



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: Discuss/consider options regarding reducing maximum home sizes from 5,000 square feet to 3,500 square feet

RECOMMENDATIONS

Discuss/consider options and provide direction to staff.

BACKGROUND

A Council goal for fiscal year 2018 was to “Amend zoning code to reduce maximum home size.” In April 2018, the Council referred this topic to the Planning Commission for consideration. The Planning Commission (PC) reviewed possible changes to the Zoning Ordinance to reduce the maximum allowable house size at five meetings in 2018. The Commission ultimately forwarded a report to the Town Council with no consensus on any recommended changes, with the exception of recommending excluding the area of one 120-square foot accessory building and deleting “green building” additional square footage provisions. No consensus was reached on whether to reduce the maximum allowable floor area for single-family residential or duplex properties. The PC stated they believed existing Town regulations adequately controlled house sizes.

The Town Council considered the matter at their November 7, 2018 meeting. At that meeting, a preliminary consensus was that the total square footage of structures on single-family residential and duplex properties should be reduced to 3,500 square feet, from the current 5,000 square feet. While the Council did not discuss the specific details of the limitation, the Council directed staff to return with issues and options for consideration.

DISCUSSION

Before proceeding with zoning code revisions, it would be helpful for the Council to provide direction on key policy decisions regarding the implementation of reducing the maximum home size from 5,000 square feet (sf) to 3,500 sf.

Key issue: How to apply a 3,500 maximum square foot limit?

Option #1: Apply a lower maximum floor area limit of 3,500 square feet (sf) *only to new construction on undeveloped residential parcels.*

Option #2: Apply a lower maximum floor area limit of 3,500 sf *to all existing and new single family residential and duplex properties.*

Option #3: Apply a lower maximum floor area limit of 3,500 sf *only to new construction on undeveloped residential parcels and continue to allow existing homes and duplexes of 3,500 sf or greater to expand up to the Town's current 5,000 square foot maximum subject to more stringent development standards.*

Policy Considerations

Below is a brief policy analysis of each option.

Option #1: 3,500 Sf Limit for only New Development

Under this Option, owners of existing developed properties would potentially be allowed to expand/add to their existing properties to the current 5,000 square foot limit. Properties that are currently undeveloped would be subject to the new, lower maximum floor area limit of 3,500. A person that wanted total residential square footage greater than the new limit allowance would have to buy an existing developed property and be approved to expand it under the current regulations.

This Option would bifurcate the maximum residential square footage size regulations. The new, lower maximum floor area limit would apply only to previously undeveloped properties, regardless of whether they were subsequently developed. To ensure compliance, the Town would have to create and permanently maintain a list of undeveloped properties.

While parallel zoning regulations are challenging to administer and is uncommon, we can develop regulations. Under this system, the vast majority of residential properties in Fairfax would still be subject to the current 5,000 square foot limit. However, this Option would not create "legal non-conforming" uses of existing homes (see Option #2).

Option #2: 3,500 Sf Limit for Both Existing and New Development

Under Option 2, a varying numbers of properties would/could be rendered "legal non-conforming" by a square footage reduction in maximum residence size, depending on the extent of the square footage reduction and what is or is not considered countable square footage. In other words, properties that previously "conformed" (i.e., allowed under the zoning code) to the maximum floor area limit would now be considered "legal non-conforming" which means that owners would not be able to remodel, alter, or potentially expand such structures.

In order to better understand the potential impacts Option #2 could have on existing homes, staff compiled a list of existing homes based on the County Assessor's data. The total number of residences listed in each size category (and larger) is probably underestimated. Garage areas are counted separately from residences, and the areas of other accessory buildings, of which Fairfax has hundreds, are not counted by the County. The cumulative additions of garage/accessory building square footage would add to the net structural areas of such properties and, most likely, add to the number of properties in the specific size categories listed below.

Therefore, the figures listed below for the number of Fairfax single family dwelling/duplex properties by square footage is intended to serve as an "order of magnitude" for discussion purposes. Please note the number of units listed under each category is a cumulative total. In other words, the total number includes the total of the numbers above. For example, the 28 units that are listed as "equal to or greater than 3,500 sf includes the 14 units listed in the categories above it.

Category of Unit Size	Cumulative Total
▶ 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

If the new maximum allowable residential size is lowered to 3,500 square feet, a minimum of 28 single family or duplex properties in Fairfax would exceed the maximum square footage limit. According to Assessor's records, no residential properties exceed the Town's current 5,000 square foot limit.

Addressing Legal Non-Comforting uses

Should the Council select this Option, staff would request direction regarding the following question:

Should limited structural expansion or greater than 50% remodels be allowed in newly created non-conforming properties?

Allowing owners of properties that would become legal nonconforming to perform greater than the 50% remodels permitted under current zoning, or possibly allowing some limited expansion of floor area, would help address fairness issues for newly legal non-conforming properties, and may provide an incentive to such owners to improve their residences. Typically, property owners contemplating a significant remodel desire some additional area. Even a limited

expansion (e.g., 100 square feet) for a closet or bathroom would ease the impact of the new limit on existing homes affected by the reduced maximum size.

Option #3: 3,500 sf Limit for New Development and more stringent regulations for homes greater than 3,500 sf that wish to expand.

Under this option, the lower maximum floor area limit of 3,500 square feet would apply to undeveloped properties, and existing developed properties of 3,500 sf and greater would potentially be allowed to develop up to the current 5,000 square foot maximum subject to the design complying with certain standards.

The Planning Commission (PC) discussed the concept of new regulations for existing properties using the County of Marin's ordinance as a model. For example, the larger the house, the more energy efficient it would have to be, or the development has very little offsite visibility. However, the PC concluded that there is no need to create more stringent standards because the Town's current regulations and other policies have been quite effective in governing size and fit of residential development to date. Specifically, maximum floor area, floor area ratio, and coverage limits appear to adequately govern the size of a residence relative to a lot. Other requirements such as Design Review and Use Permit procedures adequately control potential development-related issues such as mass, bulk, and visibility. All but the largest, least-constrained properties are currently effectively precluded from building large residences.

Other Policy Considerations

All the options above will require amendments to various sections of the zoning code. Below are specific recommendations from the Planning Commission and staff for Council consideration regarding policies that apply to all the options considered.

Zoning Code Definitions- Floor Area and Maximum Floor Area

This section of the code will need to be revised to reflect the Council's direction. Current code states that the single family dwelling or duplexes themselves cannot exceed 5,000 square feet, and that the total floor area ratio (FAR) on residential lot cannot exceed 0.40. Language will be needed to clarify that 5,000 sf is the maximum floor area for a property regardless if the FAR would allow for more than 5,000 square feet.

Accessory structures

The Planning Commission recommends allowing one non-conditioned shed with no utilities of any kind (e.g., electrical, plumbing) to be excluded from consideration as "countable" square footage, as long as the structure does not exceed 120 square feet in size and 7 feet in height – in other words, a shed. Currently, any accessory structures on the same lot are considered in the floor area calculation. The PC believed allowing one accessory structure seem to be reasonable. The PC is not recommending any other revisions to how floor area is calculated.

Green Building

The Planning Commission recommends that current zoning provisions allowing additional floor area for residences (i.e., 10%) with green building technology (§17.136.040 (B)-(D)) are no longer necessary and should be eliminated. California Energy Codes currently contain numerous provisions applicable to new residences and major remodels that largely address energy efficiency requirements.

Clarifying some "Non-Conforming" provisions

Regardless of which option the Council selects, Town code is currently not very clear how to treat properties with non-conforming structures. The general objective of the Town's non-conforming provisions is to reduce non-conformities over time by preventing work beyond minor maintenance. Substantial maintenance, demolition/replacement, or expansion are not permitted. At a minimum, Chapter 17.016: Non-Conforming Uses and Structures will require revisions to provide more clarity for certain provisions.

For example, the current provisions in Section 17.016.070 *Restoration of A Damaged Structure* are confusing and subject to varying interpretations. The section references two thresholds for determining if a structure must be constructed to existing zoning standards (i.e., conformity): work involving greater than 50% of floor area and work that reaches 50% percent of cost of restoration versus the cost to replace the entire structure as it existed prior to the damage.

The Planning Commission recommends amending the nonconforming zoning provisions to clearly stipulate only one threshold be used to trigger conformity. Staff recommends using the "work greater than 50% of floor area" standard. This is much easier for staff to calculate and applicants to understand. The cost basis is very subjective and requires more work and time to determine/evaluate the cost value of repairs and the cost value to replace the entire structure prior to the damage.

NEXT STEP

With Council direction regarding these topics, staff will prepare an ordinance for Council consideration.

FISCAL IMPACT

None at this time.