



# TOWN OF FAIRFAX

## STAFF MEMO

### November 18, 2020

**TO:** Mayor and Town Council

**FROM:** Janet Coleson, Town Attorney  
Kara Spencer, Assistant Planner

**SUBJECT:** Responses to Questions and Issues Raised at the November 4, 2020 Town Council Meeting regarding the Appeal of the Planning Commission Approval for the Project at 6 Walsh Lane

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Questions were raised at the Fairfax Town Council meeting of November 4, 2020 regarding the appeal of the Planning Commission's approval of the proposed remodel of 6 Walsh Lane. The questions related to certain Town Code provisions concerning legal non-conforming structures and the conclusion that no variances are required for this project, the proper way to calculate the proposed Floor Area Ratio (FAR) and whether there is an issue with Fire Department access.

Staff has reviewed the recording of the November 4, 2020 Council meeting as well as the appellant's submitted letters and offers this supplemental memorandum to address these issues.

**Legal Non-Conforming Structure - No Variance Required:**

The existing house at 6 Walsh Lane is a "legal non-conforming structure" because it has a less than standard side setback (it intrudes 6 inches into the required 5 foot setback on the northeast side) and because it has a less than standard combined front and rear setback (it intrudes 9 feet (at the deck) into the required 35 foot combined front and rear setback).

Chapter 17.016 of the Fairfax Town Code governs Non-Conforming Uses and Structures. Sections 17.016.010 and 020 contain the definition of legal non-conforming structure and the provision allowing continuation and maintenance of such structures. Section 17.016.030 deals with non-conforming *uses*, and is not applicable to *structures*. Section 17.016.040 is applicable to this remodel, as it governs alterations and additions to non-conforming structures. This section begins with subsection (A) stating a general prohibition on moving, enlarging or reconstructing a non-conforming structure. Subsection (B) continues describing this general prohibition.

Subsection (C), however, provides,

**The restriction in this division shall NOT apply:**

(1) to projects that are (simple window replacements, roof repair or energy efficiency improvements and similar projects); **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; **[The proposed project meets the off-street parking requirements.]**

AND

- (b) The work does not increase an existing or create any new non-conformity; **[The proposed project does not increase the existing non-conformity in the side setback or the combined front/rear setback as there is no further intrusion into the side, rear or front yard setbacks. The increase in height is not creating a new non-conformity as the proposed height is still within the height limit of 35 feet.]**

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). **[The proposed project is not located in either area.]**

As a result, the general prohibition on moving, enlarging, or reconstructing a non-conforming structure found in Section 17.016.040(A) and (B) is **NOT applicable** to this proposed project. Accordingly, no variance is required.

**Floor Area Ratio - the existing sub-floor area:**

The appellant makes several claims concerning the sub-floor area of the home. The appellant claims this sub-floor area is not a basement as defined by the Fairfax Town Code<sup>1</sup>, should be considered living space, and therefore should count towards the Floor Area and Floor Area Ratio (FAR) of the current structure.

While it is correct to state that this area does not fit the definition of "Basement" found in the Code, the sub-floor area is not habitable space as supported by the FTC's definition of "Habitable Room"<sup>2</sup>, and the California Building Code's (CBC) definition of "habitable space"<sup>3</sup>. The sub-floor area is unfinished, without heat, and therefore cannot be considered a space for living, sleeping, eating, or cooking. This conclusion is supported by the Marin County Assessor's records (see Attachment) that clearly show the sub-floor area is not considered habitable space by the Assessor and accordingly, has not been assessed as such. This means it is currently not included in the calculation of floor area.

Even though the appellant spends a great deal of time attempting to label the sub-floor area as habitable space, it appears to be immaterial to the calculation of the proposed project's FAR. According to the Marin County Tax Assessor, the home has a total of 1,510 square feet on a 7200 square foot lot. The project proposes to add a total of 406 square feet to the 1,510 square foot existing floor for a total of 1,916 square feet on the existing floor (future upper floor). According to the applicant, who measured the entire house, the sub-floor has 1,022 square feet of area. The project would add 96 square feet to the sub-floor level for a total of 1,118 square feet. The project would convert 950 square feet of this sub-floor level to living space and 93 square feet would remain unfinished, non-habitable space. Finally, 75 square feet would be for

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<sup>1</sup> Fairfax Town Code Section 17.008.020 defines "Basement" as an area below the first floor with an exterior wall extending no more than three feet above the adjacent grade of any side wall. An interior area of any single-family dwelling or duplex that meets this definition shall not be considered floor area. As well, the FTC definition of "Floor Area" excludes any crawl space, basement area, attic without floor and any open porch, deck, balcony or terrace.

<sup>2</sup> Fairfax Town Code Section 17.008.020 defines "Habitable Room" as a room in a dwelling unit designed to be used for living, sleeping, eating or cooking, excluding bathrooms, toilet compartments, closets, halls, storage and similar space.

<sup>3</sup> The CBC defines "Habitable Space" as a space in a building for living, sleeping, eating, or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

stairs. Thus, the project would add a total of 1,356 square feet of living space (including converting 950 sq ft of the currently non-habitable sub-floor area) to the existing 1,510 square feet of living area for a finished total of 2,866 sq ft of floor area (garages under 500 sq ft are not counted toward floor area.) As a result, the majority of additional living space is created by converting non-habitable space that already exists within the home into livable space and the FAR is at the .40 allowed.

The following may aid in understanding the calculations:

	<u>Existing Sq. Ft.</u>		<u>Proposed Sq. Ft.</u>
<u>Existing Floor</u> .	1,510	plus 406	1,916
<u>Existing Sub-Floor</u>	1,022 (unfinished)	plus 96 less 168 <sup>4</sup>	<u>950</u> (converted to habitable)
Total			2,866 sq.ft.
FAR		<u>2,866</u> (habitable space) 7,200 (lot)	.398 or .40 FAR

The appellant, however, contends that the existing “floor area” in the sub-floor area is 680 square feet, but has not explained how he derived this square footage amount. He further contends that 487 square feet will be “new” floor area without explanation as to how he derived this amount. Thus, according to the appellant the total floor area of the lower level would be 1,167 square feet with project implementation resulting in the total floor area of the home of 3,083 square feet (1,167 in the lower level plus 1,916 square feet in the upper level). As such, the appellant states that the FAR for the project would be .43, which exceeds the maximum allowable FAR of .40.

The correct figures are displayed above.

**Fire Department Access:**

An allegation was made that a fire truck would not be able to access this house. The project applicant met with Geoff Aus and Rob Bastianon of the Ross Valley Fire Department on January 28<sup>th</sup>, 2020. As a result of that meeting, the Fire Department agreed that there is space for a 20 foot by 30 foot clear area at the intersection of Walsh Lane and Manzanita that will satisfy the street width requirement for a fire truck. Ross Valley Fire asked the applicant to provide a drawing illustrating the 20 foot by 30 foot clear space on Manzanita and the distance to the rear portions of the residence at 6 Walsh Lane. (See Plans page F2). Furthermore, the fire hydrant that serves this property meets the fire flow requirements and a fire flow test is not required. Accordingly, the Fire Department independently has signed off on this proposed project.

**ATTACHMENT**

Handwritten Tax Assessor Records

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<sup>4</sup> Less 168 is the 75 sq feet for the stairs and 93 sq feet left unfinished and non-habitable.