



## MEMORANDUM

**DATE:** May 7, 2013

**TO:** Planning Commission

**FROM:** Mike Moore, Planning and Building Director

**SUBJECT:** ITEM #3 - Floor Area and Second Units: Response to City Council Request for Clarification of Ordinance Amendment Recommendations

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At its meeting of April 1, 2013, the City Council held a continued public hearing on recommendations from the Planning Commission for amendments to the Zoning Ordinance (Title 20 of the Mill Valley Municipal Code) related to Floor Area Ratio (FAR) and Residential Second Units. The Commission recommendations followed careful consideration and discussion of the various proposals and were based on specific concerns that had arisen through the course of the Commission's regular review of new residential development. While the proposed amendments to FAR and Residential Second Units address very different standards and requirements, these two components of the Zoning Ordinance were linked by the Commission's intent to accomplish the following:

- Accurately identify, measure and present all allowable floor area in order to insure that the existing standards for maximum allowable floor area are not or could not be exceeded.
- Establish a clear (to applicants, staff and decision-makers) and consistent (to minimize variation and interpretation) definition of what is counted into and what is excluded from the calculation of maximum allowable floor area.
- Use the calculation of allowable floor area along with applicable Design Review Guidelines as a tool to insure that new development is compatible with applicable site, neighborhood and community design characteristics.
- Make certain that through the discretionary design review process that residential second units (and garages) are valid floor area exclusions that will provide the long-term design and use benefits intended by the City's floor area exclusion incentive.

The Commission completed their recommendations on FAR and Second Units in July of 2012 and they were first presented to the City Council for adoption at a public hearing on March 4, 2013. At that hearing, the Council generally supported the recommendations, but either had questions about or some specific recommendations for changes to the following:

- The proposed definition of “First Floor” was unclear because it did not provide enough of a distinction between the floor it purported to define and other “floors” of a structure, particularly where a lot may be sloped.
- The proposed definition of “Floor Area Ratio” did not actually define that phrase as a “ratio”, but rather as a calculation of floor area.
- The proposed description of how floor area would be calculated for large volume spaces (over 14 feet in height) was unclear and confusing in terms of how it was measured and what was actually counted as floor area.
- The proposed definition of “Residential Second Unit” did not incorporate the more expanded definition of “Kitchen” also in that Chapter.
- The proposed definition of “Attached Residential Second Unit” did not address potential circumstances where a second unit might be separate (detached) from the primary residence, but less than the minimum 6-feet of separation in the definition of a “Detached Residential Second Unit”.
- The proposed second unit standard requiring a deed restriction to maintain the second unit as approved should also include language that required the unit, if available for rent to the general public, to have a rent that is affordable to an individual or household (less than 120% of the Marin County Area Median Income).

The City Council continued the hearing to April 1, 2013 and at the conclusion of their deliberations, referred the following items back to the Planning Commission for further clarification:

- 1) the definition of and floor area exception for basements and whether they should be habitable space;
- 2) the calculation of floor area for so-called “large volume” spaces; in particular, how they are measured for purposes of applying the recommendation of counting those spaces at one-and-one-half times the floor area;
- 3) the driveway and garage parking requirements in the standards for Residential Second Units (Section 20.90.030(J));
- 4) the second unit setback standard in Section 20.90.030(H);
- 5) reducing the allowable floor area exception (500 square feet) for garages on lots smaller than 8,000 square feet.

The Planning Commission began its discussion at its meeting on April 8 and completed its recommendations at its meeting of April 22. At the conclusion of the discussion on April 22, the Commission directed staff to make the proposed revisions as discussed by the Commission and bring the proposed revisions back for one final Planning Commission review at its regular meeting of May 13, 2013. The City Council has continued its further deliberations on these matters until their regular meeting of May 20.

To show the progression of the subject amendments through the discussions at the City Council and Planning Commission and provide a context for the Commission to consider the latest proposed revisions, the following table shows the original recommended ordinance language, the subsequent revision (based on City Council discussion) and then the latest proposed revision (based on the April 22 Planning Commission discussion). New recommended revisions to address all of the issues raised by the Planning Commission on April 22 are highlighted using underline (added language, except where code section headings are underlined) and ~~strikethrough~~ (deleted language).

Topic	Original Draft Language	First Proposed Revision	Planning Commission Recommendation
<b>Basements</b>	<u>20.08.038 Basement.</u> “Basement” means an enclosed area that extends no more than three feet above the existing or finished grade in any location, whichever is lower.	None	<u>20.08.038 Basement.</u> “Basement” means an enclosed area that extends no more than three feet above the existing or finished grade in any location, whichever is lower.
<b>Floor Area Ratio</b>	<u>20.08.092 Floor Area Ratio.</u> “Floor Area Ratio” means the total gross floor area of all enclosed structures on the lot measured from the exterior face of the exterior stud wall, including but not limited to the main dwelling structure, accessory structures, residential second units, enclosed patios and sheds that require a building permit.	<u>20.08.092 Floor Area Ratio (FAR).</u> “Floor Area Ratio” means the relationship between the amount of allowable floor area permitted in a building (or buildings) and the area of the lot on which the building stands. The maximum allowable floor area is equal to the total gross floor area of all enclosed structures on the lot measured from the exterior face of the exterior stud wall, including but not limited to the main dwelling structure, accessory structures, residential second units, enclosed patios and sheds that require a building permit.	<u>20.08.092 Floor Area Ratio (FAR).</u> “Floor Area Ratio” means the relationship between the amount of allowable floor area (see also “ <u>Allowable Floor Area</u> ”) permitted in a building (or buildings) and the area of the lot on which the building stands. <u>It is a standard applied, along with other applicable development standards in this Title, to effectively manage the height, bulk and mass of a given structure in relation to the lot on which the building stands, in relation to surrounding structures on the same and adjoining properties and in relation to the public realm (streets, sidewalks, open space, etc.).</u> The terms “ <u>Floor Area Ratio</u> ”, “ <u>F-A-R</u> ” and “ <u>Allowable Floor Area</u> ” may be used interchangeably.
<b>Allowable Floor Area</b>	<u>20.08.092 Floor Area Ratio.</u> “Floor Area Ratio” means the total gross floor area of all enclosed structures on the lot measured from the exterior face of the exterior stud wall,	<u>20.08.092 Floor Area Ratio (FAR).</u> “Floor Area Ratio” means the relationship between the amount of allowable floor area permitted in a building (or buildings) and the area of the lot on which the building	<u>20.08.032 Adjusted Floor Area Allowable Floor Area.</u> “ <u>Allowable Floor Area</u> ” means the total gross floor area of all enclosed structures on the lot measured from the exterior face of the exterior stud wall,

	including but not limited to the main dwelling structure, accessory structures, residential second units, enclosed patios and sheds that require a building permit.	stands. The maximum allowable floor area is equal to the total gross floor area of all enclosed structures on the lot measured from the exterior face of the exterior stud wall, including but not limited to the main dwelling structure, accessory structures, residential second units, enclosed patios and sheds that require a building permit.	including but not limited to the main dwelling structure, accessory structures, residential second units, enclosed patios and sheds that require a building permit. See also “Floor Area Ratio”.														
<b>Allowable Floor Area Exclusions</b>	<p>A. The following shall be excluded from the calculation of maximum Floor Area Ratio:</p> <ol style="list-style-type: none"> <li>1. Up to 500 square feet of garage area on lots under 8,000 square feet of gross area;</li> <li>2. Up to 500 square feet of garage or 800 square feet of combined garage and residential second unit area for lots ranging from 8,000 to 10,000 square feet of gross area;</li> <li>3. Up to 500 square feet of garage or 1,000 square feet of combined garage and residential second unit area for lots over 10,000 square feet in gross floor area;</li> <li>4. Non-enclosed spaces and structures.</li> </ol>	<p>A. The following shall be excluded from the calculation of maximum allowable floor area:</p> <ol style="list-style-type: none"> <li>1. Up to 500 square feet of garage area on lots under 8,000 square feet of gross area;</li> <li>2. Up to 500 square feet of garage or 800 square feet of combined garage and residential second unit area for lots ranging from 8,000 to 10,000 square feet of gross area;</li> <li>3. Up to 500 square feet of garage or 1,000 square feet of combined garage and residential second unit area for lots over 10,000 square feet in gross floor area;</li> <li>4. Non-enclosed spaces and structures. A space is considered non-enclosed if it is open on at least two sides (sides with guardrails are considered open);</li> </ol>	<p>A. The following shall be excluded from the calculation of <del>maximum</del> allowable floor area:</p> <ol style="list-style-type: none"> <li>1. <del>Up to 500 square feet of garage area on lots under 8,000 square feet of gross area;</del> <u>The floor area of a garage, or any portion thereof, depending on the size of the lot on which it stands, as follows:</u></li> </ol> <table border="1" data-bbox="1075 1192 1416 1608"> <thead> <tr> <th><u>Lot Size (sq. ft.)</u></th> <th><u>Floor Area Exclusion (sq. ft.)</u></th> </tr> </thead> <tbody> <tr> <td><u>4,000 or less</u></td> <td><u>0</u></td> </tr> <tr> <td><u>4-5,000</u></td> <td><u>200</u></td> </tr> <tr> <td><u>5-6,000</u></td> <td><u>250</u></td> </tr> <tr> <td><u>6-7,000</u></td> <td><u>300</u></td> </tr> <tr> <td><u>7-8,000</u></td> <td><u>400</u></td> </tr> <tr> <td><u>8,000 or more</u></td> <td><u>500</u></td> </tr> </tbody> </table> <ol style="list-style-type: none"> <li>2. Up to 500 square feet of garage or 800 square feet of combined garage and residential second unit area for lots ranging from 8,000 to 10,000 square feet of gross area;</li> </ol>	<u>Lot Size (sq. ft.)</u>	<u>Floor Area Exclusion (sq. ft.)</u>	<u>4,000 or less</u>	<u>0</u>	<u>4-5,000</u>	<u>200</u>	<u>5-6,000</u>	<u>250</u>	<u>6-7,000</u>	<u>300</u>	<u>7-8,000</u>	<u>400</u>	<u>8,000 or more</u>	<u>500</u>
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	<p>A space is considered non-enclosed if it is open on at least two sides (sides with guardrails are considered open);</p> <p>5. Exterior areas under roof eaves or other cantilevered overhangs;</p> <p>B. Basements, as defined in Section 20,08.038, shall be excluded from the calculation of Floor Area Ratio, provided that the basement:</p> <p>a) is not more than 300 square feet in area as measured to the exterior face of the exterior wall. Any basement floor area more than 300 square feet shall be included in the floor area ratio calculation.</p> <p>b) is not part of a development with limited access and the basement results in minimal net off-haul from the site. If significant excavation and off-haul would negatively impact the surrounding neighborhood and is inconsistent with applicable Residential Design Guidelines, then the size of the basement may be further reduced or the</p>	<p>5. Exterior areas under roof eaves or other cantilevered overhangs;</p> <p>B. Basements, as defined in Section 20,08.038, shall be excluded from the calculation of Floor Area Ratio, provided that the basement:</p> <p>a) is not more than 300 square feet in area as measured to the exterior face of the exterior wall. Any basement floor area more than 300 square feet shall be included in the floor area ratio calculation.</p> <p>b) is not part of a development with limited access and the basement results in minimal net off-haul from the site. If significant excavation and off-haul would negatively impact the surrounding neighborhood and is inconsistent with applicable Residential Design Guidelines, then the size of the basement may be further reduced or the basement may be eliminated, altogether.</p> <p>c) can meet the applicable requirements of Title 18 (Floodplain Management) for basements in designated flood hazard zones.</p> <p>C. Height measurement that is used in</p>	<p>3. Up to 500 square feet of garage or 1,000 square feet of combined garage and residential second unit area for lots over 10,000 square feet in gross floor area;</p> <p>4. Non-enclosed spaces and structures. A space is considered non-enclosed if it is open on at least two sides (sides with guardrails are considered open);</p> <p>5. Exterior areas under roof eaves or other cantilevered overhangs;</p> <p><u>6. Up to 300 square feet of enclosed space below the first floor on sloped lots that is not a basement (see also “Basement”); is a minimum of 8 feet wide by 10 feet long with a maximum 8 foot floor to ceiling height; and where no additional excavation is required to create the space.</u></p> <p>B. Basements, as defined in Section 20,08.038, shall be excluded from the calculation of Floor Area Ratio, provided that the basement:</p> <p>a) is not more than 300 square feet in area as measured to the exterior face of the exterior wall. Any basement floor area more than 300 square feet shall be included in the floor area ratio</p>
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	<p>basement may be eliminated, altogether.</p> <p>c) can meet the applicable requirements of Title 18 (Floodplain Management) for basements in designated flood hazard zones.</p> <p>C. First floor areas and above that have a total floor to ceiling height of 14 feet or more shall be calculated at one and one half the floor area of areas with ceiling heights of less than 14 feet. Where the slope of the roof is greater than a ratio of four feet of rise in twelve feet of run, the ceiling height shall be measured at the midpoint of the distance to the ridge. Stair wells and elevator shafts shall only be counted once.</p>	<p>determining floor area will be to the ceiling in cases where there is conditioned space above. In cases of vaulted spaces or areas with unconditioned attic space above, the measurement will be to the top of the roof. Where measuring to the roof, where the slope of the roof is greater than a ratio of four feet of rise for twelve feet of run, the height measurement shall be to the midpoint of the top of the wall and the top of the roof. Otherwise the peak of the roof area will determine the height measurement. Where the height so measured in any area is greater than 14 feet above the lower of natural or finished grade, the floor area of the area above 14 feet will be measured at one and one half times the floor area dimensions. Stair well and elevator shaft floor area shall only be counted once.</p>	<p>calculation.</p> <p>b) is not part of a development with limited access and the basement results in minimal net off-haul from the site. If significant excavation and off-haul would negatively impact the surrounding neighborhood and is inconsistent with applicable Residential Design Guidelines, then the size of the basement may be further reduced or the basement may be eliminated, altogether.</p> <p>c) can meet the applicable requirements of Title 18 (Floodplain Management) for basements in designated flood hazard zones.</p> <p>C. <del>Height measurement that is used in determining floor area will be to the ceiling in cases where there is conditioned space above. In cases of vaulted spaces or areas with unconditioned attic space above, the measurement will be to the top of the roof. Where measuring to the roof, where the slope of the roof is greater than a ratio of four feet of rise for twelve feet of run, the height measurement shall be to the midpoint of the top of the wall and the top of the roof. Otherwise the peak of the roof area will determine the height measurement. Where the height so measured in any</del></p>
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			<p>area is greater than 14 feet above the lower of natural or finished grade, the floor area of the area above 14 feet will be measured at one and one half times the floor area dimensions. Stair well and elevator shaft floor area shall only be counted once.</p> <p><u>Any portion of first floor areas and above that have a total floor to roof height of 14 feet or more shall be calculated at one-and-one-half times the allowable floor area of that space. Height will be measured as the distance in feet or fractions thereof, from the finished floor to the top of the roof. Where the slope of the roof is greater than a ratio of four feet of rise for twelve feet of run, the height measurement shall be to the midpoint of the distance between the top of the wall and the top of the roof. Otherwise the peak of the roof will determine upper limit of the height measurement. Stair well and elevator shaft floor area shall only be counted once.</u></p>
<p><b>Single-Family Residential (RS) Development Standards</b></p>	<p><u>20.16.040 Property development regulations.</u></p> <p>A. Maximum Floor Area Ratio. (The Maximum Floor Area Ratio may be reduced through Design Review pursuant to Section 20.66.045.)</p>	<p><u>20.16.040 Property development regulations.</u></p> <p>A. Maximum Allowable Floor Area Ratio. (The Maximum Floor Area Ratio may be reduced through Design Review pursuant to Section 20.66.045.)</p> <p>B. For any single-family</p>	<p><u>20.16.040 Property development regulations.</u></p> <p>A. <del>Maximum</del> Allowable Floor Area. (The <del>Maximum</del> Allowable Floor Area may be reduced through Design Review pursuant to Section 20.66.045.)</p> <p>B. For any single-family</p>

	<p>B. For any single-family dwelling where there is no existing floor area below the first floor and where the maximum allowable floor area exceeds or is within 100 square feet of the maximum allowable floor area specified in this section, a building permit may be obtained for up to 100 square feet of additional floor area, where the proposed addition complies with all other provisions of this Title.</p> <p>C. For any single-family dwelling in existence at the time of the adoption of this Section on May 16, 2013, any existing floor area below the first floor, as defined by Section 20.08.091, may be converted to habitable space and shall not be counted against the maximum allowable floor area for a given parcel of property as determined by Section 20.16.040 (A), provided that the conversion of the existing space does not change the existing height, bulk, mass or building footprint of the structure and only</p>	<p>dwelling where there is no existing floor area below the first floor and where the maximum allowable floor area exceeds or is within 100 square feet of the maximum allowable floor area specified in this section, a building permit may be obtained for up to 100 square feet of additional floor area, where the proposed addition complies with all other provisions of this Title.</p> <p>C. For any single-family dwelling in existence at the time of the adoption of this Section on May 16, 2013, any existing floor area below the first floor, as defined by Section 20.08.091, may be converted to habitable space and shall not be counted against the maximum allowable floor area for a given parcel of property as determined by Section 20.16.040 (A), provided that the conversion of the existing space does not change the existing height, bulk, mass or building footprint of the structure and only minimal excavation or modification of the existing grade is required.</p>	<p><del>dwelling where there is no existing floor area below the first floor and where the adjusted maximum allowable floor area exceeds or is within 100 square feet of the maximum allowable floor area specified in this section, a building permit may be obtained for up to 100 square feet of additional floor area, where the proposed addition complies with all other provisions of this Title.</del></p> <p><del>C. For any single family dwelling in existence at the time of the adoption of this Section on May 16, 2013, any existing floor area below the first floor, as defined by Section 20.08.091, may be converted to habitable space and shall not be counted against the maximum allowable floor area for a given parcel of property as determined by Section 20.16.040 (A); provided that the conversion of the existing space does not change the existing height, bulk, mass or building footprint of the structure and only minimal excavation or modification of the existing grade is required.</del></p>
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	minimal excavation or modification of the existing grade is required.		
<b>Second Unit Required Parking</b>	J. Off Street Parking. 1. The location of the required parking space(s) may be on the driveway of an approved carport, car deck or garage, and the driveway may be located partially or completely in the City right-of-way, so long as any new parking space on a driveway located entirely or partially in the public right of way does not impede travel; emergency vehicle access; create safety hazards for vehicles, pedestrians or bicyclists; is a minimum of 20 feet in length; and an encroachment permit or encroachment agreement is approved by the Department of Public Works. At least one of the required parking spaces for each unit shall be independently accessible at all times.	None	J. Off Street Parking. 1. The location of the required parking space(s) <del>may</del> <u>shall not</u> be on the driveway of an approved carport, car deck or garage, <del>and the driveway may be located partially or completely in the City right-of-way, so long as any new parking space on a driveway located</del> <u>entirely or partially in the public right of way does not impede travel; emergency vehicle access; create safety hazards for vehicles, pedestrians or bicyclists; is or the driveway of the primary residence or otherwise obstruct the parking of the primary residence, and shall be a minimum of 20 feet in length; and an encroachment permit or encroachment agreement is approved by the Department of Public Works.</u> At least one of the required parking spaces for each unit shall be independently accessible at all times.
<b>Residential Second Unit Interior Setbacks</b>	H. A detached residential second unit shall have a minimum interior yard setback of 5 feet, regardless of lot size.	None	<del>H. A detached residential second unit shall have a minimum interior yard setback of 5 feet, regardless of lot size.</del>

**Recommendation:**

Review the proposed revisions based on the Commission deliberation on April 22 and provide direction to staff on any further revisions and a recommendation to the City Council for their continued public hearing on May 20, 2013.