



TOWN OF FAIRFAX

STAFF REPORT

June 5, 2019

TO: Mayor and Town Council

FROM: Ben Berto, Director of Planning and Building Services ^{GT}

SUBJECT: Second reading and adoption of "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 and to Revise the Standard for Determining Whether a Legal Nonconforming Structure Is More than 50% Destroyed;" CEQA exempt per CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), and 15302.

RECOMMENDATION

Read by title only and adopt 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 and to Revise the Standard for Determining Whether a Legal Nonconforming Structure Is More than 50% Destroyed."

DISCUSSION

At its May 1, 2019, meeting, the Council introduced the ordinance. Tonight is the second reading and adoption of the ordinance. If adopted, it would become effective in 30 days. The ordinance as currently proposed reduces the allowable floor area on single-family and duplex residential properties to 3,500 square feet. The ordinance specifically states that existing structures larger than 3,500 sq. ft. are not considered non-conforming units.

The adoption of the ordinance is a Council goal for both FY18-19 and FY19-20.

FISCAL IMPACT

None

ATTACHMENT

Ordinance

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 AND TO REVISE THE
STANDARD FOR DETERMINING WHETHER A LEGAL NONCONFORMING
STRUCTURE IS MORE THAN 50% DESTROYED**

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 and April 23, 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 Chapter 17.136 for floor area restrictions pertaining to single family residential and duplex properties.]

FLOOR-AREA RATIO. The floor area, as defined above, of a building or buildings on a lot divided by the area of the lot. [Refer to Chapter 17.136 for floor area ratio restrictions pertaining to single family residential and duplex properties.]

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

Section 2. 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 duplex 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 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.

(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 residence or duplex shall be no greater than 0.40, 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 a single-family residences or duplex 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) one accessory dwelling unit pursuant to Chapter 17.048.

§ 17.136.040 EXISTING STRUCTURES.

(A) Any single family residential or duplex property whose legally-established floor area exceeds the maximum floor area limit in Section 17.136.030(B) as of June 1, 2019, shall not be deemed a legal non-conforming structure solely based on floor area.

(B) If any structure on a property specified in subsection (A) is involuntarily destroyed by fire or other calamity, by act of God or by the public enemy, to a greater extent than fifty (50) percent, such structure may be rebuilt and reconstructed in kind with the same floor area, provided there is no increase in any nonconformity of the original structure and shall not be required to comply with § 17.016.070(B) except with respect to improvements located in the public right of way.

(C) If any structure on a property specified in subsection (A) is voluntarily altered, remodeled, reconstructed or demolished to a greater extent than fifty (50) percent, such structure may be rebuilt or reconstructed with the same floor area, but otherwise in full conformity with the requirements of Title 17 (Zoning).

(D) Any structure on a property specified in subsection (A) may be voluntarily altered, remodeled, reconstructed or demolished to an extent of fifty (50) percent or less, provided that the alteration, construction, or reconstruction of the structure shall not increase the existing, legally-established floor area.

(E) The limitations in Section shall not apply to the construction of one (1) accessory dwelling unit per lot in conformance with Chapter 17.048.

(F) If any single family residential or duplex property containing less than the maximum floor area stated in Section 17.136.030(B) is involuntarily destroyed by fire or other calamity, by act of God or by the public enemy, to a greater extent than fifty (50) percent, such structure may be rebuilt and reconstructed in kind with the same floor area, provided there is no increase in any nonconformity of the original structure and shall not be required to comply with § 17.016.070(B) except with respect to improvements located in the public right of way.

(G) Evidence of the floor area and existing legal nonconformities of the existing structure(s) 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. The extent of destruction, alteration, or reconstruction of any structure, shall be determined in accordance with § 17.016.040(B).

§ 17.136.050 FLOOR AREA EXCEPTION PROCESS.

An exception to the maximum floor area requirement may be granted to prevent or minimize inconsistencies with the floor area of adjacent or neighboring properties, to assist with the provision of adequate off-street parking, or if the lot is one acre or greater in size; 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 an exception requires the review and approval of the Planning Commission. An exception that meets all of the above conditions may be granted by the Planning Commission, provided the total floor area shall not exceed 5,000 square feet per property.

Section 3. 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, 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, 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.

Section 4. 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 existing 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 5. 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 6. 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 1st day of May 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