

TOWN OF FAIRFAX

STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: March 18, 2021
FROM: Linda Neal, Principal Planner
LOCATION: Commercial Districts
RE: Draft Ordinance correcting a 2002 Code change to the Design Review Ordinance removing exterior color changes or alterations of significant design elements to buildings or premises in the commercial zones from the purview of the Planning Commission
CEQA EXEMPT: The proposed ordinance change is exempt from CEQA review in accordance with sections 15160(c)(2), 15061 (b)(3), 15305 and 15378.

From 1982 to 2002 the Zoning Ordinance required that alterations and additions to structures in the commercial zones (all zones except the residential zones) having an estimated value more than \$2,500 as determined by the Building Inspector, and/or changes in the exterior color of structures, or the alteration of a significant design element which is a part of the building, required approval of a design review permit from the Design Review Board (See attachment B – Staff report and attachments from the 2/18/21 meeting including Ordinance No. 500 and the recodified version of the Town Code). That changed on February 5, 2002 when the Town Council voted to adopt Ordinance 688, Attachment B, which mandated that design review be required for new residences and residential projects constituting 50% remodels in the various residential zones. The title of the ordinance indicates that the requirement for a design review permit for new residences and 50% remodel was to be "an expansion of the Design Review Board's duties". While adding "New residences and alternations or additions constituting 50% remodels as set forth in Town Code 17.10.040(B) in all zones including residential RD 5.5-7 Zones, Residential RS 6 Zones and Upland Residential UR Zones", the codification company apparently inadvertently removed the following language from the design review ordinance which directed the applicability of the provisions of the design review ordinance:

Alterations or additions in all zones except RD 5.5-7, RS 6 and RS 7.5 which have an estimated value more than \$2,500 as determined by the Building Inspector and/or changes in the exterior color of structures or the alteration of a significant design element which is a part of the building."

DISCUSSION

At the February 18, 2021 meeting the Commission directed staff to draft an amendment to the Town Code to reinstate exterior color changes and/or alterations of significant exterior design elements as requiring a design review permit from the Planning

Commission. They also questioned setting a dollar amount as the trigger for determining when exterior building changes require a design review permit.

The staff has eliminated any reference to a monetary project amount triggering the requirement for a design review permit because exterior color changes and/or alteration of significant design elements to a commercial building or site are adequate triggers. For example, fences or other walls are considered structures and they can significantly alter the appearance of a building or site as can installation of new equipment on a roof.

Resolution No. 2021-04 recommends that the Town Council adopt the proposed draft ordinance, (Attachment A to the Resolution) adding the following language to Zoning Chapter 17:

(C) Town Code § 17.020.030(C): Alterations or additions in all zones except RD 5.5-7, RS 6 and RS 7.5 and/or changes in the exterior color of a building or other structure or the alteration of a significant design element which is part of the design of the building or other site structures (fences, trash/recycling enclosures).

RECOMMENDATION

Conduct the public hearing and then adopt Resolution No. 2021-04 recommending that the Fairfax Town Council adopt Ordinance XXX including the requirement of a design review permit from the Planning Commission for all exterior color changes and or alteration of a significant design element which is a part of the design of the building or premises of any commercially zoned properties.

ATTACHMENTS

A – Resolution No. 2021-04 and attached draft Ordinance # XX

B – Staff report and attachments from the February 18, 2021 Commission meeting

RESOLUTION NO. 2021-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF FAIRFAX RECOMMENDING THE FAIRFAX TOWN COUNCIL ADOPT ORDINANCE NO. XX ENTITLED “AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 17.020 [§ 17.020.030(C)] TO INCLUDE THE REQUIREMENT OF A DESIGN REVIEW PERMIT FOR EXTERIOR COLOR CHANGES OR SIGNIFICANT EXETERIOR DESIGN CHANGES TO ANY BUILDINGS OR OTHER SITE STRUCTURES ON COMMERCALLY ZONED PROPERTIES

WHEREAS, the Town of Fairfax contains a developed commercial district along portions of Sir Francis Drake Boulevard, Broadway, Bolinas Road, and Center Boulevard; and

WHEREAS, the Design Review permitting process is a procedural tool used by the Town to ensure that exterior changes to the developed structures on commercially zoned properties compliment the neighboring commercial development and the historic nature of downtown Fairfax as viewed from major thoroughfares and surrounding hillside areas; and

WHEREAS, incorporating the processing of any exterior color changes or significant exterior design changes to any building or property located on a commercially zoned property, into the Design Review process is necessary in the project review phase to ensure such changes are compatible with adjacent commercial and residential development and that the changes will avoid monotony in the overall appearance of the downtown area: and

WHEREAS, staff has prepared such an ordinance, a true and correct copy of which is attached hereto as Attachment A1 (the “proposed Ordinance”), which, if adopted, will amend the Town’s zoning ordinance, found at Title 17 of the Town Code; and

WHEREAS, in accordance with the State Planning and Zoning Law, the Planning Commission is tasked with considering whether any proposed amendment to the Town’s Zoning Ordinance would be in conformance with the terms of the Town’s General Plan. The Planning Commission determines that the proposed Ordinance would conform to the Town of Fairfax 2010 – 2030 General Plan on the basis of the following:

The proposed Ordinance will incorporate the review of exterior color changes and significant exterior design changes to any commercial buildings or any other structure located on commercially zoned properties ensuring that all renewal projects are subject to the same requirements which will comply with the following Fairfax General Plan goals, objectives, and programs:

Land Use Element Goal LU-7: Preserve community and neighborhood character.

Land Use Element Objective LU-7.1; Preserve and enhance the community's small-town scale and character.

Land Use Element Objective LU-7.1.2: New and/or renewed development in the Town Center area should preserve and enhance the village character of the Town Center area in the mix of land uses, architectural styles and ornamentation, materials, colors, and textures.

Town Center Element Goal TC-2: Maintain and preserve the historic character of the Town Center Area.

Town Center Policy TC-2.1.1: New and/or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures, and materials.

WHEREAS, 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 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), 15061 (b)(3) and categorical exemptions 15305 and 15378 because there is no potential that the regulations result in a direct or reasonably foreseeable indirect physical change in the environment.

WHEREAS, the Planning Commission has conducted a duly-noticed public hearing to consider the draft ordinance on March 18, 2021, heard the presentation of the staff report, and receive public comment on the matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the Town of Fairfax as follows:

SECTION 1. The recitals set forth above are adopted as further findings of the Planning Commission.

SECTION 2. The Planning Commission has reviewed the draft ordinance attached hereto as Attachment A1 and finds that it is consistent with the Town General Plan, as set forth above.

SECTION 3. The Planning Commission hereby recommends that the Town Council amend Title 17 of the Fairfax Town Code as set forth in Attachment A hereto to incorporate the requirement for a public hearing and design review permit granted by the Planning Commission prior to making any exterior color changes or significant exterior design changes to any commercial building or other site structures located on commercially zoned properties.

The forgoing Resolution was duly passed and adopted at a regular meeting of the Planning Commission of the Town of Fairfax held in said Town on the 18th day of March 2021 by the following vote, to wit:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Michele Rodriguez, Chair

ATTEST: _____
Ben Berto, Planning Director

ORDINANCE NO. XXX

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING TOWN CODE CHAPTER 17.020 TO INCLUDE THE REQUIREMENT THAT EXTERIOR COLOR CHANGES AND/OR DESIGN ELEMENT CHANGES TO EXISTING COMMERCIAL BUILDINGS OR BUILDINGS LOCATED ON COMMERCIAL ZONED PROPERTIES REQUIRE THE APPROVAL OF A DESIGN REVIEW PERMIT BY THE PLANNING COMMISSION

WHEREAS, the Town of Fairfax contains a small but colorful downtown area filled with small, one and two story commercial buildings; and

WHEREAS, the community of Fairfax values “the small-town feel” of the commercial areas; and

WHEREAS, the exterior color and structural design components of the commercial buildings in the downtown commercial zones create and maintain the small-town character and historical nature of the commercially developed properties along Sir Francis Drake Boulevard, Broadway, Bolinas, and Center Boulevard; and

WHEREAS, being able to guide development, restoration, and improvements to the existing structures to maintain the historic, small town, character of the downtown area is essential. Incorporating into the design review process the review of exterior color changes and significant exterior design element changes is essential to maintaining the diversity and unique character of the commercial areas; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on March 18, 2021 to consider the draft ordinance; and

WHEREAS, adoption of this Ordinance is consistent with and will further the following Fairfax General Plan Goals, objectives, policies, and programs of the Town’s General Plan:

1. Land Use Element Goal LU-7: Preserve community and neighborhood character.
2. Land Use Element Objective LU-7.1; Preserve and enhance the community’s small-town scale and character.
3. Land Use Element Objective LU-7.1.2: New and/or renewed development in the Town Center area should preserve and enhance the village character of the Town Center area in the mix of land uses, architectural styles and ornamentation, materials, colors, and textures.
4. Town Center Element Goal TC-2: Maintain and preserve the historic character of the Town Center Area:
5. Town Center Policy TC-2.1.1: New and/or renewed development in the Town Center Planning Area should be compatible with the architectural character of the downtown in terms of height, design treatment, colors, textures, and materials; and

WHEREAS, the Town Council conducted a duly noticed public hearing on XX, XX, XXXX to consider the draft ordinance, heard the presentation of a staff report, and received public comment on the matter.

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

SECTION 1: Section 17.020.030 (“APPLICABILITY”) OF THE Fairfax Municipal Code, Chapter 17.020 (“Design Review Regulations”), is revised to include subsection “(C)” to read as follows:

“§ 17.020.030(C) Alterations or additions in all zones except RD 5.5-7, RS 6 and RS 7.5 and/or changes in the exterior color of a building or other structure or the alteration of a significant design element which is part of the design of the building or other site structures (i.e., fences, garbage enclosures, etc.)”

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 the proposed Ordinance does not constitute a “project” within the meaning of the California Environment Quality Act of 1970 (CEQA) Guidelines Section 15060(c)(2), 15061(b)(3) because there is no potential for either a direct physical change on the environment, or a reasonably foreseeable indirect physical change in the environment and categorical exemptions 15305 and 15378 because the code amendment will not result in any changes in land use density, is not a project, and is in compliance with the Fairfax 2010-2030 Fairfax General Plan; and

SECTION 3: Severability. If any section, subsection, sentence, clause, phrase, or work 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 work thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or work might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation; and

SECTION 4. 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 XX day of XXX, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

BRUCE AKCERMAN, Mayor

ATTACHMENT A1

ATTEST: _____
Michele Gardner, Town Clerk

TOWN OF FAIRFAX

STAFF REPORT

Department of Planning and Building Services

TO: Fairfax Planning Commission
DATE: February 18, 2021
FROM: Linda Neal, Principal Planner
LOCATION: Commercial Districts
RE: Discussion of 2002 Code change Design Review Code change removing exterior color changes to buildings in the commercial zones from the purview of the Planning Commission.

From 1982 to 2002 the Zoning Ordinance required that alterations and additions to structures in the commercial zones (all zones except the residential zones) having an estimated value more than \$2,500 as determined by the Building Inspector, and/or changes in the exterior color of structures, or the alteration of a significant design element which is a part of the building, required approval of a design review permit from the Design Review Board (Attachment A – includes Ordinance No. 500 and the recodified version by the Town's new codification company that changed numbering sequences in the entire code).

That changed on February 5, 2002 when the Town Council voted to adopt Ordinance 688, Attachment B, which mandated that design review be required for new residences and residential projects constituting 50% remodels in the various residential zones. The title of the ordinance indicates that the requirement for a design review permit for new residences and 50% remodel was to be "an expansion of the Design Review Board's duties". Instead of adding "New residences and alternations or additions constituting 50% remodels as set forth in Town Code 17.10.040(B) in all zones including residential RD 5.5-7 Zones, Residential RS 6 Zones and Upland Residential UR Zones", as an addition to what is now Town Code 17.020.030(A), the codification company removed the language requiring design review approval of additions and alterations to commercial buildings including exterior color changes and design element changes and replaced it with the language above relating only to residential construction requiring design review.

There is nothing in the minutes of the Planning Commission meeting or Town Council meetings indicating that this ordinance was intended to remove the requirement that design review be required for alterations, additions, color changes or design element changes to structures in the commercial zones (Attachment C – 1/17/02 Commission minutes, 2/5/02 Council minutes and 3/6/02 Council minutes).

Staff was able to find the Town Council original resolution of intention that indicated what they wanted to accomplish in the ordinance amendment. The resolution gave direction to the Planning Commission and the staff to draft an ordinance "expanding the duties of the Fairfax Design Review Board to include review and approval of all new

ATTACHMENT B

residences and alterations or additions constituting 50% remodels” (Attachment D – Council Resolution of Intention No. 2216).

Staff was only able to find an unsigned version of the Planning Commission Resolution No. 01-02 approving the additional language requiring design review approval of new residences and alterations or additions constituting 50% remodels. This document also uses the phrase, “expanding the duties of the Fairfax Design Review Board” in the title and the body of the document. (Attachment E).

RECOMMENDATION

Discuss the codified text change and provide staff direction on one of the following options:

1. Leave the code language as it exists now.
2. Return at a future meeting with draft amended code language that restores the following language described above to the code, “Changes in the exterior color of structures or the alteration of a significant part of the design of any commercially zoned property” and for new residences and 50% residential remodels.

ATTACHMENTS

- A – Ordinance 500 and Town Code 17.12.030(A)
- B – Ordinance 688
- C – 1/17/02 Commission minutes, 2/5/02 and 3/6/02 Council minutes
- D – Council Resolution of Intention No. 2216
- E – Commission Resolution No. 01-02

ORDINANCE NO. 500

AN ORDINANCE AMENDING ARTICLE 11, DESIGN REVIEW, TO MODIFY THE DESIGN REVIEW REQUIREMENTS FOR SIGNS AND OTHER STRUCTURES; ARTICLE 27, RIDGELINE SCENIC CORRIDOR, TO MODIFY THE REQUIREMENTS FOR DESIGN REVIEW OF STRUCTURES IN THE CORRIDOR; AND ARTICLE 28, SIGNS, TO MODIFY THE REQUIREMENTS FOR DESIGN REVIEW OF SIGN PERMITS, OF ORDINANCE 352

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1

Section 11.04 is hereby amended to read as follows:

11.04 The provisions of this Article shall apply to:

- (1) Alterations or additions in all zones except RD 5.5-7, RS 6 and RS 7.5 which have an estimated value more than \$2,500 as determined by the Building Inspector and/or changes in the exterior color of structures or the alteration of a significant design element which is part of the design of the building.
- (2) New construction in Central Commercial, Limited Commercial, Highway Commercial, Service Commercial, Multiple Residential, Planned Development District, Single Family-Residential Master Plan zones, duplexes in RD 5.5-7 zones and structures in the ridgeline scenic corridor as required in Article 27, and residences which have a distance of more than ten (10) feet from the ground to the lowest point of complete enclosure.

SECTION 2

Section 11.80 is hereby added to read as follows:

- 11.80 Public Hearing
- 11.81 Applications for design review shall not be acted upon until a public hearing thereon is held except for design review of sign permit exception applications.
- 11.82 Notice of the time and place of said public hearing together with a brief statement of the nature of the application shall be given in the following manner:
- (1) By posting said notice in those public places or locations designated herein under Section 2.20, Enactment, not less than ten (10) days before the date of the hearing.
 - (2) By mailing or delivering said notice to an owner of each parcel contiguous to applicant's parcel, which owner shall be shown as such on the most recent assessment roll or tax roll normally utilized by the city in the conduct of its municipal affairs, and such mailing or delivery to be at least five days prior to the date of hearing.
- 11.83 Additional notice of the public hearing may be given to owners of other property within five hundred (500) feet of applicant's parcel when, in the opinion of the Design Review Board, such properties would be affected by the proceedings so noticed.

- 11.84 Any error, irregularity, informality or omission as to noticing shall not void or invalidate the proceedings, considerations or disposition of a design review application except as may be otherwise provided under Section 65801, Government Code of the State of California.

SECTION 3

Section 27.30 is hereby amended to read as follows:

- 27.31 No building, accessory building or structure or modification thereof shall be erected within ridgeline scenic corridors as defined on Visual Resources Map No. 9, except in either of the following circumstances:
- 1) The applicant demonstrates to the staff that an accessory structure or addition will have no impact on significant views due to the proposed location of the structure in relation to existing improvements.
 - 2) The Design Review Board approves a permit for building in the ridgeline scenic corridor.
- 27.32 If buildings, accessory buildings or additions and modifications to them must be placed within the restricted area, they shall be designated and located to have the least impact on existing visual resources.

SECTION 4

Section 27.40 is hereby amended to read as follows:

- 27.41 An application for a permit for building in the ridgeline scenic corridor shall be made in accordance with Section 11.20 of Ordinance 352.

SECTION 5

Article 28, Signs, is hereby amended to read as follows:

28.60 Sign Permits, Building and Electrical
Permits Required

28.70 Exceptions

28.80 Design Criteria

SECTION 6

Section 28.30 is hereby amended to add Section 28.33(3),
Conforming Signs.

28.33(3) Signs which conform to the Sign Regula-
tions in Section 28.40 and the design
criteria in Section 28.80.

SECTION 7

Section 28.45 is hereby amended to delete (1) Freestanding
Signs.

SECTION 8

Section 28.47, Illumination, is hereby deleted and
Section 28.48 is renumbered 28.47. Section 28.47(3) is hereby
amended to read as follows:

28.47(3) No sign shall be erected upon any
public street, sidewalk, parking
lot or other public way or place.

SECTION 9

Section 28.50 is hereby amended to be titled "Signs which
Require an Exception" and to add (6) Neon and Internally Illumin-
ated Signs, and (7) Freestanding Signs with a total height inclu-
ding structure not exceeding the building height.

SECTION 10

Section 28.60 is hereby amended to read: "Sign Permit,
Building and Electrical Permits."

SECTION 11

Section 28.61(2) is hereby amended to read as follows:

28.61(2) No sign permit shall be issued unless
the sign conforms to the criteria in
Section 28.80 or unless an exception
is granted in accordance with Section 28.70.

SECTION 12

Section 28.61 is hereby amended to add:

- (4) The Town Planner's decision on any sign permit application may be appealed to the Design Review Board within five (5) days of the action. Such appeal shall be filed on the prescribed form and accompanied by a fee set by resolution of the Town Council.

SECTION 13

Section 28.61 is hereby amended to add:

- (5) Sign permits issued for signs projecting over the city right-of-way shall include permission to encroach into the city right-of-way.

SECTION 14

Section 28.60 is hereby amended to delete Section 28.62, Design Review; Section 28.70, Application Requirements, is renumbered Section 28.62, with subparagraphs renumbered accordingly. Section 28.63 is amended to delete the phrase "upon approval of the application by the Design Review Board."

SECTION 15

Section 28.63 is hereby amended to read as follows:

28.63 Building Permits and Electrical Permits.

Upon approval of the application and upon issuance of the sign permit, a building permit shall be secured and a permit fee paid in accordance with the Uniform Building Code for freestanding and projecting signs. An electrical permit shall be secured and a fee paid for all lights.

SECTION 16

Section 28.63 is renumbered 28.70, Exceptions, with subsections numbered accordingly.

SECTION 17

Section 28.80 is hereby amended to read as follows:

28.80 Design Criteria

28.81 All signs must conform to the following criteria:

- (1) The sign must meet the purpose and intent of Section 28.80 of this chapter.
- (2) The sign may not be garish, excessively brilliant or otherwise inappropriate to the character or plans of the Town.
- (3) The sign must be architecturally a part of the design of the building rather than a feature independent of and in conflict with the design of the building.
- (4) The color and material of the sign shall be compatible with the color and material of any wall on which a sign is painted or to which the sign is attached.
- (5) Lighting shall be installed so as not to cause glare to passing pedestrians or motorists.

SECTION 18

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

- (a) Bulletin Board, Fairfax Town Offices, Town Hall;
- (b) Bulletin Board, Fairfax Post Office; and
- (c) Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days after its final passage and adoption.

The foregoing ordinance was duly and regularly introduced by the Town Council of the Town of Fairfax at a regular meeting thereof held on the 8th day of November 1982, and thereafter adopted at an adjourned meeting thereof held in said town on the 15th day of November, 1982, by the following vote, to wit:

AYES: COUNCILMEMBERS Arnold, Egger, Willmann and Mayor Sherman

NOES: COUNCILMEMBERS (None)

ABSENT: COUNCILMEMBERS Lippi

Carol Sherman

MAYOR

ATTEST:

Charles A. Grasso

TOWN CLERK

17.12.010

Chapter 17.12

DESIGN REVIEW REGULATIONS

Sections:

- 17.12.010 Title.
- 17.12.020 Purpose.
- 17.12.030 Applicability.
- 17.12.040 Design review criteria.
- 17.12.050 Application.
- 17.12.060 Preliminary plans.
- 17.12.070 Application—Filing fee.
- 17.12.080 Procedure for consideration.
- 17.12.090 Period of consideration.
- 17.12.100 Public hearing—Notice.
- 17.12.110 Appeal to commission.
- 17.12.120 Appeal to council.
- 17.12.130 Enforcement.

17.12.010 Title.

The provisions of this chapter shall be known as design review regulations. (Ord. 352 § 11.01, 1973)

17.12.020 Purpose.

A. The purpose of these regulations is to effect design review of all developments, buildings, structures, signs and other facilities constructed or modified in the town of Fairfax, except as herein provided.

B. The purpose of this procedure is to foster a good design character through consideration of aesthetic and functional relationships to surrounding development, and in order to further enhance the town's appearance and the livability and usefulness of properties. (Ord. 352 §§ 11.02 — 11.03, 1973)

17.12.030 Applicability.

The provisions of this chapter shall apply to:

A. Alterations or additions in all zones except RD 5.5-7, RS-6 and RS-7.5 which have an estimated value of more than two

thousand five hundred dollars as determined by the building inspector and/or changes in the exterior color of structures or the alteration of a significant design element which is part of the design of the building;

B. New construction in Central Commercial, Limited Commercial, Highway Commercial, Service Commercial, Multiple Residential, Planned Development District, Single Family-Residential Master Plan zones, duplexes in RD 5.5-7 zones and structures in the Ridgeline Scenic Corridor as required in Chapter 17.32, and residences which have a distance of more than ten feet from the ground to the lowest point of complete enclosure. (Ord. 515 § 11, 1983; Ord. 500 § 1, 1982; Ord. 482 § 2, 1981; Ord. 476 § 2, 1980; Ord. 352 § 11.04, 1973)

17.12.040 Design review criteria.

The following criteria shall be applied in considering an application for design review approval:

A. The proposed development shall create a well composed design, harmoniously related to other facilities in the immediate area and to the total setting as seen from hills and other key vantage points in the community;

B. Only elements of design which have significant relationship to exterior appearance of structures and facilities shall be considered; these elements may include height, arrangement on the site, texture, material, color, signs, landscaping and appurtenances;

C. The proposed development shall be of a quality and character appropriate to, and serving to protect the value of, private and public investments in the immediate area;

D. The proposed development shall conform with all requirements for landscaping, screening, usable open space and the design

of parking and off-street loading areas set forth in this title;

E. Where the proposed development is located in an area where a neighborhood plan or precise plan has been adopted by the town, the design of the development shall conform in all significant respects with such plans;

F. There shall exist sufficient variety in the design of the structures and grounds to avoid monotony in external appearance;

G. The size and design of the structure shall be considered for the purpose of determining that the structure is in proportion to its building site and that it has a balance and unity among its external features so as to present a harmonious appearance;

H. The extent to which the structure conforms to the general character of other structures in vicinity insofar as the character can be ascertained and is found to be architecturally desirable;

I. The extent to which ornamentation is to be used and the extent to which temporary and second-hand materials, or materials which are imitative of other materials, are to be used;

J. The extent to which natural features, including trees, shrubs, creeks and rocks, and the natural grade of the site are to be retained;

K. The accessibility of off-street parking areas and the relation of parking areas with respect to traffic on adjacent streets;

L. The reservation of landscaping areas for the purpose of separating or screening service and storage areas from the street and adjoining building sites, breaking up large expanses of paved areas, separating or screening parking lots from the street and adjoining building sites, and separating building areas from paved areas to provide access from buildings to open space areas;

M. In the case of any commercial or industrial structure, the board shall consider its proximity to any residential district and

shall consider the effect of the proposed structure upon the character and value of the adjacent residential district area;

N. The design review board may recommend design guidelines to the planning commission and town council for adoption in order to further the objectives of this section and to illustrate design criteria. (Ord. 605 § 1 (14) and (15), 1991; Ord. 352 § 11.11, 1973)

17.12.050 Application.

A. Application for consideration shall be made at a meeting of the design review board by the owner of the affected property, or his authorized agent, on a form prescribed by the planning commission, and shall be filed with the secretary of the board no later than fifteen days prior to the next meeting of the board.

B. The application shall be accompanied by such information as may be required to allow applicable design review criteria to be applied to the proposed action. This information may include site and building plans, drawings

ORDINANCE NO. 688

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING SECTION 17.12.030(A) OF THE FAIRFAX TOWN CODE TO EXPAND
THE FAIRFAX DESIGN REVIEW BOARD'S DUTIES TO INCLUDE REVIEW AND
APPROVAL OF ALL PROPOSALS FOR NEW RESIDENCES AND ALTERATIONS
OR ADDITIONS TO RESIDENCES THAT CONSTITUTE 50% REMODELS PER
TOWN CODE §17.10.040(B)

The Town Council of the Town of Fairfax does ordain as follows:

Section 1:

Town Code Chapter 17.12.030(A), shall be amended as follows:

A. New residences and alterations or additions constituting 50% remodels as set forth in Town Code § 17.10.040(B)] in all zones including Residential RD 5.5-7 Zones, Residential RS 6 Zones, Residential RS 7.5 Zones and Upland Residential UP Zones.

Section 2:

Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

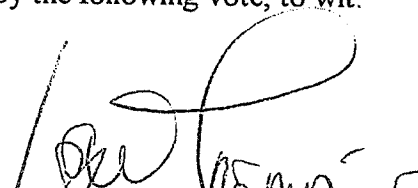
- (a) Bulletin Board, Fairfax Town Offices, Town Hall;
- (b) Bulletin Board, Fairfax Post Office; and
- (c) Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from and after its final passage and adoption.

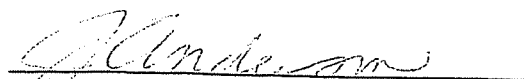
The foregoing ordinance was duly and regularly introduced at a regular adjourned meeting of the Town Council of the Town of Fairfax held in said town on the 5th day of February, 2002 and thereafter adopted on the 6th day of March, 2002 by the following vote, to wit:

AYES: Brandborg, Egger, Tremaine

NOES: Caldararo, Ghringhelli


LEW TREMAINE, MAYOR

Attest:


Judith Anderson, Town Clerk

ATTACHMENT **B**

1/17/02 PLANNING COMMISSION Mtg

Conditional Use in the Central Commercial Zones, He said he has no problem with a birthing center in Fairfax, but he feels it should not be permitted in the Central Commercial zone. He feels that the proposed Ordinance Amendment is being proposed to accommodate one applicant and he feels the applicant will not be able to open because they do not have the staff to operate legally in the State of California. He said he thought the Town should not change the Code because this could open up the possibility of other similar uses in the Central Commercial zone on the first floor which would break up our retail area. He also recommended changing the wording to an "Alternative Birthing Center" so that the Town is using the same language as the State.

M/S Hailer-Madsen motion to adopt resolution 01-01 with the modification that the center must be licensed by the State and the wording used by the Town to refer to the center be changed from "Midwifery Center" to "Alternative Birthing Center".

AYES: Herbert, Hailer, Madsen, Arguimbau, Chair Shaiken

NOES: Alvillar, Craine

Proposed Zoning Ordinance Amendment and Resolution No. 01-02: consideration of amendment to Town Code § 17.12.030(A) expanding the Design Review Board's review of projects to include all new residences and alterations or additions constituting 50% remodels in the Residential RD 5.5-7 Zone, the Residential RS 6 Zone, the Residential RS 7.5 Zone and the Upland Residential UP Zone.

Planning Director Kirkey gave the staff report and recommended approval of the Resolution No. 01-02.

Commissioner Madsen asked staff if this would increase the cost to the applicants.

Planning Director Kirkey said yes it would increase the application cost.

Commissioner Madsen asked what the increase would be.

Planning Director Kirkey said the cost would increase by about \$500 for a new residence. He said there are projects proposed in the flat areas of the Town that don't receive Design Review and the staff opinion is that it would be beneficial for the Design Review Board to review those projects.

Commissioner Hailer asked if this would increase the staff's workload.

Planning Director Kirkey said yes and it would also increase the Design Review Boards work load.

Commissioner Craine asked staff if there is anyway to discourage nuisance appeals.

Planning Director Kirkey said under the current framework the answer is no. He also said given the Permit Streamlining Act as well as a desire to have a more predictable process for the applicants it is likely that the order in which projects are reviewed by the Planning Commission and the Design Review Board may need to be changed. He said the appeal issue could be looked into at that time.

Commissioner Alvillar asked staff if this would require noticing of all residence within 300 feet for all Design Review applications.

Planning Director Kirkey said yes.

Stan Schriebman, 51 Hickory, said he feels there are too many restrictions and ordinances already and he urged the Commission to deny this item.

Ian Roth, 74 Spruce and Chair of the Design Review Board, requested the Commission to pass this ordinance. He said he thought a design review of all 50% remodels and new residences could improve the quality of the community. He also encouraged the Commissioners to come to a Design Review meeting and he said he is encouraging the Design Review Board members to attend a Planning Commission meeting. He indicated that if each group has a better understanding of what the other group does, the process will work more smoothly for everyone.

Commissioner Hailer said she felt that it is not necessary to have every 50% remodel to go through the Design Review Board process.

Commissioner Alvillar said she is in favor of this amendment with the condition that any applications that are subject to the Planning Commission review go to the Commission first so that applicants are not delayed. She also said the flat area of Town that is not subject to Design Review and a lot of the lots in the flat areas are substandard, and she said all substandard lots in the hillside areas are subject to a discretionary permit review.

Chair Shaiken said he supports this amendment because he feels this will maintain the character of the Town.

M/S Alvillar-Craine motion to recommend approval of the Town Council proposed amendment to the Town Code 17.12.030 A expanding the Design Review Boards duties to include review of all new residences and 50% remodels with the condition that all Design Review subject to Planning Commission applications go to the Commission first.

Ian Roth, 74 Spruce Rd., said the placement of all applications first before the Planning Commission review before the Design Review Board makes a lot of sense.

Commissioner Herbert said he is torn by this issue. He said the Design Review Board is doing a great job but he is concerned about adding another layer to the application process.

AYES: Alvillar, Craine, Chair Shaiken

NOES: Herbert, Hailer, Madsen

ELECTION OF 2002 OFFICERS - PLANNING COMMISSION CHAIR AND VICE CHAIR TREE COMMITTEE MEMBER, AND ALTERNATE

The Commissioners unanimously agreed to continue the matter until the February 2002 Commission meeting.

PLANNING DIRECTOR'S REPORT ON TOWN COUNCIL MEETING

Planning Director Kirkey said the General Plan Advisory Committee (GPAC) has been meeting monthly since September. The group has been focusing on completing the out of date housing element, especially since the State is closely monitoring what cities and towns are doing to encourage new affordable

2/5/02 TOWN COUNCIL MINUTES

Ken Hughes, 363 Forrest, said that Ordinance No. 613, setting the Utility Users Tax at 6%, should have been repealed long ago and that he would like to see the fund of the overcharged money go to the restoration of the Pavilion.

Vince D'Amico, Arboleda Circle, said that he would like to see the money be returned to the people who had paid it.

Mayor Tremaine closed the Public Hearing.

M/S, Brandborg/Egger, Motion to waive further reading of Ordinance No. 687 repealing Ordinance No. 613 regarding the Utility Users Tax

AYES: All

M/S Brandborg/Caldararo, Motion to adopt Ordinance 687 repealing Ordinance No. 613 regarding the Utility Users Tax

Roll Call Vote: Brandborg: AYE, Caldararo: AYE, Ghiringhelli: AYE, Egger: AYE, Tremaine: AYE

It was the consensus of the Council that the names of the vendors that had been continuing to charge 6% be provided to the Council.

Introduction and First Reading of Ordinance No. 688 expanding the scope of the Design Review Board

Planning Director Kirkey presented the staff report. He said that the proposed amendment to Town Code §17.12.030(a) would expand the Design Review Board's review of projects to include all new residences and alterations or additions constituting 50% remodels in the Residential RD 5.5-7 Zone, the Residential RS 6 Zone, Residential RS 7.5 Zone and the Upland Residential UP Zone; that the current Town Code provided the Design Review Board with purview over new construction and 50% remodels on residential properties with a slope greater than 20%; that the proposed amendment would expand the Board's oversight to encompass all new residences and 50% remodels on properties with slopes of 20% or less.

Mayor Tremaine opened the Public Hearing.

Ian Roth, 74 Spruce, Chair, Design Review Board, said that at the January Planning Commission meeting the vote to expand the purview of the Design Review board had been split three to three; that the Design Review Board was in full support of the proposed amendment; that they would address the issues of Floor Area Ratio and "monster homes," ensuring that building projects would fit within their context; that the Design Review Board was requesting the support of the Town Council; and that they could revisit the amendment in a year to evaluate its effectiveness.

Stan Schriebman, 51 Hickory Rd. said that he had been present when the Council had voted 3-2 against an emergency ordinance prohibiting the building of large homes over 3200 square feet and that he saw this amendment as another level of preventing people from building their dream homes.

Mayor Tremaine closed the Public Hearing.

M/S, Brandborg/Caldararo, Motion to waive further reading of Ordinance No. 688, an Ordinance of the Town Council of the Town of Fairfax Amending Section 17.12.030(a) of the Fairfax Town Code to expand the Fairfax Design Review Board's duties to include review and approval of all proposals for new residences and alterations or additions to residences that constitute 50% remodels per Town Code §17.10.040(b)

AYES: All

M/S, Caldararo/Egger, Motion to introduce Ordinance No.688, an Ordinance of the Town Council of the Town of Fairfax Amending Section 17.12.030(a) of the Fairfax Town Code to expand the Fairfax Design Review Board's duties to include review and approval of all proposals for new residences and alterations or additions to residences that constitute 50% remodels per Town Code §17.10.040(b)

Roll Call Vote: Brandborg: AYE, Caldararo: AYE, Egger: AYE, Ghiringhelli: NO, Tremaine: AYE

Introduction and First Reading of Ordinance No. 689 adding Midwifery as a permitted use in the Downtown Commercial Zone

Planning Director Kirkey presented the staff report. He said that the Planning Commission had approved a Use Permit for a midwifery center at 145 Bolinas Road subject to compliance with the Fairfax Parking Ordinance, among other conditions; that the Town Attorney advised the Commission that a parking variance could not be granted for such a use; that the applicant appealed the Commission's condition of approval requiring four on-site parking spaces; that the Town Council directed the staff to prepare a change in the Zoning Ordinance to add birthing centers as a permitted use in the Central Commercial Zone; that the proposed amendment to Section 17.52.040(a), Principal Permitted Uses and Structures, would be amended to include "Alternative Birthing Centers Licensed by the State of California Department of Health Services"; and that, at their January Meeting, the Planning Commission adopted Resolution No. 01-01, recommending that the Town Council approve Ordinance No. 689.

Councilmember Caldararo asked what the Town's potential liability would be if the birthing center were not licensed by the State and a death occurred on the premises related to its use.

Town Attorney Brecher said that in the event that such an incident took place and the clinic was not licensed by the State the Town would not be liable and that it was not the Town's business to enforce State requirements.

Mayor Tremaine opened the Public Hearing.

Tim Chambers, Attorney for Circle of Life, said that the item was a zoning issue rather than a medical issue; that the current wording of the proposed amendment was too narrow to allow for midwifery as a principal permitted use in the Central Commercial Zone; that he felt that it singled out midwifery centers; and that he had a list of other centers that had been approved by the State and that didn't have alternative birth center licenses.

Discussion followed regarding insurance; whether licensing of alternative birth centers was required by the State; the zoning and permitted uses of the area in question; the number of Alternative Birth Centers in the State of California; and the language of the proposed amendment.

Diane Holzer, 17 Valley Rd., midwife, said that the current law addressed MediCal and County peri-natal insurance providers; that licensed midwives currently could not accept MediCal; and that denial of the project would create a restraint of trade issue.

Tim Chambers, Attorney for Circle of Life, said that it would be better to have the wording say that midwifery centers would be licensed as alternative birth centers if required by the State; that they would be willing to obtain licensing if required by the State; and that they didn't want to be in the position of having to obtain licensing if only required by Fairfax.

3/6/02 TOWN COUNCIL MINUTES

Stan Schriebman, 51 Hickory Rd., thanked Councilmember Brandborg for her leadership role at the February 26, 2002 budget presentation meeting and said that there was not enough reporting being done on the issue.

Louise Matthews, San Anselmo, said that it was essential for the taxpayers that the Check Summary show information such as voided checks, and what department an expenditure came from and why.

Terri Alvillar, Box 1014, said that she objected to two disbursements, namely, that Fox & Schmidt had been paid over \$18,000 for an internal personnel investigation and that \$2,000 had been paid in attorney fees to Bertrand and Associates; that the Council should wait for justification for such disbursements and pay the total amount at one time; and that she wanted to know who signed the contract with Fox & Schmidt.

Town Administrator Bengyel said that the disbursement that Ms. Alvillar referred to was the only payment made and was for the entire services rendered; that approval to hire an outside service for an internal affairs investigation was made in a verbal agreement by the previous Interim Town Administrator; and that Bertrand and Associates was still providing legal services.

Barbara Dolan, Fairfax, said that it seemed that the internal investigation was very confusing and not an orderly process and that making decisions would be difficult without a good point of reference.

Suzanne Lindelli, San Anselmo, questioned what appeared to be an open expenditure to Attorney Bertrand.

Town Administrator Bengyel said that the investigation was not a planned activity and that the payments were made when billed.

Discussion continued regarding the internal investigation of a personnel matter and related expenditures.

Chief of Police Hughes said that the issue was an internal personnel matter and that to comment on any of the public's questions would be very improper.

It was the consensus of the council to continue any unheard items to an adjourned meeting.

Second Reading and Adoption of Ordinance No. 688 expanding the scope of the Design Review Board

Planning Director Kirkey presented the staff report. He said that the proposed amendments to the Town Code would expand the Design Review Board's (DRB) review of projects to include all new residences and alterations or additions constituting 50% remodels in the Residential RD 5.5-7 Zone, the Residential RS 6 Zone, the Residential RS 7.5 Zone and the Upland Residential UP Zone; and that the Town Council introduced Ordinance No. 688 at the February 5, 2002 meeting.

Mayor Tremaine opened and closed the public hearing when no speakers came forward.

M/S, Egger/Brandborg, Motion to waive further reading of Ordinance No. 688, an ordinance of the Town Council of the Town of Fairfax amending Section 17.12.030(A) of the Fairfax Town Code to expand the Fairfax Design Review Board's duties to include review and approval of all proposals for new residences and alterations or additions to residences that constitute 50% remodels per Town code §17.10.040(B).

AYES: All

M/S, Brandborg/Egger, Motion to adopt Ordinance No. 688, an ordinance of the Town Council of the Town of Fairfax amending Section 17.12.030(A) of the Fairfax Town Code to expand the Fairfax Design Review Board's duties to include review and approval of all proposals for new residences and alterations or additions to residences that constitute 50% remodels per Town code §17.10.040(B).

Roll Call Vote:

Brandborg: AYE, Caldararo: NO, Egger: AYE, Ghiringhelli: NO, Tremaine: AYE

Second Reading and Adoption of Ordinance No. 689 adding "Alternative Birthing Center" as a permitted use in the Downtown Commercial Zone

Planning Director Kirkey presented the staff report. He said that the proposed amendment to the Town Code would include Alternative Birthing Centers as permitted uses in the Central Commercial CC District; that the Town Council introduced the proposed ordinance at the February 5, 2002, meeting; and that the Council made the following change to the wording of the ordinance: Section 17.52.040(A), Principle Permitted Uses and Structures, shall be amended to include "Alternative Birthing Centers Licensed by the State of California Department of Health Services Unless Such Requirement Is Waived By The State of California" in the list of permitted uses.

Mayor Tremaine opened and closed the public hearing when no speakers came forward.

M/S Egger/Ghiringhelli, Motion to waive further reading of Ordinance No. 689, An Ordinance Of The Town Of Fairfax Amending Chapter 17.52 Of The Fairfax Town Code To Include As A Permitted Use Alternative Birthing Centers Licensed By The State Of California Department Of Health Services Unless Such Requirement Is Waived By the State of California in the list of permitted uses.

AYES: All

M/S, Egger/Ghiringhelli, Motion to adopt Ordinance No. 689, An Ordinance Of The Town Of Fairfax Amending Chapter 17.52 Of The Fairfax Town Code To Include As A Permitted Use Alternative Birthing Centers Licensed By The State Of California Department Of Health

RESOLUTION NO. 2216

A RESOLUTION OF INTENTION OF THE FAIRFAX TOWN COUNCIL TO AMEND SECTION 17.12.030(A) OF THE FAIRFAX ZONING ORDINANCE TO EXPAND THE FAIRFAX DESIGN REVIEW BOARD'S AUTHORITY TO INCLUDE REVIEW AND APPROVAL OF ALL PROPOSALS FOR NEW RESIDENCES AND ALTERATIONS OR ADDITIONS TO RESIDENCES THAT CONSTITUTE 50% OR GREATER REMODELS PER TOWN CODE §17.10.040(B)

WHEREAS, the Fairfax Town Council, having conducted a public hearing at their September 4, 2001 regular meeting, determined that the current Zoning Ordinance does not include regulations adequate to preserve the character of the Town from negative impacts related to current development trends; and

WHEREAS, the Fairfax Town Council has determined that the proposed amendment is necessary to protect the quality of life in the varied residential neighborhoods of Fairfax; and

WHEREAS, the Fairfax Design Review Board has the necessary expertise to review issues related to the siting, mass, size, and design of residential structures; and

WHEREAS, there will be no physical impacts to the environment as a result of expanding the review authority of the existing Design Review Board;

NOW THEREFORE, BE IT RESOLVED,

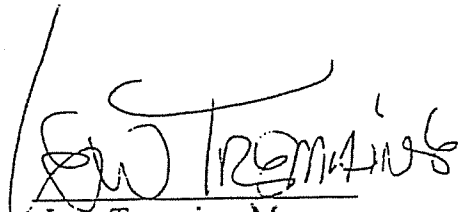
We the Fairfax Town Council direct staff to initiate a proposed amendment to Section 17.12.030(A) of the Fairfax Town Code, expanding the duties of the Fairfax Design Review Board to include review and approval of all new residences and alterations or additions to residences that constitute 50% remodels per Town code section 17.10.040(B). We further direct staff to send the proposed amendment to the Planning Commission for their review and action at the regular December 20th, 2001 meeting of the Fairfax Planning Commission.

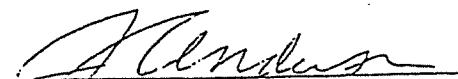
The foregoing resolution was duly presented and adopted at a regular meeting of the Fairfax Town Council of the Town of Fairfax held in said Town on the 4th, day of December 2001, by the following vote to wit:

AYES: Brandborg, Caldararo, Egger, Tremaine

NOES: None

ABSENT: Ghiringhelli


Lew Tremaine, Mayor

ATTEST: 
Judy Anderson, Town Clerk

ATTACHMENT D

RESOLUTION NO. 01-02

RECOMMENDING AMENDMENT TO SECTION 17.12.030(A) OF THE FAIRFAX TOWN CODE TO EXPAND THE FAIRFAX DESIGN REVIEW BOARD'S DUTIES TO INCLUDE REVIEW AND APPROVAL OF ALL PROPOSALS FOR NEW RESIDENCES AND ALTERATIONS OR ADDITIONS TO RESIDENCES THAT CONSTITUTE 50% REMODELS PER TOWN CODE §17.10.040(B)

WHEREAS, the Planning Commission having conducted a public hearing at their November 15, 2001 regular meeting, approved a Draft Ordinance for Council consideration for adoption; and

WHEREAS, the Fairfax Planning Commission has determined that the proposed amendment is necessary to protect the character of Fairfax's residential neighborhoods; and

WHEREAS, the California Environmental Quality Act (CEQA) provides exemption to certain activities which are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the Environment and where it can be seen with certainty that there is not the possibility that this legislative activity in question may have a significant effect on the environment, the activity is not subject to CEQA (*Guidelines 15061(b)(3)*); and

WHEREAS, there are no physical impacts to the environment as a result of expanding the review authority of the existing Design Review Board;

NOW THEREFORE, BE IT RESOLVED,

We the Fairfax Planning Commission approve the proposed amendment to Section 17.12.030(A) of the Fairfax Town Code, expanding the duties of the Fairfax Design Review Board to include review and approval of all new residences and alterations or additions to residences that constitute 50% remodels per Town code section 17.10.040(B).

The foregoing resolution was duly presented and adopted at the regular adjourned meeting of the Fairfax Planning Commission of the Town of Fairfax held in said Town on the 17th day of January 2002, by the following vote to wit:

AYES:

NOES:

ABSENT:

Chairman Steve Shaiken, Planning Commission

ATTEST: _____
Ken Kirkey, Planning and Building Services Director

ATTACHMENT **E**