

Unresolved Issues in the Draft Zoning Code

This memo is provided in order to list and respond to those unresolved issues that have been identified by members of the Zoning Code Rewrite Advisory Committee. Consultants and staff have worked with Committee members and other stakeholders to address some of these issues in the latest Public Hearing Draft of the Zoning Code. Other issues are broader policy questions that the Plan Commission and Common Council will need to address.

Issues are organized into the following general topic areas.

- Housing cooperatives
- Accessory dwelling units
- Built form and compliance with new standards
- Lakefront development
- TR-P District – integration vs. separation of housing types
- Urban residential district heights and uses; Downtown districts
- Parking requirements
- Design review; role of Urban Design Commission
- Area exceptions

Housing Cooperatives

One of the issues that staff and Committee have spent a great deal of time on is that of housing cooperatives: how they are defined and where they are permitted. Two focus group meetings were held in fall 2008 and winter 2009 to try to reach a consensus. Several issues are close to being resolved, including the definition of the term “family” and of “housing cooperative.” However, at this point there are still substantial differences between staff and consultants’ recommendations and those of the housing cooperatives community. Key differences are summarized in the table below. See also Committee Member Janis Reek’s proposal (Attachment 1).

Where Allowed: Staff Proposal	Where Allowed: Cooperatives’ Proposal
Conditional in SR-V1, SR-V2, TR-C3, TR-P and mixed-use districts – maximum of 5 persons	Permitted in SR-C3, SR-V1, SR-V2, TR-C3 and TR-V1, under established occupancy Conditional in those districts if occupancy is increased.
Permitted/Conditional in TR-V1, TR-V2, TR-U1, TR-U2 – “P” if up to 5 persons, “C” if >5 persons	Permitted in TR-V2, TR-U1 and TR-U2 – occupancy limited by building code
A two-family, three-family or multi-family dwellings may be converted into a cooperative if the entire building is converted; occupancy limits are same as listed above.	A two-family, three-family or multi-family dwellings may be converted into a cooperative if the entire building is converted; occupancy is limited by the structure’s prior permitted occupancy (i.e., 5 unrelated persons per dwelling unit)

One additional option has been discussed: treat “lodging house” building types as equivalent to cooperatives; consider allowing these group living situations as permitted uses in the highest-density residential districts (TR-U1 and TR-U2). This approach would be similar to the existing zoning code, which permits cooperatives in the R5 District.

Another issue under discussion is the status of the “New York-style” cooperative, in which the coop owns all units in a multi-family building and residents own occupancy rights to their apartment-type unit. One potential solution is to treat this ownership type like any other multi-family building, allowed in the same districts where multi-family buildings are allowed.

Comment from Committee Member Janis Reek:

There is a question about whether housing cooperatives may be permitted uses in various districts. And there is the issue raised at the last meeting of whether a particular physical use of a building (housing cooperative) can be limited to a certain type of ownership entity, i.e. an incorporated housing cooperative. I gathered that people are concerned that if a housing cooperative went out of business that the property might be purchased by an absentee landlord who would operate the property as an SRO to the detriment of the neighborhood.

Accessory Dwelling Units (ADUs)

ADUs were also the subject of several focus group meetings. A number of residents would like to see ADUs allowed in residential districts as permitted uses. Their goals include the desire to provide life-cycle housing opportunities for elderly or other family members, provide affordable housing opportunities, and achieve sustainability goals by increasing density in an unobtrusive manner.

Committee members have raised concerns over issues such as the potential for excessive parking demands, rental conversions, and the need to protect the private environment of rear yards.

ADUs are currently allowed in the R2T, R2Y and R2Z district on lots that are slightly larger and wider than the standard lot size. Temporary accessory apartments and dependency living arrangements are also allowed in most residential districts.

Staff and consultants have discussed whether ADUs should be treated as permitted uses in some districts or locations and conditional uses in others. The concern is that case-by-case consideration of ADUs could become time-consuming for the Plan Commission and divisive among residents. Therefore, the approach outlined in the draft Zoning Code is to create an overlay district that would allow and set standards for ADUs based on a neighborhood study (similar to the process for establishing a Neighborhood Conservation District). The overlay district standards include occupancy requirements and suggested design standards.

Those residents who have been advocating for ADUs have raised concerns that the overlay district process seems overly complicated and difficult to resolve.

Several options for change exist, including:

- consideration of ADU proposals individually as conditional uses, using occupancy and design standards similar to those suggested for the overlay district.

- allowing ADUs as permitted uses in certain districts or locations (for example, lots of a certain size, or corner lots)

Built Form and Compliance with New Standards

Comment from Advisory Committee Chair Michael Slavney:

New “Build-To” Requirements and the Creation of Non-Conforming Structures.

Both in relation to the general requirements of the new Ordinance and in terms of the site-specific recommendations for the neighborhood commercial and shopping street areas. I wish to strongly recommend that the Ordinance finds a way to avoid making these structures legal non-conforming. I am concerned that we politically risk the whole form-based objective of the new Ordinance if we end up creating numerous legal non-conforming structures in these areas.

Background: The Draft Zoning Code introduces design standards and guidelines that are consistent with many of the objectives and policies of the Comprehensive Plan for planning the built environment,¹ and with the Zoning Code Rewrite objective of introducing form-based elements into the new code.

Standards include:

- Attached Garage Setback: In residential districts, attached garage doors are limited to no more than 50% of the façade’s width and must be recessed slightly behind the remainder of the façade. Applies only to new buildings.
- Sidewall Offset: In residential districts, building side walls of over 40 feet within 18 feet of a side lot line must be tapered back (the existing “depth penalty” requirement).
- The mixed-use and commercial districts include design standards that apply to new buildings and major expansions (50% or more of building floor area), including entrance orientation, façade articulation, street-facing façade design, equipment screening and materials). Design standards apply only to the portion of the building or site that is undergoing alteration. These districts also include design guidelines, which are advisory and are intended to assist the applicant.
- Many of the mixed-use and commercial districts also include frontage requirements, also applicable to new buildings and major expansions. These requirements specify placement of building facades and parking in relation to primary streets. Again, these requirements apply to new buildings and major expansions.
- Subchapter 28L, Building Form Standards, includes standards for a series of defined building types, including access, entry, parking placement, massing and articulation. Again, these requirements apply to new buildings and major expansions, and can also be waived if impractical.

¹ For example, Objective 48: Implement planning, urban design and architectural design standards that foster creation of a unique sense of place for the City as a whole, and within its individual neighborhoods, districts and gathering places.

In response to Mr. Slavney’s comments, we offer one proposed revision: We recognize that it may be more difficult for additions to existing development to meet design and building form standards – for example, for a small strip center in which all buildings are set back behind a parking lot to bring an addition closer to the street. We suggest adding a statement that **“Any design standard may be waived by the Plan Commission, following review by the Urban Design Commission, if the constraints of the existing sites and structure(s) make compliance infeasible.”** The “waiver” would be a new procedure, which will need further discussion.

We also offer the following discussion points:

- If design standards apply only to new development and major additions, existing buildings are not considered nonconforming. The design standards simply do not apply until new development is proposed.
- Certain requirements, such as landscaping of parking lots and development sites, should typically apply when any new development requiring a building permit occurs, to improve stormwater management, provide shade, and achieve a number of other sustainability goals.
- While some nonconformities may be created under the new Zoning Code, hundreds of existing nonconforming lots in traditional neighborhoods will become conforming because the new Code reduces minimum lot sizes and setbacks to be more consistent with the existing built environment.

Lakefront Development

The new Code includes new standards for lakefront residential development in an effort to address two major issues:

- lakefront setback “creep” – if setbacks are based on averages of adjacent properties, they tend to move closer to the lake over time
- height and bulk of new lakefront houses, which can seem out-of-scale with surrounding development

The draft Code addresses the setback issue by establishing a minimum setback equal to that of adjacent properties or 30% of lot depth, whichever is greater. Committee members have commented that this approach may penalize deeper lots. An alternative setback method has been added, which uses the building setbacks of the two adjacent lots if these are within 20 feet of one another.

The “height and bulk” issue is addressed by a provision that limits building height and floor area ratio to 125% of the median height and FAR of all residentially-zoned buildings within 1,000 feet on either side.

TR-P District – Integration vs. Separation of Housing Types; Development Review

We have received detailed comments from Veridian Homes and Vandewalle & Associates on the Traditional Residential – Planned District, which is intended to replace the existing small-lot R2S, R2T,

R2Y and R2Z districts. Some of the comments and the proposed resolutions to them, are as follows. (See also Attachment 2 for their perspective):

- Preference for a three-district TR-P that allows for distinctions between building types, rather than one district that allows or requires a mix of housing types.
 - We have added a “TR-C4” district for small-lot single-family housing types, with the option of alley-loaded garages. This district may be applied to portions of new neighborhoods as well as to those existing neighborhoods with the smallest lot sizes or to redevelopment sites. Setbacks and lot coverage in this district and in the TR-P district have been adjusted.
 - The question of whether a multi-family-only district is needed has not been resolved. (See Mike Slavney’s comment below.) Does a single-use district provide a greater degree of certainty, or does it encourage segregation of different housing types?
- TR-P master plan process: The process is too complicated; should be identical to development review in other districts.
 - The district only requires development of a master plan for tracts of 10 acres or more or 50 units or more. We removed the requirement for review of the master plan by the Urban Design Commission. Note that most large developments of this type already require a zoning map amendment and a subdivision plat. The master plan, which is essentially an enhanced preliminary plat, will be reviewed as part of those processes.
 - If a TR-P district is designed as a full-fledged Traditional Neighborhood Development (TND) it would be expected that it would require a master plan. A TND master plan is not the same as a PUD; it has specific standards for mix of housing types, interconnected streets, open space, center and edge areas. Therefore, it doesn’t seem unreasonable to require a master plan for large-scale TR-P developments, while allowing by-right development of smaller projects.

Related comment by Michael Slavney:

Mixed Use Neighborhood Areas: There should be a way to attain the objectives for the mixed density residential areas through a fine-grained mosaic of use districts, as well as through the mixed residential districts. I am concerned that within the mixed residential areas, the presence of some single-family housing and the lack of a predictable dwelling unit and commercial use pattern, will consistently combine politically to push densities down. As an alternative, having the ability to fine grain the zoning pattern would provide substantially more predictability for all parties in the process, and would facilitate a true mixed use pattern. In my experience, the Land Use Plan is the map where such mixed use neighborhood areas should be shown as a *large area in a single color*. However, on the Zoning Map, such areas are best implemented by a *fine-grained pattern of use and density-specific zoning districts*. (Some of these districts should allow mixed use buildings.) I think that the urban pundits’ broken record criticism of use-specific zoning, is ignorant, and does not reflect the political realities of residents, developers – and ultimately plan commissioners, elected officials and city staff strongly wanting predictability about the permitted locations for single-family, two-family, multifamily and mixed use neighborhood commercial buildings.

Urban Residential District Heights and Uses; Downtown Districts

One of Veridian Homes' primary concerns is the lack of an "urban residential district" with building height greater than five stories or reduced side and front yard setbacks. In response to this concern, we have made several revisions to the TR-U2 District, currently the highest-density residential district, as shown in the July 15 zoning code draft.

- Increased the maximum height limit in the TR-U2 District to 6 stories for multi-family buildings of more than 8 units;
- Reduced side yard setbacks for multi-family buildings in most of the residential districts to 10 feet (was 6 feet plus 1 foot per unit over two units);
- Increased the floor height in the residential districts to 13 feet;
- Made single-family through three-family dwellings conditional uses in the SR-V2 and TR-U2 districts, to emphasize their multi-family orientation.

We agree that there is a need for an urban residential district with additional height and reduced front yard setbacks. Typically this district would be used within Downtown, but could be used at high-activity nodes elsewhere in the City. We will be developing this district along with the remaining Downtown districts. We suggest that this subchapter within the Code be titled "Downtown and Urban Districts," to indicate their broader applicability.

Parking Requirements

The parking standards have been developed in collaboration with a group of Plan Commission members with considerable expertise on this topic, and with reference to new and emerging research on parking design and management. The emphasis has been on limiting the amount of off-street parking in order to foster more compact development patterns and increase opportunities for transit, bicycle and pedestrian circulation. At the same time, we recognize that spillover parking on neighborhood streets can have negative impacts.

Since the Public Review Draft was released we've received several comments that the parking regulations will discourage development or have negative impacts on residential areas. It is important to note that:

- Minimum parking requirements do not prohibit additional off-street parking, up to the maximum;
- The draft was already revised to require off-street parking for concentrations of eating places in the NMX and TSS districts, where spillover parking has been noted as a problem;
- The most recent revision of the draft (7/15/09) allows parking to exceed maximums if the additional parking is structured or underground.

Design Review; Role of Urban Design Commission

We have received several comments, including those from Veridian Homes and from the University of Wisconsin, in opposition to review of master plans or building designs by the Urban Design Commission.

We have removed UDC review from the TR-P District master plan process, since the plan will be reviewed as part of a plat and zoning amendment. The question regarding UDC review of final building designs within the Campus-Institutional District is a policy question that will need further discussion.

Area Exceptions

The current draft of the Zoning Code does not include the Area Exception process. Area exceptions were developed in 2000 in response to the recommendations of the R2 Zoning Code Advisory Committee. Many R2 neighborhoods were built prior to the 1966 Zoning Code and were nonconforming to the R2 standards of the code, resulting in many requests for area variances. Wisconsin court decisions at that time limited the granting of area variances. The area exception provided an alternative method for these property owners. A subsequent Wisconsin Supreme Court decision in 2004 recognized a distinction between use and area variances, making the area variance standard one of “practical difficulty” rather than “no reasonable use.” In addition, the new Zoning Code more closely matches the built environment in many currently R2 neighborhoods, and should remove some of the necessity for area variances or exceptions.

Some ZCRAC members have questioned the desirability of removing the Area Exception process, arguing that the standards for area variances will be too difficult for property owners to meet and that the area exception allows greater flexibility and consideration of neighborhood context.

Proposed language for section on housing cooperatives in draft Subchapter ##
Supplemental Regulations, Jan Reek, ZCRAC member, June 23, 2009

E. Housing cooperative

~~1. Within the SR-V1, SR-V2, TR-C3 and TR-P districts, upon conditional use approval, a housing cooperative may be established in a dwelling unit, with a maximum occupancy of five (5) persons.~~

~~2.1. Within the SR V1, SR V2, TR C3, TR P, TR-V1, TR-V2, MNX, TSS and CC-T districts, a housing cooperative may be established in a dwelling unit as a permitted use if the occupancy is five (5) or fewer persons. Occupancy by more than five (5) persons per dwelling unit requires conditional use approval. Actual occupancy in any given unit is subject to the building code.~~

~~3.2. When housing cooperatives are established within single-family dwellings, the single-family appearance and function of the building shall not be altered through the addition of entrances or kitchens.~~

~~4.3. Two-family, three-family and multi-family buildings in the districts listed in E.1. above may be converted into cooperatives as a permitted use provided that the entire building is converted and must remain as a cooperative while so occupied. Occupancy by more than five (5) persons per original dwelling unit requires conditional use approval.~~

~~4. Within the TR-U1 and TR-U2 districts, a housing cooperative may be established in a dwelling unit as a permitted use. There is no maximum occupancy under the zoning code; maximum occupancy is regulated by the building code.~~



VANDEWALLE & ASSOCIATES INC.

To: Rick Roll
Matt Tucker
From: Brian Munson
CC: Don Esposito
Roger Guest
Date: Wednesday, June 24, 2009
Re: Zoning Code Rewrite

Thank you for the opportunity to meet and discuss our technical concerns in regards to Traditional Neighborhood Development and the current Zoning Code Draft. The following is a summary of the meeting outcomes.

RESOLVED:

Urban Residential

- The City will be adding “downtown” districts to the next code draft to facilitate higher density, urban, and tall buildings. The City should use a more generic descriptor other than “downtown” as these districts are intended to be used outside of the downtown area.
- The TR-U2 District will have a slightly higher height limit as it will step up in density to the “downtown” districts.
- The floor height used will be adjusted to use a 13’ floor height for residential floors. Commercial floors will use a 16’ floor height.
- The side yard setback 6+1’ per unit above 2 will be modified to allow for more urban standard side yards as part of the conditional use applications.

Traditional Residential-Planned (TR-P)

- A small lot, alley accepting, single family only district will be added as TR-C4
- UDC will not be a reviewing body for the TR-P Master Plans
- Maximum Lot Coverage will be reviewed for TR-P to verify that ratio accommodates the house, sidewalks, patios, and driveways needed on small lot alley single family and two family homes. Roger Guest, Veridian Homes, will forward additional as-built information based upon Grandview Commons and other built neighborhoods.
- The sidewall setback requirements will be exempted from the TR-P district for interior lots. The façade facing a side street (corner lots) will still be bound by this requirement and may need a greater setback standard.

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Non-Conforming

- Several non-conformance portions have been eliminated by the current draft, but several remain to be addressed.

PENDING:

TR-P

- The addition of a multi-family only district was discussed as a mechanism for clear delineation of future multi-family parcels. Further discussion is necessary.
- The design standards section of the Master Plan is still a concern as it will be a significant addition to the review and approval requirements and may conflict with state statute if they extend beyond exterior aesthetics and character.