



TOWN OF FAIRFAX

STAFF REPORT

April 3, 2019

TO: Mayor and Town Council

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

SUBJECT: Introduce and read by title only an ordinance amending Town Code Chapters 17.008, 17.016, and 17.136, to reduce the allowable maximum home size from 5,000 square feet to 3,500 square feet; CEQA Exempt per CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), and 15302

RECOMMENDATIONS

Conduct public hearing and introduce and read by title only an ordinance entitled "An Ordinance of the Town Council of the Town of Fairfax Amending Chapter 17.008 ('Definitions'), Chapter 17.016 ('Nonconforming Uses and Structures'), and Chapter 17.136 ('Floor Area'), of the Fairfax Municipal Code, Title 17 ('Zoning'), to Limit Maximum Floor Area for Single Family Residential and Duplex Properties;"

or

Conduct public hearing and discuss the ordinance and continue the matter to the May meeting to allow staff to revise the ordinance as directed

BACKGROUND

A Council goal for the last two years has been to amend the zoning code to reduce maximum home size. In April 2018, the Council referred this topic to the Planning Commission for consideration. The Planning Commission conducted five meetings in 2018, but was ultimately unable to reach a consensus on whether or how to change maximum house size regulations, with the exception of recommending excluding the area of only one 120-square foot accessory building, and deleting 'green building' additional square footage provisions.

The Town Council considered maximum house size reductions commencing on December 5, 2018, and also on February 5, 2019. At the February meeting, the Council directed staff to return with ordinance changes that reduced maximum single family residential floor area to 3,500 square feet, and addresses issues such as non-conforming properties and green building provisions.

DISCUSSION

At the February meeting, the Council provided the following direction regarding maximum floor area limits:

- 1) Establish a 3,500 square foot maximum floor area limit for a single-family residential zoned parcel.

The current zoning ordinance lists the maximum floor area of a residence at 5,000 square feet. This includes accessory structures, except garage space in the amounts of 500 square feet for single family residences and 800 square feet for duplexes, per the definition of "Floor Area."

The proposed ordinance would reduce the cap on total structural square footage on single-family and duplex properties to 3,500 square feet, excluding garages (current limits), an accessory dwelling unit (per state law) and one accessory structure (120 square feet or less and featuring no utilities).

2) The 3,500 sq. ft. maximum floor area limit would apply to new residences.

While the Town Council expressed a variety of opinions on how to address existing developed properties, it did not reach a consensus on how to apply the 3,500 sf limit to existing structures. Based on that direction, staff has developed an ordinance which does apply the 3,500 sf limit to existing development, but allows for existing homes above the limit to be rebuilt if they are damaged.

Determining the applicability of a maximum floor area limit to existing developed properties is perhaps the most challenging aspect of the new floor area ordinance. More vexing is how to treat the approximately several dozen residential properties that are currently at or above the proposed 3,500 total floor area limit.

Based on discussion to date, staff has developed an ordinance with the key element as listed below. *We are seeking direction from the Council on the proposed ordinance and key policy issues, which depending on the Council's direction, may require revisions to the ordinance.*

- a. Currently developed properties would be allowed to replace/rebuild previously legally permitted square footage one-for-one if it complies with all other zoning standards, regardless of the extent of remodel/demolition. In other words, an existing single-family or duplex residential property that currently contains more than 3,500 square feet of legally-constructed floor area would be allowed to completely demolish and then replace that floor area one-for-one. Existing residential structures currently below the 3,500 square feet floor area limit would be allowed to add or rebuild up to the 3,500 square foot floor area limit.

The rationale for this change is it straightforwardly addresses the issue of what otherwise could/would be legal non-conforming properties that are prohibited in current Town regulations from altering or reconstructing more than 50% of a structure. The proposed language would provide assurance to title companies, potential buyers, insurance agencies, etc. that the structures could be remodeled and replaced like-kind, eliminating potential issues with home sales, insurance, etc.

A key policy consideration for the Council with regard to reconstructing more than 50% of structure is: Should homes that are proposed to be rebuilt to their previous floor area that exceeds the 3,500 sf limit be allowed to be rebuilt without consideration to other zoning standards (e.g., parking, set-backs) that the home previously may not have complied with? Council direction on this issue may require revisions to the ordinance as presented."

- b. No expansion of countable floor area in a single-family residential property that exceeds the proposed 3,500 square foot size limit would be allowed without a variance.

The Town's intent with the new ordinance is clear. However, as a fairness measure, the current regulations allow for the possibility for someone to apply to expand their house, garage, shed, etc., above the square footage cap. The current stated findings under Section 17.136.040 do not meet the legal requirements for a variance under state law, therefore, it is recommended that this Section be eliminated. Variance requests would automatically follow the process as contained in Town Code Chapter 17.028 "Variances."

- c. Only one accessory structure of 120 square feet or less would be exempted from the proposed 3,500 square foot cap. Furthermore, the accessory structure would have to be without any utilities (e.g., water, electricity, i.e., a true storage shed), regardless of size, in order to not be counted.

This was one of the three recommendations from the Planning Commission on the maximum residential floor area code change topic. The Town doesn't know how many accessory structures there are in particular properties. Under current code provisions, if the structures meet setbacks and are otherwise exempted from building permit requirements, a person could build a large number of them up to the floor area maximum and FAR limits.

The proposed code wouldn't limit a person from having more than one accessory structure, it would clarify that the area of more than one accessory building, and the area of any accessory building of greater than 120 square feet, is included in the 3,500 square foot floor area cap.

- d. The current uncounted exemptions from the floor area limit – the first 500 square feet of a single family residence's garage, and 800 square feet of garage area for a duplex – would remain.

Neither the Planning Commission nor staff found any compelling reason to change the current exemptions from countable floor area (and the proposed floor area limit) for the garage areas listed.

- e. Current “Green Building Technologies” code provisions contained in §17.136.040 that allow up to a ten percent increase in floor area ratio would be eliminated.

As can be seen in the attached Town Code, the Town currently allows up to a ten percent in FAR for structures incorporating the “Green Building Technologies” elements listed. While the green technologies provision served an admirable purpose at the time of adoption – encouraging the use of innovative “green” technologies, mandatory State building code requirements have caught up to what is currently incentivized in the Town code. For example, if feasible, new residences are required to have solar power. Energy requirements similarly mandate the use of energy efficient insulation, windows, siding, etc. The Fairfax “Green Building Technologies” are no longer necessary, provide a large loophole for someone to achieve additional square footage, and should be eliminated.

3) The current definitions pertaining to non-conforming structure demolition should be clarified.

Town Code Chapter 17.016 contains the Town’s non-conforming regulations. Two primary changes are proposed to the non-conforming regulations:

- a. Section 17.016.070 would clarify that even though development on single-family residential and duplex properties would be considered non-conforming under the new regulations if it exceeds 3,500 square feet of net (countable) floor area, it would allow a one-for-one replacement of such structures as long as the floor area of the structures was legally established, regardless of the extent of reconstruction. As noted above, this eases the burden on owners of such non-conforming properties in selling, obtaining insurance, or even maintaining their property.
- b. The second change is proposed to the current “50 percent replacement” provisions. In the current code Section 17.016.040, alterations that cumulatively affect more than 50 percent of the floor area on a non-conforming use or structure are prohibited. The effect of those provisions is basically to reduce such non-conformities through discouraging the continuation of such uses or structures by preventing work beyond general maintenance, even if the alterations do not exacerbate or create new nonconformities. Proposed Section 17.016.040(D) would clarify that properties exceeding 3,500 square feet of net (countable) floor area are not subject to the 50 percent replacement limit.

One existing problem with the 50 percent trigger is it is defined two different, inconsistent ways in the chapter. The current provisions in Section 17.016.070 *Restoration of A Damaged Structure* 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 recommended amending the nonconforming zoning provisions to set forth that only one threshold be used to as a non-conforming regulations trigger: work greater than 50% of floor area.

A solely floor area trigger is much easier for staff to calculate and applicants to understand than a cost basis. A cost basis is open to a number of subjective interpretations and requires more time and effort to determine/evaluate the cost value of repairs and the cost value to replace the entire structure prior to the damage.

Staff is therefore proposing a code change that eliminates the reference to a cost basis trigger contained in §17.16.070 (C).

CONCLUSION

The proposed Fairfax Code changes will, if adopted, achieve a reduction in overall allowable square footage of single-family and duplex residential properties, while allowing owners of heretofore legal conforming properties continued use of their structures and properties with a minimum of red tape and uncertainty relating to compliance with the new regulations. Staff is also prepared to make further revisions to the code consistent with Council recommendations.

FISCAL IMPACT

None

ATTACHMENTS

- A. Chart
- B. Ordinance

Proposed Floor Area Limit Regulation
Explanatory Chart
Prepared for Fairfax Town Council Meeting April 3, 2019

Home and accessory bldg. floor area (square feet)	Additions Allowed	Remodel / Alteration	Rebuild if voluntarily or involuntarily destroyed	ADUs Allowed
0	Yes, new construction up to 3,500 (§17.136.030)	Yes (§17.136.030)	Yes, up to 3,500 (§17.136.030)	Yes, subject to .4 FAR limit (§17.136.030)
2,500 sf	Yes, up to 3,500, assuming no non-conformity (§17.136.030)	Yes, assuming no non-conformity (§17.136.030)	Yes, up to 3,500 (§17.136.030)	Yes, subject to .4 FAR limit (§17.136.030)
≥ 3,500 sf	No (§17.136.030 & §17.016.040(A))	Yes, assuming no other non-conformity* and do not increase floor area (§17.016.040(D))	Yes, up to previous floor area (§17.016.070(C))	Yes, subject to .4 FAR limit (§17.136.030)

*If there is no other nonconformity other than residence size/floor area limit, a remodel / alteration would be allowed as long as it does not increase the floor area of the residence. If there is another nonconformity (i.e. not due to residential size/floor area limit), then the aggregate amount of construction, reconstruction or alterations cannot affect more than 50% of the floor area, subject to certain exemptions. (§17.016.040, subds. (B)(1) & (C)). Under this rule, even alterations that do not increase non-conformities with zoning standards cannot affect over 50% of the floor area over the life of the building unless exempt. The exempt projects are limited to: window/door replacement, installation of insulation, cosmetic floor or wall coverings, roof repairs that do not change the configuration of the existing roof, earthquake preparedness improvements, projects to generate alternative energy and projects not located in the ridgeline or a flood zone where off-street parking requirements are met. (§17.016.040(C).)

ATTACHMENT A

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 17.008 ('DEFINITIONS'), CHAPTER 17.016
('NONCONFORMING USES AND STRUCTURES'), AND CHAPTER 17.136 ('FLOOR
AREA'), OF THE FAIRFAX MUNICIPAL CODE, TITLE 17 ('ZONING'),
TO LIMIT MAXIMUM FLOOR AREA FOR
SINGLE FAMILY RESIDENTIAL AND DUPLEX PROPERTIES**

WHEREAS, the Town Council finds and determines as follows:

- 1) The small town residential character of Fairfax consists of typically small, modest homes. According to the County Assessor's records, Approximately 2,557 of the 2,599 single family dwelling and duplex structures in Fairfax are less than 3,500 square feet. Only 42 single family dwellings or duplexes appear to be 3,500 square feet or larger in size.
- 2) Increases in the size of residences would adversely affect Fairfax's small town character.
- 3) Larger homes generally increase energy consumption, carbon footprint, and have the potential to cause proportionally larger negative environmental impacts, such as runoff, erosion, and additional vegetative removal, as compared to smaller homes. Further, larger homes tend to result in greater visual impacts to nearby residences, neighborhoods, and the Town.
- 4) The purpose of this Ordinance is to update the Town's Municipal Code to reduce the maximum allowable size of single family residences and duplexes in order to conform to and preserve the existing size and scale of the Town's residential properties.

WHEREAS, adoption of this Ordinance is consistent with the Town's General Plan, which provides goals, policies, and programs to preserve the environment and retain protect Fairfax's small-town character, aesthetics and environmental characteristics while also allowing for residential development. By reducing the maximum allowable size of single family residential and duplex properties from 5,000 square feet to 3,500 square feet, the proposed Ordinance would preserve Fairfax's small-town character and promote environmentally sustainable residential development patterns. Specifically, the proposed Ordinance is consistent with the following General Plan goals, objectives and policies:

- 1) GOAL LU-7: Preserve community and neighborhood character.
- 2) Objective LU-7.1: Preserve and enhance the community's small-town scale and character.

- 3) Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the Town's neighborhoods in diversity, architectural character, size and mass.
- 4) Policy LU-7.1.6: New and renewed residential development outside of the Town Center Area should be compatible with, and subordinate to, the topography, wildlife corridors and habitat, natural vegetation pattern, hydrology, and geotechnical characteristics of the area.
- 5) Objective LU-7.2: Preserve, maintain, and enhance in a sustainable manner, the existing character, scale, and quality of life in Fairfax's residential neighborhoods.
- 6) Policy LU-7.2.1: New and renewed development shall be compatible with the general character and scale of structures in the vicinity.
- 7) Objective LU-1.1: Limit development to preserve and enhance the community's unique natural and scenic resources.
- 8) Policy LU-1.2.3: New and renewed development shall be designed and located so as to minimize the visual mass. The Town will require exterior materials and colors that blend the exterior appearance of structures with the surrounding natural landscape, allowing for architectural diversity; and

WHEREAS, the Town Council directed the Planning Commission to consider zoning amendments to reduce maximum house size on May 2, 2018; and

WHEREAS, the Planning Commission considered the proposal whether to reduce maximum house size on May 17, June 21, July 19, and September 20, 2018, but failed to adopt a resolution making findings and a recommendation on the matter within 40 days after the conclusion of the public hearing and therefore is deemed to have approved the proposed amendment pursuant to California Government Code Section 65853 and Town Code Section 17.004.110; and

WHEREAS, the Town Council has conducted a duly-noticed public meetings on December 5, 2018 and February 6, 2019 to consider reducing maximum house size, and held a public hearing on April 3, 2019, heard the presentation of a staff report, and received public comment on the matter; and

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

Section 1. Section 17.008.020 ("DEFINITIONS") of the Fairfax Municipal Code, Chapter 17.008 ("Definitions"), is hereby amended to revise and restate the definitions of "Floor Area" and "Floor Area Ratio" and to repeal the definition of "Maximum Floor Area" as shown in underline/strikeout as follows:

FLOOR AREA. The total area of all floors in all buildings, including accessory structures, on a lot as measured to the outside surface of exterior walls or to the centerline of common walls. The FLOOR AREA excludes any crawl space, basement area, attic without floor, and any open porch, deck, balcony or terrace. [Refer to Section 17.136.030 for floor area restrictions pertaining to single family residential and duplex properties.] ~~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 ~~a building or buildings on a lot~~ divided by the area of the lot. [Refer to Section 17.136.030 for floor area ratio restrictions pertaining to single family residential and duplex properties.]

MAXIMUM FLOOR AREA. ~~For single family residences and duplexes, can be of a ratio no greater than 0.40 relative to the size of the lot where the structure is located. The MAXIMUM FLOOR AREA of single family residences or duplexes will not exceed 5,000 square feet for any lot regardless of lot size, based on the area shown on the Marin County Assessor's map.~~

All other definitions set forth in Section 17.008.020 shall remain in full force and effect.

Section 2. Section 17.016.010 ("DEFINITIONS; PURPOSE") of Fairfax Municipal Code, Chapter 17.016 ("NON-CONFORMING USES AND STRUCTURES" is hereby amended to read as shown in underline/strikeout 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.

(1) **LEGAL NON-CONFORMING USE.** 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) **LEGAL NON-CONFORMING STRUCTURE.** 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,

floor area ratio, 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.

Section 3. Section 17.016.040 ("ALTERATIONS AND ADDITIONS TO NON-CONFORMING STRUCTURES") of Fairfax Municipal Code, Chapter 17.016 ("NON-CONFORMING USES AND STRUCTURES") is hereby amended to read as follows:

§ 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, floor area ratio, 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 (B), 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~~ (B)(1) above 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).

(D) The legally-established floor area of structures exceeding 3,500 square feet on a single family residential or duplex property shall not be subject to the restriction in subparagraph (B)(1) above, provided that the construction, alteration, or reconstruction of the structures shall not increase the existing floor area.

Section 4. Section 17.016.070 ("RESTORATION OF A DAMAGED STRUCTURE") of Fairfax Municipal Code, Chapter 17.016 ("NON-CONFORMING USES AND STRUCTURES") is hereby amended to read as follows as shown in underline/strikeout:

§ 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~~ legal non-conforming structure, is destroyed by fire or other calamity, or by act of God or by the public enemy, to the extent of 50 percent or less, 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, or other time period required by law, 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 ~~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~~ legal non-conforming structure, is destroyed by fire or other calamity, or by act of God or by the public enemy, to a greater extent than 50 percent as defined in § 17.016.040(B), 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 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.~~

(C) Notwithstanding subsection (B)(1), the legally-established floor area of structures exceeding 3,500 square feet on a single family residential or duplex property that are totally or partially destroyed or damaged by fire or other calamity, or by an act of God or by the public enemy, or is voluntarily razed or required by law to be razed, may be restored and reconstructed to previous floor area, provided that reconstruction is started within one year, or other time period required by law.

Section 5. Chapter 17.136, entitled "FLOOR AREA" of the Fairfax Municipal Code is hereby amended and restated to read as shown in underline/strikeout 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 properties.

(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~~ 3,500 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.

§ 17.136.020 GENERALLY.

The general requirements and regulations set forth in this title shall be subject to the specific modifications and interpretations set forth in this chapter.

§ 17.136.030 MAXIMUM FLOOR AREA AND FLOOR AREA RATIO

(A) The maximum floor area ratio for any lot containing a single family residences or duplexes shall be no greater than 0.40 for any lot, excluding 500 square feet of garage space for a single-family residence or 800 square feet of garage space for a duplex, as applicable.

(B) The maximum floor area for any lot containing of a single-family residences or duplexes shall not exceed 3,500 square feet regardless of lot size. The maximum floor area limit shall exclude the floor area of (1) one accessory structure containing 120 square feet or less and featuring no utilities; and (2) 500 square feet of garage space for a single-family residence or 800 square feet of garage space for a duplex, as applicable, and (3) an attached or detached accessory dwelling unit as defined in Section 17.048.030. 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.~~

Section 6. CEQA. Adoption of the proposed Ordinance is exempt from the California Environmental Quality Act ("CEQA"). This Ordinance reduces the size limit for new single family residences and duplexes, which will thereby reduce residential energy consumption and visual impacts as compared to larger homes, and smaller building footprints will also reduce runoff, erosion, vegetative removal. Therefore, it can be seen with certainty that the adoption of this Ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed Ordinance is exempt from further environmental review pursuant to CEQA Guidelines Section 15060(c)(2) (the activity is not a project as defined by Section 15378) and Section 15061(b)(3) (common sense exemption). In addition, the Ordinance permits the replacement and reconstruction of non-conforming structures on the same site and with substantially the same purpose and capacity, and is therefore also exempt pursuant to CEQA Guidelines Section 15302.

Section 7. 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 8. Effective Date and Posting. 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 3rd day of April 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