

Members of the Planning Commission  
Mike Moore, Director of Planning and Building  
Andy Berman, Mayor  
Garry Lion, Council member  
Jim McCann, City Manager  
City of Mill Valley

April 4, 2013

Dear friends,

I have a commitment on Monday April 8 and will not be attending the PC meeting. These are my thoughts on the progress of the proposed ordinance to amend Title 20 of the municipal code.

Based on the meeting of CC on April 1 there appears to be consensus regarding the proposed changes to the second unit ordinance so I have no further comment regarding our proposals, but have some thoughts on related matters. During the CC meeting Mike described the current rules with regard to parking in cases where there are second units. As a reminder, we did not deliberate on the parking elements of the second unit ordinance, and in my list of goals for 2013 I have included, as my item 3, an interest in discussing our views regarding using a tandem parking strategy. This is a matter for another day (hopefully within this term), but I do not consider this item settled.

There is also a question of how the setback rules work for second units, particularly when above or below a garage. Hopefully Mike can settle any confusion here and we can present a final view to the CC in May.

Finally, at the first CC meeting there was the briefest discussion of restricting second units, when rented, to some level of affordability. I do not recall that there was a vote on this or specific direction to staff to make a change. When invited by CC to comment, I suggested that this idea could be problematic. A smaller unit by its nature and market forces should be less expensive than other larger spaces but may not meet affordability. Putting in a deed restriction on rental fees could result in a unit not being built or a unit built for another purpose such as an aging parent or au-pare being left empty subsequently when this use ends. I support economic diversity in town and would rather see a moderately priced second unit at market rates than no unit built or a unit that sits empty.

I think staff got ahead of CC on this informal comment. Realistically, I would want to know how much 500 SF apartments rent for, how the cost of a 500 SF addition compares to the rent restriction and what the restriction would be in dollars. When someone builds a development with a few low-income units the cost can be somewhat spread over the other units. With a single second unit there is nowhere to spread the cost. I think this idea is better dealt with separately and carefully. I suggest that PC come up with a view on whether enough consideration has been

given to this idea. Our view could be included in the staff report, so that CC gives this more rigorous consideration or perhaps deferral when they next meet.

There are a number of proposed revisions to measuring maximum allowable floor area. My comments will follow the order of the revisions.

20.08.091 First floor definition- Small point, is this definition only used for underskirt development in 20.16.040? This definition may not otherwise be necessary given the proposed changes I share below as far as how to measure maximum floor area. There may be other purposes for the definition so I defer to Mike here.

20.08.092 Floor area ratio- Should the title be changed to Maximum Allowable Floor Area (MAFA) everywhere? To Garry Lion's point, it is not a ratio or %, it is a maximum. There may be other purposes for the definition so I defer to Mike here also.

As to the exclusions to this section, Kim Jessup made a good point about how a 500 SF allowance for garage may be too generous on lots under 8000 square feet, as you end up with a small house and a larger garage on a smaller lot. I agree with her and encourage you to consider a revision here to a single car garage allowance on the smallest lots. It would be helpful for Mike to let us know in general how many lots are less than 8000 SF or 6500 SF. I think we could say for any lots less than say 6000 or 6500 SF we give a 250 SF garage bonus. I leave this to you as I do not have a strong view, except to be assured we can get through all of the issues timely.

Another point Kim raised was with regard to non-enclosed spaces, such as porches and covered patio's. These can clearly add to HBM. We have discretion in the DRG's but the larger they are the more problematic they become. For me it is worth coming up with a maximum size because it affects both PC and ZA decisions. I leave the discussion to where it takes to you.

Basements- CC views on our proposal vary. Lets step back and focus on what we wanted to accomplish. We wanted to allow some storage because of the positive impact on use of garages and we wanted to continue to discourage other basement uses due to the site disturbance. How about some wording changes to item B to remove the reference to FAR (MAFA would be better than FAR throughout Title 20, by the way) and continue to rely on the DRG's as follows?

Basements, as defined in Section 20.08.038 shall be acceptable provided the basement:

a. Is not more than 300 square feet in area as measured to the exterior face of the exterior wall and no higher than a floor to ceiling height of 6.8 feet. (I picked 6.8 because it is lower than the new minimum living space of 7 feet and seems to work for storage and standard doors as long as guys like Mike duck a little)

b. and c. ....same wording

d. basement area exceeding the dimensions in a) above that are the result of additional excavation or a design that elevates conditioned space to accommodate the basement are discouraged and may be required to be eliminated during design review. The impact on off-haul or an increase in the buildings resulting height bulk or mass is inconsistent with the applicable Residential Design Guidelines.

Now, on to the height measurement question. First, a comment. We work better together as a team. CC had issue with what was originally proposed to them so I took a shot at a revised set of words. Staff gave me no comments. I realized that my effort was wanting when Garry Lion asked me a question right before the April 1 meeting. So, my latest effort follows. I think this proposal works, but I would appreciate it if PC, Mike and Jim McCann all take a hard look at this before it goes back to CC again to see if my approach works. Be critical!

C. Project effective floor area must be determined for purposes of comparing the project size to the maximum allowable floor area on the lot. For purposes of measuring project effective floor area, any height that exceeds 14 feet in any area will result in that area being measured at one and one half times the floor area dimensions. Height will have a top and bottom measurement dimension using the method below. For purposes of "on center" measurements the 5-foot dimension will be measured horizontally, the top and bottom grids will be adjusted so that they align, and in the case of spaces of less than 5 feet around the edges of a measurement area the individual dimension of the edge shall be measured on center.

a) The top of the 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 top measurement will be prepared with the following approach, based on roof slope. A flat roof will be measured every 5(?) feet on center to the exterior side of the roof in both dimensions of the roof for the top measurement. When measuring a sloped roof, the area will be separated into two components, based on the area from the midpoint of the top of the wall and the exterior peak of the roof.

1. Where the slope of the roof is greater than a ratio of four feet of rise for twelve feet of run, the area above the midpoint will have a top measurement based on measuring from the midpoint location in both dimensions. The area below the midpoint will have a top measurement every 5(?) feet on center to the exterior side of the roof in both dimensions.

2. If the ratio is equal or less than four feet of rise for every twelve feet of run, the exterior peak of the roof will determine the top measurement throughout both

dimensions for the area above the midpoint. The area below the midpoint will have a top measurement every 5(?) feet on center to the exterior side of the roof in both dimensions.

b) The bottom of the height measurement that is used in determining floor area will be to the floor in cases where there is conditioned space below. In cases where the area does not have conditioned space below the bottom of the height measurement will be determined by the lower of natural or finished grade. Grade will be measured every 5(?) feet on center for purposes of this measurement in both the dimensions of the floor with the following amendment. Where the total change in grade along a dimension varies by no more than +/- 5 (?) feet from the average grade the dimension can be considered flat at the average grade.

OK, this is what I was trying to get at. We need a definition of top and bottom for the measurement. For the floor below the roof we use the roof and floor, unless the space is one floor high. If there is a middle floor with conditioned space above and below, we use the floor to ceiling height. For the bottom floor we use grade for the bottom and the top is a ceiling if conditioned above and the roof if the space is one floor high. Cool!

I clarified how only space above the midpoint of a 4 in 12 roof counts double if the height is above 14 feet to the appropriate bottom.

As all dimensions are across both the front yard and side yard, and are affected by grade front to back I propose what is essentially 5 feet on center grid. Architects, is this a reasonable approach? Is 5 feet a good dimension? Is another measure better? I chose 5 because when grade falls quickly it seemed to me that anything larger would be problematic. Whatever you think I am fine with.

Finally I wanted to create a simplifying assumption for grid lines along any dimension that are close to flat. I picked 5 feet +/- but defer to the architects.

Is this too complicated? I assume that an applicant normally have the data because this is how overall building height is measured now. This approach is essentially what we agreed to conceptually. Steve's 3 dimensional drawings and the questions from CC crystallized for me that we are really talking about a grid

How does this compare to other jurisdictions? Can we show CC that this is normal and not too complicated? Some other examples may help calm any concern that we are too complex. Architects? Mike? Can we comment on how our approach is really 'within the lines', not overly complex and solves the problems we have been observing and dealing with thru the DRG's?

In summary, we accomplish three things with our approach. We deal with vaulted spaces with the “top” to roof approach and we deal with hillside lots that sit too high on the land with the “bottom” measurement to grade approach. We allow a variety of architectural forms by using the average approach with a 4 in 12 roof slope instead of a bias for flat roofs.

If this is deemed too complicated then one alternative is to give up on the “bottom” to grade approach. Floors are flat, so the grid goes away if we always measure to floors instead of grade. I am against this simplification because I think the grade idea works really well with what the DRG’s are getting at with regard to sitting high on hillside lots, but I hate to see us walk away from all our efforts here, if this is too complex.

Similarly, we could take up Garry Lion’s suggestion to eliminate the average approach regarding sloping roofs for simplicity, but this discourages peaked roof forms. Steve was particularly adamant about allowing some design flexibility and I think our approach does a nice job of balancing flexibility of form with more predictable PC reactions to HBM questions.

The last simplification I thought about but rejected is the 4 and 12 rule. Ken Wachtel seemed to be concerned about this idea, but I am not sure where the other CC members are. I understand why the architects proposed this rule. I think an example should allay any concerns. A flat 14.5 roof to floor (forget grade for simplification) counts 1.5 times. If the 4 and 12 rule were eliminated then if someone designs a space with a very low pitch roof rising from 13.5 to a 14.5 peak, it only counts once as the mid height is 14. The HBM is virtually the same. If the peak dimension exceeds 14 feet, the penalty would only be for 50% of the space, and again at less than 4 in 12 you are looking at a pretty flat roof. Our rule would say that the peak at 14.5 determines height for the area above the mid point. I strongly support our idea, but if too complex I suppose we can deal with the negative result of dropping the idea.

We cannot deliberate on this forever. I look forward to listening to your deliberations on how to balance any perceived complexity with our goals.

As to drawings, we have too many currently and this adds to the possibility that this is perceived as too complex. The drawings were good because it forced us to think about all possible permutations, but now that the words are hopefully very precise I think we can get the examples down to just 2 or 3 simple illustrations to cover everything. Depending on how Monday goes I am willing to work with Steve to get us down to something tight. I would need to do this before April 14.

Garry Lion did not like the idea of counting stairwells and the like only once. We chose this approach to be consistent with what most other jurisdictions do. We also were responding to comments against the alternative approach we received from

the architectural community. We do not get stairwell issues all that often (besides Edgewood) so I am sanguine as to whether we count them once or on every floor. My only interest is in making sure everyone knows the rules. I suggest we reemphasize our reasoning in the staff report and let CC vote for what they want.

Finally there is 20.16.040 C, which allows for under skirt development. Ken Wachtel seemed to be concerned about this idea, but I am not sure where the other CC members are. Ken did not like the May 16 2013 sunset date for allowing expansion with no floor area impact. He said that new construction also has the skirted areas so why not let them have the benefit also? The issue is that with the free underskirt space rule remaining, applicants would be encouraged to vault understory space and then come back later and build understory to exceed maximum floor area. If the vaulted understory space makes it past design review, some penalty with regard to floor area would likely attach due to the measurement to grade rule discussed above. But the penalty is at 50% and the "free space" is at 100%. This incentive is a problem.

There are three possible solutions to a concern here. Leave everything as proposed because the sunset date is important so that applicants are not encouraged to stilt up projects to get space later. Steve's example A displays this phenomenon well. If someone follows the DRG's there is no need to create a material amount of space that can be exploited later.

If CC remains concerned then the other two options are to eliminate the sunset date for applying the free space rule or eliminate the provision entirely. Between these two poor alternatives I would simply eliminate the idea entirely because I am very against any bonus that incents designers to contribute to HBM. With no sunset, PC would have to use discretion to eliminate the problem at the application level and it is not worth it. To be clear, I support the change as presented but hope that we can be unanimous in a view that the choice is between the amendment and nothing, rather than the amendment with no sunset.

Mike, I suggest that the staff report carefully describe the "why"s we are accomplishing with each of our decisions so that CC members can be well prepared for their next (final?) deliberation. Each of our decisions has a goal in mind and I think it is important for CC to understand our motivations.

OK, this note has taken a while to write! I hope your deliberations on Monday go quicker! No need for anyone to get back to me before Monday (Brown) and please do not discuss with CC members as I am also sending to Andy and Garry. I look forward to viewing the meeting Tuesday morning. Once again, I encourage everyone to be very critical of what I have written when you review Monday because we need to get this very clean before CC reviews on May 6. I am out of town for that meeting by the way.

Sincerely,

John McCauley