTRICTS

PUBLIC ZONES
PD - Public Domain

COMMERCIAL ZONES
CC - Central Commercial
CH - Highway Commercial
CL - Limited Commercial
CS - Service Commercial
CR - Recreational Commercial

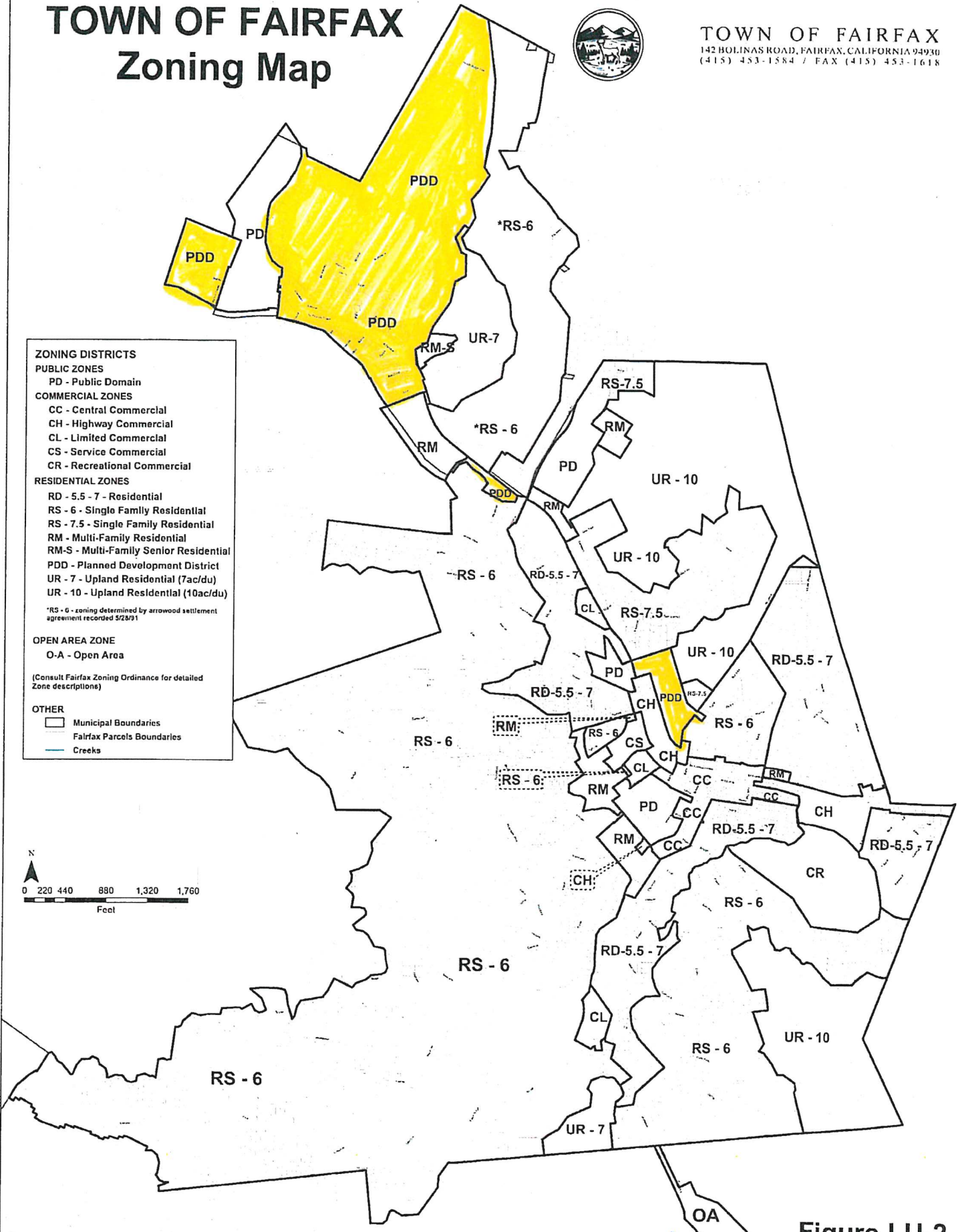
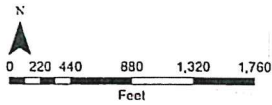
RESIDENTIAL ZONES
RD - 5.5 - 7 - Residential
RS - 6 - Single Family Residential
RS - 7.5 - Single Family Residential
RM - Multi-Family Residential
RM-S - Multi-Family Senior Residential
PDD - Planned Development District
UR - 7 - Upland Residential (7ac/du)
UR - 10 - Upland Residential (10ac/du)

*RS - 6 - zoning determined by arrowwood settlement agreement recorded 5/28/91

OPEN AREA ZONE
O-A - Open Area

(Consult Fairfax Zoning Ordinance for detailed Zone descriptions)

OTHER
 Municipal Boundaries
 Fairfax Parcels Boundaries
 Creeks



ATTACHMENT **A**

Figure LU-2

§ 17.112.040 RESIDENTIAL DENSITY POLICY.

(A) *Conformance to the general plan.* All projects must conform to the adopted General Plan or to any accepted specific plan applicable to the area under consideration.

(B) Residential Density limitations. ~~A Maximum residential density shall be established based upon average slope, as set forth in the following table:~~

<u>Average Slope</u>	<u>Maximum Residential Density</u>
<u>30% and greater</u>	<u>1 dwelling unit / 10 acres</u>
<u>20 to 29.9%</u>	<u>1 dwelling unit / 5 acres</u>
<u>10 to 19.9%</u>	<u>1 dwelling unit / 2 acres</u>

A density shall be ~~further set which is consistent with limited ations imposed~~ by site conditions including natural resources, topographic and geological conditions and by the level of public services and road conditions that can reasonably be provided.

(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in further limiting setting density.

(1) Extent of lands which are hazardous to life and property due to soils, geological, seismic or hydrological factors unless the hazards can be mitigated by minor modifications to existing land forms and vegetation. These determinations must be based on the analysis of a licensed engineering geologist and/or civil engineer specializing in soils problems and hydrologist;

(2) The number of safe building sites which exist on the property;

(3) The cumulative impact of the development on existing circulation and drainage systems.

(D) *Gross acreage calculation.*

(1) Density shall be set for gross acreage. Hazardous lands may be excluded from the building area, but will be included in the calculation of gross density per acre.

(2) In cases where a portion of the property falls within two different categories in the General Plan, the Planning Commission shall determine an aggregate density based on the percentage of gross acreage in each category.

(Prior Code, § 17.58.040) (Ord. 352, passed - -1973; Am. Ord. 493, passed - -1982)

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.112 PDD PLANNED DEVELOPMENT DISTRICT ZONE
OF THE FAIRFAX MUNICIPAL CODE**

WHEREAS, this Ordinance is adopted as follows:

- 1) The State of California has recently passed legislation (collectively referred to as the Housing Accountability Act and Senate Bill 35) intended to ensure greater predictability in local jurisdictional review of housing developments.
- 2) The State law severely limits the ability of local jurisdictions to regulate the density of, or to deny applications for, housing development absent reliance on specific, objective development standards.
- 3) The purpose of this Ordinance is to update the Town's Municipal Code to apply objective development standards to the review of housing development projects in the PDD zone.
- 4) The Town's current regulations governing development in the Planned Development District Zone Chapter 17.112 have not been amended in several decades and lack objective development standards.
- 5) The Town wishes to continue to effectively govern the density of housing development and determine whether or not housing development is consistent with the Fairfax General Plan and local regulations; and

WHEREAS, adoption of this Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment, protect against hazards, and retain protect Fairfax's small-Town character, aesthetics and environmental characteristics while also allowing for residential development; and

WHEREAS, the Planning Commission conducted a duly-noticed public hearing on December 20, 2018 to consider the draft ordinance; and

WHEREAS, the Town Council has conducted a duly-noticed public hearing on January 23, 2019 to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter; and

WHEREAS, this ordinance is not intended nor shall it be construed to abrogate, annul, or impair any more restrictive easement, covenant, or other agreement between parties, including but not limited to homeowner's restrictions (such as CC&Rs), nor any conditions of approval for any adopted precise plan, parcels with open

space/conservation restrictions or easements, or parcels with specific development restrictions in the PDD zone;

NOW, THEREFORE, the Town Council of the Town of Fairfax does ordain as follows:

Section 1. Section 17.112.040 of the Fairfax Municipal Code is hereby amended to read as follows:

“(B) Residential Density. A Maximum residential density shall be established based upon average slope, as set forth in the following table:

Average Slope	Maximum Residential Density
30% and greater	1 dwelling unit / 10 acres
20 to 29.9%	1 dwelling unit / 5 acres
10 to 19.9%	1 dwelling unit / 2 acres”

A density shall be further limited by site conditions including natural resources, topographic and geological conditions and by the level of public services and road conditions that can reasonably be provided.

“(C) *Planning Commission determination.* The Planning Commission shall consider the following criteria in further limiting density.

- (1) Extent of lands which are hazardous to life and property due to soils, geological, seismic or hydrological factors unless the hazards can be mitigated by minor modifications to existing land forms and vegetation. These determinations must be based on the analysis of a licensed engineering geologist and/or civil engineer specializing in soils problems and hydrologist;
- (2) The number of safe building sites which exist on the property;
- (3) The cumulative impact of the development on existing circulation and drainage systems.

Section 2. Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act (“CEQA”). Adoption of this Ordinance will enact only minor changes in land use regulations, and it can be seen with certainty that its adoption will not have a significant effect on the environment because it will not allow for housing development at densities that exceed what was previously allowed in the PDD regulations, and the proposed Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2) and 15061(b)(3) because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment, and CEQA Guidelines Section 15378 because they have no potential for either a direct physical change to the environment, or a reasonably

foreseeable indirect physical change in the environment. Moreover, the regulations are exempt from CEQA pursuant to CEQA Guidelines Section 15305, which exempts minor alterations in land use limitations; and

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The Town Council of the Town of Fairfax hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

Section 4. Effective Date. This Ordinance shall become effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Fairfax on the 23rd day of January 2019, and duly adopted at the next regular meeting of the Town Council on the _ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

BARBARA COLER, Mayor

ATTEST:

Michele Gardner, Town Clerk