



# TOWN OF FAIRFAX

## STAFF REPORT

### May 27, 2021

**TO:** Planning Commission

**FROM:** Ben Berto, Director of Planning and Building Services

**SUBJECT:** Objective Design and Development Standards

#### BACKGROUND

Staff presented an update to the overall Housing Element and Objective Design and Development Standards (ODDS) to the Planning Commission at last week's June 20 regular meeting. This report follows Commission updates provided on February 20, March 19, May 27, and November 19, 2020, explaining rationales for, and providing information about Objective Design and Development Standards.

The basic reason for ODDS is the State, spurred by the ongoing housing shortage, particularly affordable housing, has eliminated most local discretionary review of housing projects in an effort to spur housing development. Through a variety of new State laws, local governmental review of multifamily development projects have largely been reduced to whether the projects comply with previously adopted Objective Design and Development Standards.

At the end of its consideration of ODDS, the Town will determine whether or not to adopt ODDS. However, not doing so would reduce an already ministerial review of multifamily projects to whether the project complies with the few objective standards already contained in the Zoning Ordinance – for example, height limit and building setbacks. Even those standards are not sacrosanct, as under current State Density Bonus laws, a developer can demand exceptions to up to four local zoning standards (for example, building height). For a thorough overview of State laws superseding or eliminating local government housing regulations, please refer to the Town Council presentation by the Town Attorney's office on April 7, 2021 (link to bbk powerpoint presentation here:)

<https://storage.googleapis.com/proudcity/fairfaxca/uploads/2021/04/Housing-Legislative-Update-PowerPoint-4-7-21.pdf>

The State has provided grant funding for local jurisdiction to develop their ODDS. Eleven Marin County jurisdictions including Fairfax took this opportunity and successfully secured grants to collaboratively develop an overall ODDS toolkit that covering all those jurisdictions (all but San Rafael, who was already independently developing theirs). The intent is for the overall toolkit to be winnowed down and carefully edited so that what is adopted is oriented specifically to Fairfax.

The ODDS development effort coincided with the CoVid-19 pandemic, necessitating a different rollout than was originally planned. As a result of the information presented at the ODDS sessions, the Commission in March 2020 appointed an ad-hoc subcommittee to review ODDS with staff and the consultants. The scope of the ODDS was also directed to include an historical component. Staff hired an architectural historian – Ed Yarbrough of YAR – to make sure the ODDS effort appropriately incorporates historical factors.

Fairfax efforts to date include the above-mentioned Commission workshops, and two meetings with the Planning Commission’s ODDS/historic subcommittee. This special meeting is the first opportunity for the Commission to review the overall ODDS toolkit prepared by Opticos. Opticos will be making a powerpoint presentation at this virtual meeting.

## **DISCUSSION**

Staff has spent considerable time reviewing the 348-page overall toolkit. The document presented is a form-based code for only which parts would be applied that the Town deems appropriate to suit the needs of our community.

To date the ODDS toolkit has not been modified for Fairfax. Staff and the Commission subcommittee have provided comments to the Opticos design team. However, it takes a considerable amount of time to make adjustments. Further, given the complexity of the ODDS, it seemed appropriated to provide the unedited version for your Commission’s review, and get the overall Commission’s input versus make preliminary changes with which your Commission may not agree. Minor changes will obviously be made before the Commission reviews this again – for example “Faifax” will be substituted for “jurisdiction” wherever the latter word appears in the document. Staff hopes that generic terms, where they appear, are not overly distracting given an understanding of the context in which this document is presented.

### **Toolkit comments**

Opticos will be providing an in-depth discussion of how the functioning of the toolkit should be understood. The Quick Code Guide, Preamble, and Chapter 1 at the front of the document provide a good overview and guide to how the toolkit is to be applied. Staff asks the Commission to provide honest feedback about items that seem esoteric and hard to understand, because one of the key objectives of this document is to pass muster as providing objective standards that can be understood by a housing developer of average intelligence. This is actually one of the bases in State law regarding whether ODDS will survive legal challenge. That is not to say that the toolkit needs to be a quick read. The topics are complex because they need to cover a lot of ground.

### **Zones**

Major changes to be made to this overall toolkit include reducing the number the zones shown in Chapter 3 of the toolkit to those which are applicable to Fairfax. Currently staff and the consultant consider there to be three zones as the obvious candidates for incorporation into Fairfax’s version of the toolkit:

T3 Suburban Neighborhood  
T4 Suburban Neighborhood Small  
T4 Suburban Main Street Small

It should be noted that as the State overrides more and more local review authority with its statutes, the type of projects to which the Town may want or need to consider developing and applying form-based codes may also increase. For example, the State may shortly in the future eliminated discretionary review for duplexes. The Town would want to have duplex ODDS in place ahead of time to ensure that ugly boxes do not get developed in Fairfax.

### **Zone standards**

Staff recommends that Commissioners primarily focus on the standards that would be applicable to these three zones. It is important to not place too much emphasis on certain toolkit specifics at this early presentation stage. These standards were developed for the 11 jurisdictions participating in this effort. For example, even though the height limits shown for the above zones are currently shown as 35 feet, staff has already commented on the need to reduce the height limit to the Town's 28.5 feet. The consultants are in process of making this change for those districts.

### **Uses**

Uses shown in the Chapter 4 tables for the zones are another example it needs to be emphasized that these will not be the uses ultimately residing in these tables (or whatever equivalent is eventually adopted by the Town. Staff has already directed the applicants to apply only those commercial, institutional, and other uses currently contained in the Town's respective current zoning districts.

### **Design Sites**

Design sites (Chapter 5) is a good example of where (draft) application of objective standards via this form-based code (as opposed to the Town's regular zoning) really emerge. This shows how the Town can retain control over the physical design and layout of sites even if it no longer has the ability to individually apply discretionary review to multi-family housing.

### **Building Types**

Chapter 6 provides some great pictorial examples of different building types that can potentially be included as housing options within the zones. Staff requests the Commission provide feedback about which types seem the most appropriate for Fairfax. The Town's architectural historian, although he has not provided written feedback on this section, will be prepared to comment on it at this meeting.

### **CONCLUSION**

Staff noted in conversations with the Opticos team that this ODDS toolkit does not contain material that is an important, even essential part of submittal requirements for any large-scale housing development. Information on items such as geotechnical stability, drainage and hydrology, traffic, biology, etc., needs to be provided with any such application. Opticos' response is that such information is important, but is outside the scope of a form-based code.

It needs to be understood therefore that such informational requirements need to be evaluated in terms of the Town's overall objective submittal requirements, to be complementarily applied to projects along with the ODDS toolkit. Staff is working with the applicants on submittal requirements specific to the ODDS, and intends to have that ready as part of the Town's overall multifamily submittal requirements when the final toolkit is ready for adoption by the Town.

One of the questions that has arisen as Opticos presents this draft toolkit to different Marin jurisdictions is how it should be adopted. Initial feedback is there is a broad range of local jurisdiction responses to how to apply it. For example, the County is considering adopting it as the regulations to apply to all multifamily housing projects, regardless of whether or not a project developer may be invoking various State superseding statutes (for example, SB35 provisions mandating ministerial-only review).

Staff considers the Town's current regulations as reflective of years of effort by its citizenry and leaders, and as such should continue to be governing regulations where State law allows.

## **RECOMMENDATIONS**

Staff recommends that the Commission provide direction to staff on:

1. The draft toolkit's applicability by the Town on multifamily development proposals.
2. Changes to be made to the toolkit, and any other comments on the draft.
3. Whether the Commission ODDS/historic subcommittee should be expanded to include a Commissioner with specific architectural knowledge to be applied to review of the draft toolkit,

Attachment A – draft ODDS toolkit (Town website copy only)

Attachment B - Marin City SB 35 approved multifamily development (cross-section)