

**CITY OF CHARLOTTESVILLE**  
**DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES**  
**STAFF REPORT**



**REQUEST FOR A ZONING TEXT  
AND MAP AMENDMENT**

**PLANNING COMMISSION REGULAR MEETING**  
**DATE OF PLANNING COMMISSION MEETING: January 14, 2020**

**Author of Staff Report:** Brian Haluska, Principal Planner

**Date of Staff Report:** October 30, 2019 (**Revised January 6, 2020**)

**Proposed Change To Ordinance:** Adoption of the Downtown Extended Strategic Investment Area Zoning districts to include T4, T5 & T6

**Applicable City Code Provisions:** Chapter 34, Article VI – Mixed use corridor districts

**Executive Summary**

This is a proposed zoning text amendment to add a new section to the zoning ordinance to establish a Downtown Extended Strategic Investment Area with three zoning districts (referred to as the T4, T5 and T6 transect zones) and regulations for those zones. Additionally, the City’s zoning map would be amended to re-classify individual lots and place them in one of the specified transect zones.

The draft code presented with this report is the December 2019 draft version of the code. It was updated from the Draft presented to the Commission in October 2019, and contains the following major revisions:

- The signage sections have been removed. The City’s current signage regulations will govern signs in the DE-SIA.
- The use sections have also been removed. The uses currently allowed in the DE Corridor will be maintained.
- The word “should” has been replaced in most instances with the word “shall”.
- The affordable housing bonus requirements now contain additional language to prevent loopholes around the size and location of the affordable residential units.
- The business incubator computer lab reduction allowance for the affordable housing bonus has been removed.
- Proposed moving the definitions contained within the draft to the general Zoning Ordinance Definitions section.

**Background**

In 2012, the City of Charlottesville identified an area of the City to be the focus of a planning process that would come to be known as the Strategic Investment Area. Following the award of a

contract to perform the planning work on this project to Cunningham Quill Architects, the planning process commenced in 2013 and resulted in an amendment of the City's Comprehensive Plan to add a small area plan known as the "Strategic Investment Area Plan" or "SIA Plan".

The Steering Committee for the Strategic Investment Area Plan adopted the following principles for the plan:

1. Improve and maintain a high quality of life for the people who live there and those who may in the future by addressing issues surrounding housing decay, crime, health, jobs, adult education, child care, and transportation.
2. Create a healthy neighborhood and a "sense of place" with public parks, libraries, other amenities and healthy food sources with safe and interconnected streets that promote walking, bicycling and efficient public transit and use green infrastructure techniques to improve water quality.
3. Promote mixed income residential development without displacing current residents.
4. Focus and coordinate private and public investment in infrastructure, education and community assets to increase economic, recreation and housing opportunities.
5. Honor the CRHA Residents Bill of Rights and rebuild and preserve existing public and assisted housing as part of an overall plan to revitalize the area. (The SIA will work in concert with the CRHA redevelopment plan and not supersede or replace it).
6. Develop shared understandings of the issues, challenges, opportunities and desired outcome for the SIA.

The draft plan for the SIA was presented to City Council in December of 2013, and ultimately approved as an amendment to the City's Comprehensive Plan on February 3, 2014.

The SIA Plan as approved by City Council (2013) is available for viewing on the City's website, at <https://www.charlottesville.org/home/showdocument?id=27996>.

As a part of the discussion on implementing the plan, staff raised the concern that drafting a zoning change for the entire SIA would be a large undertaking that would incorporate and attempt to address a number of competing interests. Specifically, the SIA area included the area south of Downtown and low-density residential areas – two areas that require thorough investigation and may yield very different considerations. In light of these conflicts, staff recommended breaking the SIA into three phases for the purpose of considering zoning changes.

In early 2017 the City engaged the Form-Based Code Institute (FBCI) as a contractor to write a form-based zoning ordinance for Phase 1 of the SIA. The contractor started substantial public input with a charrette at the IX property in September of 2017, and followed up with targeted public outreach at Friendship Court, Crescent Hall and the Sixth Street CRHA housing sites.

FBCI presented several drafts for review by the City. The third draft was submitted in March 2019, and has been posted for public review. Staff reviewed this draft and provided feedback to the consultant in September. The consultant revised the draft code in advance of a Planning Commission work session on October 15, 2019.

The Planning Commission held a joint public hearing on the October 2019 draft on November 12, 2019 and deferred action so that staff could address some concerns with the code.

### **Study Period and Public Hearing**

On October 22, 2019, City Council initiated the proposed zoning text and zoning map amendments for consideration through an official public hearing process. Once an amendment has been initiated by City Council, it is deemed referred to the Planning Commission for study and recommendation (City Code §34-41(d)). From the time of initiation, by law the planning commission has **100 days** in which to make its recommendation to City Council. Failure to report back to the City Council within 100 days is deemed a recommendation of approval.

### **Standard of Review**

As per §34-42 of the City Code, if initiated, the planning commission shall review and study each proposed amendment to determine:

- (1) Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;
- (2) Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;
- (3) Whether there is a need and justification for the change; and
- (4) When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the commission shall consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification.

### **Proposed Zoning Text Change**

The proposed zoning text amendment would amend and re-enact the provisions of the Zoning Ordinance, Chapter 34, Division 11, Sec. 34-216, to add three (3) new zoning districts: SIA-T4, SIA-T5, and SIA-T6. In addition, the proposed zoning text amendment would create a new Division 17 within Article VI of the Zoning Ordinance establishing the regulations for the transects. The draft also adds additional definitions to the Zoning Ordinance's Definitions section located in Section 34-1200.

### **Standard of Review Analysis**

#### **1. Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;**

The Strategic Investment Area Plan that was adopted as an amendment to the Comprehensive Plan on February 3, 2014 expressly contemplates and recommends a form-based code as a means of implementing the recommendations of the SIA Plan.

**2. Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;**

The purposes of the Chapter 34 of the City Code (Zoning Ordinance) chapter would be furthered by providing a predictable framework for redevelopment and context-based zoning regulations to guide the placement, form and use of private and public property and buildings in the SIA. Particularly for the land currently within the Downtown Extended Mixed Use Zoning District, updated zoning regulations enacted in furtherance of a specific plan, are very much needed.

**3. Whether there is a need and justification for the change;**

One of the goals of the Strategic Investment Area Plan was “to create a healthy, viable neighborhood with urban amenities such as public parks, institutions like libraries and excellent food sources and safe, interconnected streets that promote walking, biking, and efficient public transit.” As a part of the plan, the Form-Based Code proposed here is intended to begin implementing the plan to fulfill this goal. The proposed Form-Based Code has specifically been designed to promote safe, interconnected streets, by implementing the City’s Streets that Work Plan—another component of the Comprehensive Plan. It promotes a corridor for retail uses, which may include food stores, and requires the provisions of specific types of open spaces to be provided as part of the development/ redevelopment of land.

**4. When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities.**

The proposed change to the zoning map would rezone the land within Phase 1 of the strategic Investment Area. The main change in the code is the alteration of maximum height regulations across the SIA area. Currently, the zones covered by the proposed rezoning have height restrictions as follows:

Zone	Minimum Height	Maximum Height	Bonus Height Available
Downtown Extended (DE)	35 feet	50 feet	61 feet
West Main East (WME)	35 feet	52 feet	None
B-2 Business	None	45 feet	None
R-2 Residential	None	35 feet	None

The transect districts would allow 3 stories of building height in the T4 district, 4 stories in the T5 district, and 5 stories in the T6 district – with bonus height available for the provision of affordable housing within each transect zone.

The proposed code would also eliminate restrictions on maximum residential density. A developer would be allowed whatever density can be accommodated within the building form (width and height) allowed by the applicable transect zone.

Currently the Downtown Extended zone has a by-right maximum of 43 dwelling units per acre, but permits a mixed-use building to have a density of 240 units per acre by special use permit. West Main East has a maximum density allowed of 43 dwelling units per acre by right, and an absolute maximum of 120 units per acre by special use permit. B-2 zoning permits 21 dwelling units per acre by right, and up to 87 units per acre by special use permit.

### **Public Comment**

The City has received a variety of comments on the draft. The current summary of those comments, along with staff responses— where appropriate – are contained in Appendix 2 of this report.

Staff has not received any additional comments on the revised draft.

### **Recommendation**

Staff recommends approval of the proposed zoning text amendment.

### **Suggested Motions**

1. “I move to recommend approval of this zoning text amendment to Article VI of Chapter 34 of the Code of The City of Charlottesville, 1990, as amended, on the basis that the changes would serve the interests of public necessity, convenience, general public welfare and good zoning practice.”
2. I move to recommend approval of this zoning text amendment to Article VI of Chapter 34 of the Code of The City of Charlottesville, 1990, as amended, on the basis that the changes would serve the interests of public necessity, convenience, general public welfare and good zoning practice *with the following additions and modifications:*
  - a.
  - b.
3. “I move to recommend denial of this zoning text amendment to Article VI of Chapter 34 of the Code of The City of Charlottesville, 1990, as amended

### **Appendices**

1. Draft Downtown Extended Strategic Investment Area Zoning district regulations: <https://www.charlottesville.org/home/showdocument?id=67625>
2. Summary of public input received prior to October 15, 2019 Planning Commission Work session.
3. Previous Form-Based Draft and Supporting Materials from October Work Session: <https://www.charlottesville.org/home/showdocument?id=66976>



**CITY OF CHARLOTTESVILLE  
NEIGHBORHOOD DEVELOPMENT SERVICES**

**MEMO**

To: City of Charlottesville Planning Commission  
CC: Alex Ikefuna, Director  
Missy Creasy, Assistant Director  
Lisa Robertson, Chief Deputy City Attorney  
From: Brian Haluska, Principal Planner  
Date: November 4, 2019  
Re: Public Feedback on the SIA Form-Based Code Draft

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This memo summarizes the public feedback on the Form-Based Code for Phase 1 of the Strategic Investment Area. It incorporates public comments received prior to the Planning Commission work session on October 15<sup>th</sup>, as well as several concerns raised just prior or at the work session. Staff has deleted some items that the Commission addressed in the work session, as well as feedback that was commenting on the code or making general observations about the proposed Code. The original list of comments presented at the October 15<sup>th</sup> work session is still available online here:  
<https://www.charlottesville.org/home/showdocument?id=66976>

The draft code included in the packet is the draft from October that the Commission previously saw. The input from the public hearing, as well as the responses in this document that indicate a change that will be incorporated in a “Final draft” indicates the final draft code that will go to City Council for a vote.

## **Responses to Questions Regarding the Legal Status of the Form-Based Code**

1. **Concern:** the FBC is too vague; I'm having trouble determining from the FBC document whether or not my land will be included in any of the new FBC zoning district classifications (T4, T5, or T6).

**Response:** The illustrations within the FBC document, referencing the applicability of three transect zone districts (T4, T5 and T6) are for general reference only. The City's Official Zoning Map is actually published outside the text of the zoning ordinance (see City Code 34-1) and the Official Zoning Map is the document which will ultimately identify which "transect" zone into which a particular lot has been classified. A proposed Zoning Map amendment is available within the office of NDS for review, and each parcel proposed to be included in the new transect zones is identified in the public advertisement of the zoning map amendment.

2. **Concern:** the FBC is too vague, because it doesn't address PUDs; will PUDs still be available within the SIA?

**Response:** PUDs aren't addressed in each individual zoning district. "PUD" is a stand-alone zoning district classification, sometimes referred to as a "floating" zone that can be implemented anywhere via a rezoning application process (see City Code Chapter 34, Article V). If the FBC is adopted, a landowner could certainly still submit a rezoning application requesting a change in the zoning district classification of his or her land from the FBC to "PUD". In reviewing that application, the planning commission and city council would need to review the SIA Plan and determine whether the FBC or the proposed PUD would better achieve the key elements/ objectives of the SIA Plan.

3. **Concern:** the FBC is too vague, because it leaves questions open, such as "how fixed to make the Framework Plan".

**Response:** any remaining questions are to be resolved through the upcoming public hearing process. The planning commission will need to provide input and express preferences. In general, staff agrees that a final FBC ordinance must be clear, and should use clear language (if a standard is intended to be mandatory, the ordinance should say "shall" or "must" rather than "should"). As to standards where more flexibility is desired the ordinance should identify acceptable alternatives (landowner "may" do X, or, alternatively, landowner "may" do Y; landowner "must" do either X or Y). Note: the Framework Plan establishes the layout of the street network desired within the FBC transect zones, in furtherance of another component of the Comprehensive Plan (the Streets that Work Design Guidelines). Much like the street standards currently set forth within the subdivision ordinance, the Framework Plan is, by its nature, somewhat prescriptive. Some deviations are allowed, however (see, e.g., Chapter 2, the Framework Plan). Also, much like the "primary" and "linking" street designations

in some other zoning districts, the street designations in FBC may specify what ground-floor uses may occupy a building.

4. **Concern: Can the City force me to provide mandatory open space on my property?**

**Response:** The General Assembly has expressly authorized the City to determine what specific area(s) of land and air space may be occupied by buildings or structures, and what specific areas of land and air space must remain *unoccupied* by buildings or structures. Some of the City's other zoning district regulations require a specific amount of open space, but leave it to developers to determine its specific character and location. The proposed FBC gives a developer a choice of several types of open space, but require it to be sited in specific locations, i.e., immediately adjacent to the tallest buildings constructed within a T6 zone (to create a plaza). Landowners within the T6 zone/district are allowed more height to accommodate for this.

5. **Concern: the FBC will discourage density.**

**Response:** density is a measure, not necessarily an objective in itself. Depending on how it's measured, density is a standard that either attempts to keep an area from having more people than can be served by public services (water, sewer, fire, transit, schools, etc.) and/or that keeps an area from being overly-built, leaving no space between buildings, no green spaces, and little room for future transportation improvements. Sometimes good zoning practice might require the City to encourage concentrations of people or massive buildings, to take advantage of existing available services or to promote redevelopment of an area in which streets have already been laid out. Density can be measured either by "dwelling units per acre" (DUA) or by the amount of land covered by the built environment ("land coverage"; "building massing"; etc.). If the expressed concern relates to elimination of DUA within the FBC as a measure of density: that's something that many local designers and developers have been requesting for several years. Few developers who are constructing high-rise buildings, SFD or TH developments are including dwelling units affordable to a wide range of incomes, so it's clear that zoning regulations promoting high-density development within certain Mixed Use zones are not achieving affordable housing goals that are currently City Council's highest priority. If density is measured by how buildings occupy land, and how much space is left unoccupied by buildings, then the proposed FBC has been designed to implement the general density recommended within the SIA Plan. *Note: in the current DE zoning district building height (without any bonuses) is restricted to a maximum of 50 feet (approx. 4 stories) by right; this would limit a 4-story building with a footprint of 1/2 acre to 10-11 apartments, total. In a FBC district, the same building would not be restricted as to DUA, and a landowner could include many more apartment units within that same building. This has potential to achieve both urban design*

*objectives as well as a greater number of actual dwelling units—without requiring a developer to seek any special use permit(s).*

6. **Concern:** the proposed FBC is being considered outside of the proper planning process. The City should wait until its Comprehensive Plan is updated, its zoning ordinance is revised, and an affordable housing strategy is adopted.

**Response:** actually, the proposed FBC arises out of a planning process that exemplifies how planning and zoning processes are supposed to relate to one another. In 2013 City Council approved a Strategic Investment Area (“SIA”) Plan [in the nature of a small area plan] and the SIA Plan was adopted as a component of the Comprehensive Plan. Comp Plan provisions are implemented through the Zoning Ordinance, and the FBC is a type of zoning ordinance specifically identified within the SIA Plan as being suitable to achieve the goals and objectives of the Plan. A Comprehensive Plan is supposed to designate areas and include measures for implementation of affordable housing construction sufficient for current and future needs of inhabitants of all income levels. The SIA Plan has, as one of its key elements, the objective that there should be a variety of housing choices and a mix of affordability. The proposed FBC is intended to implement the key elements of the SIA Plan.

7. **Concern:** the proposed FBC is inconsistent with the SIA Plan, because it doesn’t implement all of the recommendations included in the Plan.

**Response:** Neither the SIA Plan nor any other component of the Comprehensive Plan is a legally binding document. A zoning ordinance is not required to implement each and every recommendation of the Plan; City Council is allowed, at a given time, to give priority to some key elements and objectives. The assessment for the Planning Commission and City Council to make is whether or not the provisions of the FBC promote key elements of the SIA Plan in a manner that will guide development of the SIA generally in accordance with the vision set forth within the Plan.

8. **Concern:** the FBC does not match the SIA Land Use Plan which calls for more dense development with taller building heights and more extensive retail areas than the proposed FBC allows.

**Response:** as noted above, the FBC is not required to match the SIA Land Use Plan precisely. However, just as the current DE zoning district offers additional building height as a “bonus” for landowners willing to construct mixed use development, the proposed FBC offers additional building height as a “bonus” for landowners willing to construct affordable housing and thereby achieve one of the key objectives of the SIA Plan: a variety of housing choices and a mixture of affordability (SIA Plan, p. III-27 through III-30). As to retail, the SIA Plan calls

for a retail corridor, not necessarily retail scattered throughout each of the transect zone(s). (SIA Plan, p. III-25).

9. **Concern: the proposed FBC is still in draft form, and serves more as guidance than enforceable code.**

**Response:** although the Draft FBC has already been available for public comment for some time, it will not be placed into a near-final version until after the official public hearing on November 12, 2019. Once the joint public hearing has concluded, the planning commission will formulate its recommendations to City Council and the commission's recommendations will be incorporated into a near-final ordinance for Council's review, input and decision.

### **Responses to Questions Regarding the Affordable Housing Provisions in the Code**

10. **Concern/opinion:** the proposed FBC is an entirely inappropriate vehicle to address affordable housing. The FBC would replace the current City-wide provisions (§34-12), likely with less success. The FBC ordinance will function as a disincentive to achieving on-site affordable housing within developments due to the incremental costs of constructing additional "bonus" stories.

**Response:** It is correct that the City-wide provisions of §34-12 would not apply within the FBC transect zones (T4, T5 and T6); however, many people complain that the provisions of §34-12 are not effectively increasing the availability of affordable dwelling units within the City. There is no city within the United States that has identified the perfect government regulation that will result in affordable housing at needed levels; cities historically devoid of zoning regulations (e.g., Houston) have housing affordability crises, just as cities with the most restrictive zoning and inclusionary zoning policies (e.g., San Francisco). Currently, the regulations within the City's mixed-use districts—including DE—are achieving density at the expense of affordable housing (and other public objectives, as expressed in the vision of the SIA Plan). In areas where the highest number of dwellings per acre are allowed, the City is not seeing substantial development of affordable dwelling units. Under §34-12 most developers are not electing to construct affordable housing, and the formula for calculating a contribution to the Housing Fund (a formula imposed by the General Assembly) isn't tied to the actual cost of local housing construction.

The City's consultants—including one individual who has extensive experience with Arlington County's acclaimed Affordable Housing Program—believes that a combination of incentive zoning, together with other available tools (subsidies to developers from the City CAHF, tax credit programs, etc.) is a highly recommended way for the City to begin to make substantial progress. Arlington's approach is to make every possible tool available, in one location or another (Arlington has some FBC zoning districts, and some traditional zoning districts) and to distribute public funding in a prioritized way that advantages the best

opportunities that present themselves. Charlottesville City staff's general outlook is that it's better to try something new now, than to go for an additional number of years without doing anything differently. All of that being said: staff believes that it is critically important for the City to complete a Housing Strategy (to be incorporated as the new Housing Chapter within the Comprehensive Plan), and to formally adopt a City Affordable Housing Program to implement the Strategy through funding priorities and ordinances, and to monitor development patterns closely to determine when ordinance amendments are needed.

- 11. Concern: The proposed FBC has a discriminatory effect because it doesn't treat all abutting neighborhoods the same; it results in an uneven application of general zoning design regulations by subjecting properties in the FBC area to entirely different set of such regulations than are applied to other comparable urban mixed-use districts. This is being done without adequate analysis and real justification.**

**Response:** The justification for the FBC is found within the SIA Plan, and the individual expressing this concern has also stated separately that the SIA Plan is a thoughtfully considered document. Both the SIA Plan and the proposed FBC were prepared by experienced, thoughtful consultants who completed studies and analyses of existing conditions and desired outcomes, and recommended the use of a form-based code type zoning ordinance to achieve the City's urban design objectives. The whole purpose of having various zoning district classifications is that one area of the City may have a different set of zoning regulations than a different area of the City.

- 12. Concern: I read an article in the New York Times about a group that sued a Texas agency to challenge its decision-making process for LIHTC applications (*Inclusive Comtys. Project., Inc. v. Tex. Dept. Hous. Comty. Dev.* (2016)). Will the provisions of the FBC, which offers building height bonuses—for affordable dwelling units within the FBC—create racially disparate impacts in violation of the Fair Housing Act? (Those incentives aren't currently offered in other zoning districts).**

**Response:** The mere fact that a particular zoning ordinance ("Z.O.") regulation is enacted in one zoning district, but not in other zoning districts, isn't unlawful *per se* and, in and of itself, isn't the basis for a successful disparate impact claim. The purpose of having multiple zoning districts is to promote land use objectives tailored to particular areas. City Council's decision to amend its zoning ordinance is a discretionary, legislative act, guided by a number of objective factors. Although incentive zoning isn't currently used for affordable housing in the Z.O. (but building height bonuses *are* currently offered in certain districts, to promote mixed-use development), the City already has one affordable housing Z.O. provision that applies city-wide (§34-12). Having a mixture of city-wide and zoning-district-specific provisions is consistent with the City's obligations: state law requires the City to plan for affordable housing and to designate areas for it.

See Va. Code §15.2-2223(D). Finally: the City has scheduled an upcoming project to update and revise the City's Comp Plan and Zoning Ordinance, which will include planning for and identifying areas which present the best opportunities for affordable housing—citywide.

*Case Summary*--In *Inclusive Cmty. Project, Inc. ("ICP") v. Tx Dep't of Hous. and Cmty. Affairs v. (2016) ("ICP Case")*, ICP was unsuccessful in its challenge to Texas' administration of its LIHTC tax credit program. ICP claimed that the discretionary manner in which applications were evaluated or approved as resulting in low-income housing being developed more often in areas with a majority minority population than in other areas. ICP's legal arguments were rejected and the court determined that the mere fact that a decision-making process is discretionary in nature does not *per se* establish proof that the process is [or will be] the cause of a disparate impact.

**13. Concern: I've heard that a California lawsuit on appeal to the U.S. Supreme Court might result in Inclusionary Zoning being declared unlawful. Should the City wait to hear the outcome of that case before adopting the FBC?**

**Response:** It's not necessary to hold up consideration of the FBC pending the outcome of the California case (*Cherk, et al. v. Marin County, Ca.*). The proposed FBC seeks to obtain inclusion of affordable housing within housing projects, but only through use of incentives ("incentive zoning"). Incentive zoning is expressly authorized by Virginia law (§15.2-2286(A)(10)) and, pursuant to the definition of "incentive zoning" included within Va. Code §15.2-2201, affordable housing creation and preservation is one of the purposes for which a zoning ordinance may offer special benefits or privileges in the development process.

The California case (*Cherk*) involves a landowner's challenge to a California subdivision law that was mandatory (not incentive-based). As a condition of receiving approval to subdivide a 2.79 acre lot into two lots, the *Cherks* were required to comply with certain affordable housing requirements. They were given choices, among them: pay an "affordable housing fee" of \$39,960; dedicate one of the two subdivided lots for use as affordable housing; construct one or more affordable dwelling units off-site; or dedicate a different lot within Marin County for affordable housing. The California courts reviewing the Marin County ordinance found the ordinance to be a reasonable land use restriction (authorized by California law) which had been imposed by legislative action of the county's governing body, and not an unlawful "exaction" imposed by administrative act of the county's subdivision agent. The *Cherks* are seeking Supreme Court review, in order to obtain a ruling as to whether or not (i) a mandatory imposition of requirement that land be used for affordable housing is a permissible land use regulation, and (ii) whether or not, under prior Supreme Court rulings, a different standard applies to legislative actions (i.e., adoption of a zoning ordinance) versus conditions imposed in connection with obtaining a building permit. In a well established line of cases, the Supreme Court has required there to be a close

“nexus” between conditions imposed upon a landowner as part of a development permit (such as a site plan, subdivision or building permit application). One major question presented in this appeal is whether a mandatory requirement for affordable housing (e.g., requiring 20% of all units approved for construction to be affordable units) is a lawful public purpose for land use and subdivision ordinances, or an Unconstitutional taking of a landowner’s property. (*Note:* November 15, 2019 is the date currently set for a conference, at which the Sup. Ct. will discuss whether or not to grant a *writ of certiorari* and review the California court decision).

### **General Comments**

1. Table 1.1 Code Article Tracking: Sec-34-1100 Height and application of district regulations: FBC says “No change except (b) shall not apply.” (a) is also different. What marks the top of a building is defined differently in the current code and the FBC.

**Response:** The top of buildings as defined in the current zoning ordinance will apply to the FBC as well.

2. What is the street classification for existing streets?

**Response:** “Primary” or “linking”. No relation to Streets that Work (Comp Plan).

3. Is the “Side” category under Frontage referring to secondary frontages or side yards?

**Response:** the “side” category refers to side yards. Secondary frontages are referred to as “corner sides”.

4. In regard to a maximum lot width, can a shared parking garage (not fronting a street cross property lines to serve multiple lots/buildings? If so, does the language need to change to permit that?

**Response:** We will add a sentence to the final draft that parking is exempt from max lot width (as it needs to be hidden anyway).

5. In regard to maximum lot coverage, does open space that is grade-accessed and above a parking garage count towards lot coverage? For example, on a sloping site, a partially buried parking garage could have a rooftop plaza accessed from the high end of the site. Counting a garage such as this towards lot coverage could make it more difficult to fully build out a site and take advantage of the bonus heights which provide for affordable housing.

**Response:** Good suggestion to exempt open space on top of the garage, publicly accessible and grade-accessed, from max lot coverage.

6. How is lot frontage calculated? For example, if 70% frontage is required at the front of a site, and you have a 5' minimum setback, does that mean that 70% of the building must be at exactly 5' from the property line? Would a build-to zone make more sense? There are no maximum setbacks listed. Build-to zones may reduce the number of 5% waivers needed to go through the director of NDS per section 7.3.3.

**Response:** In the situation described, 70% of the building would need to meet the minimum setback.

7. Should there be an exception for the treatment of the ground floor on sites of a certain slope?

**Response:** Not where the ground floor (above-grade) facing a particular street has intentionally regulated uses in order to achieve activation of that street.

8. Do the SIA parking requirements supersede the Parking Modified zone? This zone permits a 50% reduction in non-residential parking, excludes affordable housing units, and allows for alternate means for providing parking.

**Response:** Based on Planning Commission input, the parking requirements should be equal to that of the Parking Modified Zone, with exceptions for small lots.

### **Open Space**

9. Rooftop green space should be promoted as an open space type.

**Response:** This suggestion will be incorporated into the final draft, so long as no habitable structures/areas are to be constructed (this doesn't count things, such as mechanical equipment, etc., that can be attached above the level of the roof deck).

10. As we read the draft FBC, and sections 2.4 and 2.5 in particular, there only seems to be one "Open Space" clearly required throughout the entire Phase 1 area. (The Framework Plan labels it as the "Mandatory Open Space" that must be located in the general vicinity of the Ix Art Park.) Further, because draft section 2.4.1 requires that it be either a "Square" or a "Plaza" (as defined by open space types C and D, respectively, on Tables 2.1A and 2.1B), it could be as small as 0.2-acre, and it could consist of up to 90% impervious surface.

**Response/note:** the "mandatory open space" is in the general vicinity of the Ix Art Park, because that is also the location of the proposed T6 classification, which requires taller buildings to be constructed along the edge of a square or plaza.

- a. While we understand that nothing in the FBC would limit developers from increasing the size of the one Mandatory Open Space beyond 0.2-acre or providing more Open Spaces throughout Phase 1, we believe the current

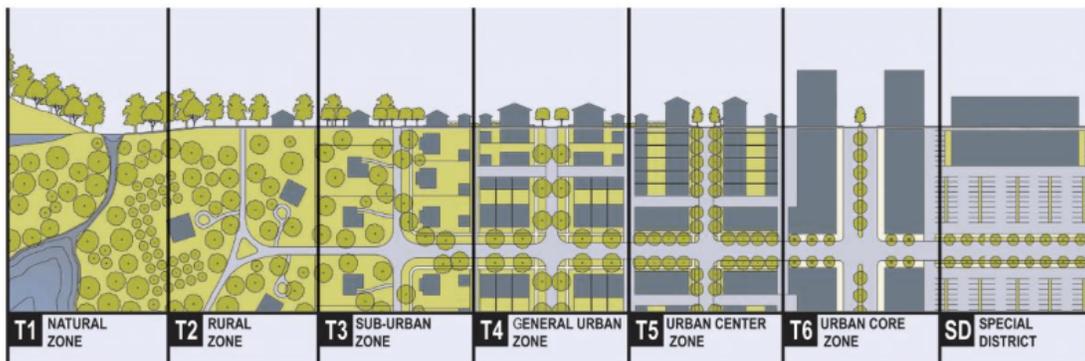
draft FBC leaves too much to chance on such an essential component of healthy communities. We recommend that the FBC require a much more robust public green space to serve as a signature Open Space for this area, particularly in light of the fact that the proposed Pollock’s Greenway that is a key feature of the Strategic Investment Area Plan has been abandoned in the draft FBC. The “Park” or “Green” open space types referenced in Tables 2.1A and 2.1B seem much more appropriate for this purpose than the “Square” and “Plaza” open space types that the current draft would require.

**Response:** in the T6 zone, because of the nature of the urban environment, the recommendation has been for a plaza or square. However, if the Commission would like to consider a different type of space, the urban design concept could be revisited.

- b. We also wanted to note that based on the location of the Mandatory Open Space in the center of the T6 zone, it could potentially be surrounded by buildings as tall as 152 feet (as calculated using the permissible story heights listed in draft section 6.1.3). Has any analysis been done of whether 0.2 acres would be a reasonable size for an effective open space surrounded by buildings of this scale?

**Response:** that is the intention/ nature of the T6 urban transect zone.

## The Transect



Naturalists use a concept called the transect to describe the characteristics of ecosystems and the transition from one ecosystem to another. Andres Duany has applied this concept to human settlements, and since about 2000 this idea has permeated the thinking of new urbanists. The rural-to-urban Transect is divided into six zones: core (T6), center (T5), general urban (T4), sub-urban (T3), rural (T2), and natural (T1). The remaining category, Special District, applies to parts of the built environment with specialty uses that do not fit into neighborhoods. Examples include power plants, airports, college campuses, and big-box power centers.

11. The reference to an “open space fund” in draft section 2.5.5 raises more questions about the firmness of the Open Space requirement. The bracketed note after that section states the City will “help define conditions” for contributing to the fund, but it is not clear in the first place what requirements could be avoided for contributing to it. For instance, could an applicant contribute cash in lieu of providing the one Mandatory Open Space shown on the Framework Plan? If so, what guarantee is left that an Open Space would be included in the Phase 1 area?

**Response:** Staff advises removal of the reference to an open space fund.

### **Affordable Housing**

12. The draft FBC does not make clear where developers must build the affordable dwelling units that must be provided in order to obtain the building height bonus. There are multiple options, and we feel the FBC must be clear on what is permissible to avoid confusion on such a key component. For example:

- a. Must they be built within the building that will use the bonus height, or just within the same proposed development?

**Response:** Within the building

- b. Will off-site construction of the units be allowed, either within the area included in Phase 1 of the SIA or elsewhere in the City?

**Response:** No, not within this incentive-zoning approach. The point of additional height is to accommodate ADU’s

- c. Or do they even need to be built at all? Draft section 1.6.8 mentions a “cash contribution.” That section is not fully fleshed out in the draft, but its inclusion suggests the intent might be to allow the affordable dwelling unit bonus requirement to be satisfied with a cash payment in lieu of construction.

**Response:** The City Attorney’s Office has not endorsed a “cash contribution” requirement for the incentive zoning approach. The CAO strongly advocates requiring an Affordable Housing Covenant to be recorded prior to issuance of any building permits. Also, draft section 1.6.7 mentions bonding of the affordable units prior to construction as a means of guaranteeing the units are built.

13. Draft section 1.6.9 appears to provide an “escape hatch” that allows a developer or building owner who promised to provide affordable units in exchange for bonus height to pay a fee per affordable dwelling unit that they fail to achieve within one year of issuance of a certificate of occupancy. The method for calculating the amount of the fee is not clear in the draft FBC.

- a. Aside from the need to nail that methodology down, it is worth asking whether such a provision should be included at all—particularly if the

decision on the “cash in lieu” question raised above is to not allow cash contributions in lieu of building affordable units.

**Response:** The bonding of affordable units does offer a potential “escape hatch” for builders promising affordable units but then failing to construct them. The bond amounts would need to be high enough to strongly incentivize completion of the units. Alternative methods of ensuring compliance would need to be reviewed by the City Attorney’s office. The CAO much prefers use of Affordable Housing Covenants, recorded in the land records prior to issuance of building permits, to give the City the ability to compel the construction and implementation of the required ADUs.

14. The note at the bottom of Table 1.2 indicates that the determination regarding the number of affordable dwelling units (ADUs) that must be built in exchange for a height bonus is “calculated on the number of incremental units made possible by the additional height.” In other words, a 100-unit building need not provide between 10 and 20 affordable units (which would be 10-20%) of the *total* number of residential units in the building). Instead, the number of ADUs required would be based on the number of residential units made possible by the additional height. So, for example, if 20 of the building’s 100 units would be located on the “bonus floors,” the required number of ADUs would be 2-4 (10- 20% of those 20 units). This is fairly easy to apply in a straightforward situation like the one described above, but some reasonable hypotheticals come to mind that generate challenging and important interpretative questions that should be clarified in the draft.
  - a. For example, what if the bonus floors only include large “penthouse” units? One could imagine three bonus floors with one unit each (for a total of 3 units). 10- 20% of 3 units equals 0.3 to 0.6 ADUs. In such a situation, would the bonus height be awarded despite the calculation yielding little to no ADU requirement?

**Response:** Yes

- b. Another hypothetical is a mixed-use building. How would the incremental unit calculation work for a proposed building that includes both office space and residential units? Must the bonus floors be residential only (since the incremental unit calculation appears to be based on the number of residential units located on the bonus floors)? Or would the incremental unit calculation take into account residential units located on the by-right floors?
  - c. How would a building that is entirely commercial be handled? The consultants indicated at the September 5 open house that commercial buildings would get the height bonus by-right, but that strikes us as problematic. Why would a proposal providing no affordable dwelling

units receive bonus height that is supposed to be contingent on the provision of affordable dwelling units?

**Response:** Commercial buildings are limited to the by-right height, as they do not have the requisite affordable housing. Staff would recommend 40 years.

15. When calculating the number of affordable dwelling units required, do you round to the nearest whole number or always round up?

**Response:** Staff would recommend always rounding up.

### **Regulating Plan**

16. What is the rationale for locating the T-4 and T-6 zones as they are proposed?

**Response:** The bulk of the Phase 1 area was designated in the SIA plan as an area to have a height of 5 stories. The T-4 areas are currently smaller lots that are more residential in nature. T-4 zoning limits the height of these properties to less than that of T5 zones, and restricts the uses to residential uses.

Alternatively, the T-6 designation is in the area of the southern end of 2<sup>nd</sup> Street SE. 2<sup>nd</sup> Street SE was identified in the SIA Plan as the principal pedestrian corridor through the SIA area. The plan further designated the southern end of 2<sup>nd</sup> Street SE as a node of activity that the additional height would support.

17. The property at 310 Avon Street should be included in the T-6 zone instead of T-5, in light of its current development potential.

**Response:** The Planning Commission addressed this at the October 15 work session, and recommended including the property as a T-6. Staff, however, notes that the SIA plan adopted as a part of the Comprehensive Plan shows this area with a zoning more in line with T-5. Staff recommends that a future review of this property, along with other properties adjacent to the Belmont Bridge may be reviewed in the future. To consider this proposal responsibly, scenarios should be developed and discussed as to the nature and location of the plaza/ civic space that would be required as part of T6 transect zoning, and the transitions associated with existing uses nearby.

### **Parking/Parking Access**

18. Table 10.1: Can we get rid of parking minimums? If we are truly committed to building a community that promotes walking, biking, and transit, the parking minimums need to go. Vinton, VA has no parking minimums in their downtown, so it seems it is a permitted practice in VA. Richmond has also started slashing parking minimums in their BRT zones.

**Response:** We recommend not requiring minimum parking for lots under 6 units or 7,500 sf.

19. Table 10.1: Are parking requirements based on net or gross floor area? For example, is there any allowance for service space such as storage or restaurant kitchen areas as is typical in other codes? If not, the required parking numbers are higher than Charlottesville's code for the rest of the city. For example, in T5, the FBC calls for 3 spaces per /1000sf for office use. The zoning code calls for 2/1000 gross sf. The FBC calls for 4/1000sf for food service. The zoning code calls for 4/1000sf of seating area in a restaurant.

**Response:** Staff recommends that the final draft have parking requirements in light of the Planning Commission's recommendation from the October 15 work session.

20. Section 10.2-iii-1. - This can be deleted as it matches the city's required dimensions for a compact car.
21. *Section 10.2.4* - "For uses requiring more than 20 off-street spaces, no more than 50% of the required surface lot spaces must be open to the sky." Should "must" be "shall"? That seems great, but kind of tough on developers. Also, if that is the case, I would change the phrasing to say "For off-street parking areas serving a single development (or parcel?) that have more than 20 spaces, no more than 50% of the spaces shall be open to the sky." Someone could provide more surface parking than is required, and I'm guessing the intent would be for that to be covered as well?

**Response:** The suggested language will be substituted in the final draft.

22. *Section 10.3* - Bike parking minimums do make sense when pushing for increased bicycle usage in the SIA.
23. How narrow can FBC allow two-way parking access drive to pass from street to the rear of our property? Mike at DPZ mentioned 10' min width (for 2 way?) in the FBC. Having a very narrow 2 way access drive on narrow lots would help
24. Could the FBC consider exempting small infill projects in the T4 zone (or the rest of the SIA) that have buildings/uses that generate a need for parking spaces fewer than ten, or twenty ? ...I have seen this method used in other cities to encourage small, infill development that is in scale with neighbors. Obviously, some will think the parking will spill over to the residential neighborhoods, but I think the city can protect against that with Permitted Parking Zones for those residential streets.

**Response to Items 21-24:** Staff believes that the parking questions/ concerns aren't unique to the FBC district, and need to be studied ASAP on a city-wide basis—particularly to set standards relating to development that includes ADUs.

### **Specific Code Sections**

25. Draft Section 2.1.3 states that projects that meet the Framework Plan “are subject to an expedited review process.” This is a key incentive to developers to propose developments that are consistent with the FBC.
- a. What is that expedited process, and how does it compare to the regular site plan review process?
  - b. How does the process change if someone seeks the affordable housing bonus?
  - c. How does the process change if someone seeks a waiver or deviation from any of the FBC requirements? (An answer to a question at the September 5 open house indicated that there will be a process developers can use to seek waivers from requirements in the FBC, but that process is not detailed in the draft FBC.)

**Response:** Any ordinance that might be adopted by Council to implement the FBC would need to include provisions for special application submission materials specific to the FBC regulations, which can be authorized by council to be established administratively. In terms of timeline: applications within the FBC would be subject to the same statutory review procedures, but staff's idea at this point would be to establish a 45 day review time (instead of the statutorily-required 60-day period) for initial submissions under the SIA framework.

26. *Section 2.2.1.* - I would like the Planning Commission to consider the 4 acre threshold for the requirement to divide a parcel up into blocks. 4 acres is a square 417' on a side. 3 acres is a square 361' on a side. 2 acres is a square 295' on a side. As our downtown blocks are about 280' x 230', and that is the most walkable part of our city, I wonder if 2 or 3 acres would be more appropriate.

**Response:** The block standards in section 5.1 that should take care of this concern. 4 acres is essentially 3 blocks.

27. *Section 2.2.6.* - This reads as though standard bicycle lanes are not permitted on vehicular streets. Protected bike lanes are great, but they can be dangerous on short blocks with on-street parking due to right-turning cars. They also prohibit taking the lane to make left turns. Standard bike lanes between the parked cars and the travel lane should at least not be excluded from those options permitted. The consultant should perhaps take this up with the Bicycle and Pedestrian Advisory Committee. My understanding from our last meeting was that there was general support for my correction.

**Response:** We are rewriting section 2.2.6 to refer to the Streets That Work Guidelines “STW” (Comp Plan) instead, and connect where possible with the 2015 Bike and Pedestrian Master Plan

28. One touted aspect of the FBC is that it will provide walkable and bikeable streets, which we agree is a crucial goal for this area. However, most of the language relating to sidewalks and bicycle facilities in draft sections 2.2 (Thoroughfare Network) and 2.3 (Thoroughfare Design) reads to us more as guidelines than actual requirements. As such, it is not clear how the draft FBC would necessarily augment or strengthen bicycle and sidewalk requirements that exist for this area in the current code. For example:

- d. Draft section 2.2.6 states that bicycle facilities are “encouraged” and lays out some desirable forms for them, but we do not see anything in the FBC that clearly or specifically requires proposals to include bicycle lanes or bicycle facilities on any particular street.
- e. Draft section 2.3.1 indicates some aspects sidewalks must meet where they are proposed in development projects, but we do not see any language that clearly requires proposals to include sidewalks on any particular street or location. For example, draft section 2.3.1(a) states that sidewalks must be a minimum of six feet wide along B-streets, but the language does not state that sidewalks must be included along B-streets in the first place. This is presumably the intent, but we are concerned the language as currently drafted will not ensure the intent is achieved.

**Response:** We are rewriting section 2.2.6 to refer to STW instead and connect where possible with the 2015 Bike and Pedestrian Master Plan

29. *Section 2.2.6:* Is there no provision for "normal" bike lanes? Protected bike lanes would be fantastic, but sharrows are not a real piece of bike infrastructure.

**Response:** We are rewriting section 2.2.6 to refer to STW instead and connect where possible with the 2015 Bike and Pedestrian Master Plan

30. *Section 2.3.4-ii.* - “Street trees and plantings should be native species...” Remove the requirement for “native species”. Just refer to the City’s tree list, which is vetted by the Tree Commission and provides for trees that are non-invasive and adapted to our local environment. Requiring native species is too limiting.

**Response:** Staff agrees, and the final draft will reflect the change.

31. *Sections 2.4 and 2.5* - There are lots of unused categories of open space in here. Does every development need to provide open space or just those developments that encompass the required and suggested open spaces on the framework plan? Are the remaining categories place holders for future parts of the city?

**Response:** The remaining categories are available for use in developments other than those specifically called out in the plan.

32. *Section 2.4.2-a.* - “Existing open space includes publicly accessible space at ground level and at the first floor above grade.” This is confusing. What does existing open space have to do with requirements for new public open space? I read this to indicate that this space could be enclosed. Is that the intention? What is the intention?

**Response:** Final draft will clarify “up to 36 inches above grade” to permit a raised courtyard open space type.

33. *Section 2.4.2-c.* - “Area within courtyards that are open during normal public hours may be considered open space.” Words like “may” leave this up to the reviewer and lack predictability for the developer. Replace “may” with “shall”. Consider whether there should be any definition of “normal public hours.” Does this include weekends?

**Response:** “open space” is a term of art that should simply refer to areas of land that are not occupied by buildings or structures. If public plazas/spaces are desired, the standards of the zoning district should establish a requirement for publicly accessible areas, and define what that means.

34. *Table 2.2.* - The different uses described need to be defined. What exactly is a “festival” such that it’s not permitted on most types of green space when a “concert” is?

**Response:** Staff agrees with this concern and will clarify this language in the final draft.

35. *Section 2.6.2.* - “Retail is discouraged in locations not indicated as required...” Does “discouraged” mean not permitted or is this just unenforceable guidance?

**Response:** it means “Retail is not permitted”.

36. *Section 2.6.2* - Is it safe to assume that retail does not include food service or is this category meant to encompass all commercial uses within Table 8.1 such as office when it says that retail is discouraged where not indicated as required or suggested in the framework plan? It seems odd to only allow larger floor-plate commercial uses where the most pedestrian activity is desired and smaller storefronts would be more suitable.

**Response:** the use matrices contain the same general use categories as the DE district. “Retail” is not the same thing as “restaurant”. Both are “commercial”.

37. *Bulk Standards Tables 4.2, 4.2, and 4.3*: Why are two numbers listed for the side yard setback? What does (PB+) mean in relation to front setbacks for accessory buildings?

**Response:** The two numbers are both options for a side yard setback on a building. It may either sit on the property line or must be at least 5 feet back. PB means “Primary Building”. The front of accessory buildings need to be set ten feet behind the front wall of the primary building.

38. *Section 5.1.7-b*. - “blocks on slopes greater than 15%”. Is this the average slope across the entire length or width of the block? It reads as if there just needs to be an area of greater than 15% slope somewhere on the site of the block.

**Response:** Consultant will be asked to clarify this language in the public hearing.

39. *Section 5.1.8-b*. - “lots must abut one or more street.” Does this allow for that “street” to be a pedestrian street (I’m hoping it does)? If so, perhaps a reference to a required distance from that parcel to a fire access right of way would be good to include.

**Response:** reference to “street” will be interpreted as a public street ROW for vehicular or multimodal traffic. If a lot abuts more than one street, the commission may consider having one frontage be a “pedestrian street” so long as that term is defined, and standards are provided for it. Minimum access for fire apparatus, and the standards for that, are in the Fire Code and can’t be altered by the zoning code; our goal is to preserve as much flexibility as possible as to what can qualify for use as fire apparatus access.

40. *Section 6*. Minimum ground floor heights are referenced but not stated. They are shown as 16’ in figure 6.1. If this is the set minimum, it should also be listed in the text. Does this apply to the T4 transect as well?

**Response:** In the FBC we want to avoid referencing standards in two different places. If it’s in a table that’s referenced in the text, it should not be repeated in the text. (That can, over time, lead to conflicting ordinance provisions).

41. In figure 6.1, is the 4-5’ dimension between the residential floor slab and the sidewalk elevation an absolute? This may preclude multi-family buildings on sloping sites. How does ADA access work for these units from a shared lobby? Does this figure apply to the T4 transect – if someone wants to build townhouses for instance?

**Response:** The building floor heights are addressed in Section 6.1.3 of the draft.

42. Figure 6.2 references retail uses. Is section 6.1.3.j meant for ground floor retail uses, ground floor non-residential uses, or all uses? If all uses, it conflicts with the

requirements for ground floor residential uses in figure 6.1. 7.6 says that all ground floor commercial spaces should be configured with storefronts along their facades except along B streets. **Is the intention for figure 6.2 to apply to all streets or only A streets?** These requirements do not allow for any significant slope if an apartment building with ground floor residential units is used. Is that the intention in the T5 transect along B streets where retail is discouraged? The same could be said for office uses.

**Response:** Figure 6.1 has been removed from the Code.

43. *Section 6.1.3-j.* - “Where sidewalk grade changes across a building façade:” This section should be reviewed in relation to section 6.1.2 that defines building height as measured from the highest elevation of adjacent sidewalk grade. On some parcels, there could be a story’s difference between sidewalk elevations. I think it’s fine to start measuring a building’s height and start counting stories from the highest elevation of adjacent sidewalk. However, sections “j” and “k” may create conflicting regulations.

**Response:** Figure 6.1 has been removed from the Code.

44. *Section 6.1.4-b.* - Are rooftop towers and loggias allowed to be habitable? For example, are they allowed to include interior space such as an elevator lobby for a rooftop terrace?

**Response: NO.** Any rooftop equipment cabinets or elevator shafts must have the minimum space necessary to accommodate the equipment. Once you get into allowing “habitable space” those areas will count as additional building stories. This has been clarified within the City’s general zoning regulations, and will carry over into these transect districts, too.

45. *Section 6.2.1 - Maximum Façade Length.* The definition of façade is “the exterior wall of a building that is set along a frontage line”. So, is a break in a façade a short set back that pulls the wall of the building 6” away from the frontage line? What constitutes a break in a façade? Ideally, it’s a fire wall and a separate building. Even better - it’s a sideyard setback creating a small alleyway.

**Response:** Will clarify that access is not included.

46. *Section 6.2.1 – Building facades are limited to 120’ along A streets.* What constitutes a sufficient break in a building façade?

**Response:** Maximum facade length requires a break, to be defined by the architect.

47. *Section 7.4 –* This says projections must not extend into any yard more than three feet. This conflicts with canopies and awnings which are required to extend into a

yard at least 6'. What kinds of projections and encroachments are allowed (other than galleries, awnings, canopies, and display windows)? "Elements" is a very vague term. For example, are balconies allowed, and may they encroach by more than 3' to be usable? Perhaps give some examples of appropriate "elements" such as decorative cornices above ground floor retail, window sills, headers, etc. The consultant should note that the zoning code's previous section on appurtenances (appears to be referenced in section 6.1.4-a for exclusions from building height) has been compiled into a single section 34-1101-Exclusions from building height and minimum yard requirements, and may offer some guidance on horizontal encroachments.

**Response:** Staff agrees that any final ordinance should provide clarifying language and/or appropriate definitions.

48. *Section 7.6.2* - "Storefront windows, doors, signage, awnings, details, and lighting should be designed as a unified composition." Who is the reviewer for this to determine what a "unified" composition is?

**Response:** As worded, this is a guideline but not a requirement of the code.

49. *Section 7.6.3-a* - "Storefronts should not be constructed of extruded aluminum frames or panels." What else would they be constructed from? Wood? The BAR has never denied a new storefront because it was made of aluminum extrusions.

**Response:** Staff recommends deletion of the reference to extruded aluminum for the final draft.

50. *Section 7.6.5* - Storefront Bulkheads. This calls for a 12" masonry kick plate along all street frontages. Is there no room for contemporary metal designs? What is the aesthetic problem with a frameless glass storefront that extends down to grade? I would rephrase this to say that if a bulkhead or kickplate is used, it shall be masonry or metal (so as to prohibit wood or fibercement).

**Response:** Metal will be added in final draft.

51. *Section 7.6.7-a* - "The design of first and second floor commercial spaces should anticipate restaurant uses." This is very onerous. Perhaps this should be required as a percentage of overall commercial space – or to accommodate one restaurant for every x thousand square feet.

52. *Section 7.7.1-b* - "low-e glazing is prohibited." This does not meet the energy code. Low-e glazing is not tinted or reflective. "Reflective" and "Tinted" should be defined. The BAR currently requires a Visible Light Transmittance of 70 but is looking to revise this number down because it is hard to meet energy codes, and only a few options are available. I would recommend revising this section to read, "Glazing shall meet a visible light transmittance of 60."

**Response 58 and 59:** Changed: The consultant has changed this to read: “Highly reflective glazing is discouraged. Glazing shall meet a visible light transmittance of 60” in the final draft. The BAR has not settled on a number in their discussion, and has approved different numbers for two specific cases.

53. *Section 7.8-e.* - “Galleries may not change height or width along a façade.” This would preclude periodic accent points to break up the length of a gallery. Something needs to be written to describe what happens to a gallery on a sloping street.

**Response:** Clarified that exceptions for streets on slopes, the ceiling height may be accommodated to match slope.

54. *Section 7.8.2.f.* – breaks between awnings cannot exceed 12”. I would definitely delete this. I can imagine breaks between storefronts needing to be larger than that for ground floor proportions to look right – especially on a masonry building.

**Response:** Staff will review this with the consultant.

55. *Section 7.8.3 –a.* - I would increase the minimum height to 9’. The 8’ clearance on the Standard has proven entirely unsuccessful and claustrophobic. Also, earlier in the code, storefront display windows are required to be 9’ tall, and these are to go between the tops of display windows and the bottoms of transoms.

**Response:** This change will be made in the final draft.

56. *Section 7.10.2* - “Mechanical equipment, including rooftop equipment, should be shielded from view along A-streets, pedestrian streets, and open spaces with architecturally integrated walls or screens.” Please consider revising to say that rooftop equipment shall be concealed from all sides with an architecturally integrated screen at least as tall as the equipment is above the roof.

**Response:** Language will be clarified to indicate that screening is required.

57. We eliminated "roof signs" from the sign ordinance many years ago and it was a huge improvement. No signage should be permitted higher than 20 feet or the sill height of the second floor window- whichever is lower.

**Response:** We will change the drawing of: corner sign, painted wall sign and wall sign to indicate below the 2nd floor sill.

58. *Section 8.6.1* – what is a “vertical” sign, and what makes it special so that it may be internally lit?

**Response:** The reference to the vertical design will be deleted in the final draft.