Minutes

PLANNING COMMISSION REGULAR MEETING
November 12, 2025 – 5:30 P.M.
Hybrid Meeting

I. COMMISSION Pre-Meeting (Agenda discussion(s))

Beginning: 5:00 PM
***Location*:** City Space Conference Room
Members Present: Chairman Schwarz, Commissioner Yoder, Commissioner Stolzenberg, Commissioner Solla-Yates, Commissioner Roettger, Commissioner Mitchell
Staff Present: Carrie Rainey, Dannan O'Connell, Matt Alfele, Joe Phillips, Missy Creasy, Remy Trail

Chair Schwarz called the meeting to order at 5:05pm and asked if any members were interested in being invited to the Council work session discussing code items after the first of the year. He is going to reach out and see if the Planning Commission can be invited. Staff noted that we don't have information on the date for that session right now.

Chair Schwarz asked if there were any questions about the work session portion and provided a process for how to run through the items this evening. Commissioner Stolzenberg noted he has comments that he will provide in addition to those provided by commissioners already. He asked for confirmation that the initiation is for Tier 1 and 2 and that was confirmed.

II. COMMISSION REGULAR MEETING – Meeting called to order by Chairman Schwarz at 5:30 PM.

Beginning: 5:30 PM
Location: City Hall Chambers

A. COMMISSIONERS' REPORTS

Commissioner Stolzenberg – No Report

Commissioner Mitchell – No Report

Commissioner Solla-Yates – No Report

Commissioner d'Oronzio – No Report – Not Present

Commissioner Roettger – I went to the Tree Commission meeting yesterday. They are working hard. In terms of intersections with the Planning Commission, there was a discussion on vulnerable sites and looking around to find sites that probably have critical slopes or tree canopy. They are trying to be creative about how they might be developed. This was in relationship to the project next to Azalea Park. It could be developed but not with as much asphalt and parking. There was this mapping idea. They are working on the state of the forest report. With the tree canopy, the change from the tree canopy coverage from 20 percent to 10 percent was brought to everyone's attention. It sounds like it is a state code thing that we must abide by. Everybody in the Tree Commission was disappointed. The Tree Commission is creating a pamphlet for developers. After meeting with Kellie Brown (NDS Director), they were looking for any place to encourage keeping trees with the process of the site plan development. The thought is to make a pamphlet to encourage developers on the longer-term cost of taking down a mature tree and way that they can protect it.

Commissioner Yoder – No Report

B. UNIVERSITY REPORT

Commissioner Joy – No Report – Not Present

C. CHAIR'S REPORT

Chairman Schwarz – The BAR looked at a fence at the lawyer's office across The Mall. It was a strange place to put a fence. They want a 4-foot-tall fence on top of their site walls that they already have. The reason is that people are trespassing. It is unfortunate that is the solution. I would hope that maybe we could find a different solution. I don't know if we are going to see that as a special exception request. We looked at the 7-story apartment building on 7th Street Southwest. It is a student apartment building that will be wrapping 2 individually protected properties. The only reason the BAR is looking at it is because part of the project overlaps the protected properties. It was a preliminary discussion. It was not a formal application at that point. With the 5 BAR members that were there, the majority said that they were not ready to support. They needed to have a change in massing. There was a significant amount of public outcry. I know the applicant has been meeting with various BAR members to try and figure out how to get the project approved. We will see what happens when it comes back to the BAR. I did meet with the City Manager. The city's Budget Department sent you an email about that. We will be getting our preview in 2 weeks of the CIP. If you have anything that you want them to consider ahead of time, send it to me. I have something from Commissioner Solla-Yates. We will get to look at it in 2 weeks and make our comments then.

D. DEPARTMENT OF NDS

Missy Creasy, Deputy Director – We have the CIP work session on the 25th of November. That is our regular CIP discussion prior to the holiday. For anybody in our viewing audience who is interested in becoming a member of the Planning Commission, Commissioner Stolzenberg will be leaving. The application process is open through November 17th. If you are interested, that is an option. There was another press release that went out today about boards and commissions. If anyone has any questions, they can reach out to me. I can assist them with getting into that application process.

E. MATTERS TO BE PRESENTED BY THE PUBLIC NOT ON THE FORMAL AGENDA

Sophia Marrero – I am here to speak about the zoning code. We have been showing up to a lot of these meetings. We want to push the changes to the zoning code, especially because they overlook historically black and brown communities. I am here to advocate for that and to continue pushing against LV Collective's building luxury student housing that they are trying to build.

Neil Williamson – As you look through the Zoning Ordinance, I ask you to consider the property owners and how this moves forward and your goals. When we were going through the Cville Plans Together process, the goal was to make development easier and get the kind of development that the community wanted. That created the new zoning ordinance. There are now discussions of changes to a living document, which we love. We have tier 3 changes. I know that is not why are you are here today. You have people that are now applicants or to be applicants preparing based upon the code as it exists. This is a challenge with big and small projects. I encourage you to think about when you think about recommendations and how that change might impact and have a cascading effect on a project. Other than that, you have a lot of details to look at. I appreciate your work.

Joe Leung – I am part of The Friends of Public Housing Association of Residents. It is a new student organization at UVA that has been speaking at City Council meetings. I would like to echo the previous organizer's point about how students are concerned about this new development and how it will gentrify the neighborhood and encroach upon the Fifeville community. Thank you for your work on looking at the zoning ordinance amendments tonight.

F. CONSENT AGENDA

1. Development Code Text Initiation – Minor Amendments

Motion to Approve – Commissioner Solla-Yates – Second by Commissioner Roettger – Motion passes 6-0.

III. PLANNING COMMISSION PUBLIC HEARINGS

None Scheduled

IV. PLANNING COMMISSION ACTION ITEMS

V. WORK SESSION

1. Minor Development Code – Zoning Amendments

i. Staff Report

Matt Alfele, Development Manager – Tonight, we are going to be holding a work session. This is to review the 23 proposed Tier 2 zoning text amendments and Tier 1 amendments that been initiated. This is to focus on clarification, process improvements, and legal compliance. Your action is going to be to act on each amendment. You will look at each amendment. You can advance as presented, advance with edits, or defer for further study. We are aiming for a public hearing in December. Based on the work tonight, staff will reevaluate to see if it might need to be pushed out to January. That is the intent.

Next Slide – Agenda

There is going to be a brief overview of Tier 2 amendments, a recap from the October listening session, and work through each amendment. Staff will be here to answer questions and make clarifications as you work through each amendment.

Next Slide – What are the Tier 2 Amendments?

The Tier 2 Amendments deal with Development Standards, such as setbacks, build-to, active depth, accessory structures, process improvements related to development review, threshold, and legal compliance. This speaks to things like critical slope, tree canopy, updates & clarifications, definition for building structures and graphical formatting.

Next Slide

At your last work session, we had a listening session with local builders. There was a lot of discussion. It fell into design conflict with active depth versus internal parking, build-to width transition, setbacks, unbuildable lots, clarity in the code, and process & policy.

Next Slide

You will review each of the 23 Tier 2 Amendments. You will look at them, advance as presented by staff, advance with suggested edits, or not advance if this is something that creates a lot of back and forth. It can be

put on Tier 3. As mentioned before, this is going to be a yearly process. As we get used to this, you will be seeing not as many Tier Ones. You might see a couple of Tier 2s as we move forward into the future.

Chairman Schwarz – We have one item that somebody mentioned from the Tier 1 section. Does anybody else have any Tier 1 comments before we go there?

A70 – Cutoff date for existing structures.

Commissioner Stolzenberg – It is straightforward. We had talked about needing to set a cutoff time for the existing structure preservation bonus. You cannot put up a structure and say that you have an existing structure and get the bonus for the next unit. The consensus, when we previously discussed it, of most of the Commission was that we should set it at a hard moment in time of the date of adoption. I caution against that. If you look at the old code, there are several places where they have specific dates. One of them was 1964. In structure, that code was originally instituted. If you set a specific date, it is easy to think that it makes sense for the next 10 or 15 years and there will be a new code. In practice, zoning codes last a long time. To say that a 50-year-old structure in 50 is not eligible for the existing structure preservation bonus, it would be overly rigid and not achieve the goals that we want with the preservation bonus. I would say that something like 5 years before the submission of the development plan is when that structure got its certificate of occupancy. It would be plenty to make sure nobody is gaming the system but still let new structures, as of today, be called old structures as of many years in the future.

Commissioner Mitchell – The question that we need to ask is how many years. Is it 5 years or 10 years? I said 8 years because it is a compromise.

Commissioner Stolzenberg – It seems like 5 years is long enough. I don't see anyone doing a development and the 2nd phase of that development is intentionally 5 years out.

Chairman Schwarz – When I saw this section of the code, I was thinking that we were talking about things that maybe, not necessarily, had historic significance but this is how the city used to have type feel to it. It seems weird to me that in 5 years, buildings built today would be considered existing in this context. I see where you are coming from. I am leaning towards 10 years. It seems to make more sense.

Commissioner Stolzenberg – What I am remembering from 2023 is that this came from Preservation Piedmont. A big discussion was embodied carbon. We did not want to demolish buildings. We wanted to create inventive ways to preserve it. In most cases, you are probably not demolishing a building that is less than 5 or 10 years old. Anywhere in there is probably fine if we are not saying that in 50 years we are still sticking with this date. I think 8 years is a compromise. That is also fine.

Commissioner Yoder – I don't have a strong opinion on the number. I agree with the concept that it should not be a fixed date. I don't know what the number is.

Commissioner Roettger – Same sentiment. Maybe it is something we should ask. If there are buildings in town that would have input on trying to prevent someone from gaming, it but keeping it open. Five seems safe.

Commissioner Stolzenberg – The problem is that they are gaming the system. They are incentivized to give us a low number. Is 5 years a time where gaming still makes sense? To build one unit and sit on a property for 8 years or for 5 years? Use that to make it worthwhile.

Chairman Schwarz – When somebody does a master plan of a property, it can be 10 to 15 years out when they are thinking depending on how they are developing it. If they have financing for one building at a time, they can stretch it out for a while.

Commissioner Stolzenberg – We are talking about single lots in R zones here.

Chairman Schwarz – I do not feel strongly. I don't know if there are unintended consequences that are going to come out of this.

Commissioner Stolzenberg – It is low stakes. The worst case here is that you get an extra unit.

The Planning Commission consensus was 8 years.

Mr. Alfele – COs are only kept on file for so long. They not kept on file indefinitely. Enforcement would be challenging. I understand the Commission's idea. That does become difficult on the enforcement side having a set date. Even having that set date creates an issue. You could have stuff built around that time. At least, it is a concrete time. You are not constantly taking that issue and rolling it forward. There are also visual clues

Commissioner Stolzenberg – We do have the assessor's year-built field, which is not great for older buildings. I assume that it is better for newer buildings. I don't know when they update it and if they update it when you get a CO or how they choose that.

Chairman Schwarz – Another option is that it is a couple years now before this will become a problem. We could 'punt' it to next year if it could somehow be on your list of something that we need to figure out in the future.

Mr. Alfele – We can take it off Tier One and put it on for a future Tier Two for next year. It was suggested because currently there is nothing. We are in the realm of you build it, you get your CO, and you come the next day and ask for your bonus.

Commissioner Stolzenberg – It could become a problem next year with the current loophole. We can push it to 5 years. We get 5 years of time to rethink how long it is.

Commissioner Solla-Yates – We could fork this problem. We could fork it to one. We could fork it to 2 and say let's think about it and get a good solution.

Mr. Alfele – You could go with your original thought from your work session back in the spring and tying it to the adoption of the code. I am hopeful that this yearly process will continue. This could be 5 years. If there is a need to reassess that date, that could always be looked at.

Chairman Schwarz – My recommendation would be to patch it now and fix it later.

You guys need to do whatever we talk about tonight and put it into whatever will be approved. Our recommendation would be 8 years. If that is not feasible due to how things work behind the scenes, the recommendation to patch it and have it be the code adoption. Does that sound good to everyone?

Our recommendation is that if staff can figure out a way to make 8 years work, that is the recommendation. If they can't, the recommendation to Council about what Council would approve would be to patch it at a set date of when the code was adopted.

Commissioner Stolzenberg – From an enforcement perspective, we could say that you need to give us proof that the CO was issued prior to that date.

Commissioner Yoder – Is it the burden on the applicant to bring evidence that it is an existing structure, so they have the proof?

Mr. Alfele – We can make it work. I am just pointing out what we ran into.

Commissioner Stolzenberg – There also is a title in the packet. It does say December 18, 2025, as the date.

B.01

Chairman Schwarz – We have several questions and comments that already came in.

Mr. Alfele – B.01 is one of the big issues we have faced on the staff side. This is preventing duplexes and townhomes based on one of the key changes in the code. We went away from a code that called out to develop housing stock type. We now focus on units. It is unit count. It is not about single-family attached, single-family detached. That created the issue of not being able to do duplexes and townhomes on lots. It was a workaround with sublots. We are trying to patch that. Staff is suggesting the alternate form. Some of the questions that came out of that were about the side lot lines. Should it be 8 feet? Staff is suggesting 8 feet. Should it be 4 feet? What we are proposing would allow townhomes. The alternate form gives you either attached side or not attached side. If you are attaching both sides, it is zero. It is going to run out. Somebody must eventually do the setback. You can have a townhome, or a row of townhomes set up where your side setbacks on a parent lot are zero on both sides. You are saying that it is attached, so it is zero. You do run out of that at some point. Somebody must do the 4-foot or 8-foot. Staff is suggesting the 8-foot because you are losing the 4-foot. We tied this into the state requirement for our tree canopy. We thought this as a way to soften that blow, give more space for trees. The other thought was: Should we just be zero? I know there were questions. Could it be zero? Are we gaining anything from our side setbacks? Staff's concern is that there is a fire component. There is a 10-foot separation when you do buildings. Do you have setbacks from a zoning standpoint? You have setbacks for fire protection. Your fire setbacks can be closer if you choose higher rated material. They do want a setback between buildings. We have already run into this. It is a little bit of sharing the burden with 2 properties. If you did zero and somebody went right up to the property line and built their house, the person next to them, if they decide to develop, they must be 10 feet off or they must incur more cost to be closer to the property line because of the fire separation. Staff would be more inclined to, if we wanted to talk about changing side setbacks, line it up with fire and having them be 5. With 4, there is a little bit of a 1-foot set. If you build 4 feet side setback and your neighbor wanted to build, they are 4 feet. They are already at 8 feet. They could do a little fire protection, or they could move 2 feet, which is different than having to move 10 feet that they were not expecting.

Commissioner Solla-Yates – Don't we want people to use higher rated fire material for preventing fires?

Ms. Creasy – It also limits the ability to have openings.

Mr. Alfele – You have windows, doors, and a combination of things.

Chairman Schwarz – I was wondering about that. I checked it in the building code. If someone does build 4 feet from the property line, the next person over is burdened and they must build 6 feet over?

Mr. Alfele – No. You can build closer. As you go closer, I am not sure what some of the fire rating includes. It is not distance between lot lines but distance between structures. Structures are regardless of lot.

Ms. Creasy – Though we have the 4 feet in many circumstances, when somebody consults with the building official, he is communicating to them that if you go to 5 feet, you have these opportunities. If you stay at 4 feet, you have these other things that you must do. Most people are choosing the 5 feet. They do have flexibility.

Commissioner Stolzenberg – When we went with 4 over 5, we discussed that. We gave an extra foot for any sort of encroachment things you might want to have flexibility for.

Chairman Schwarz – You can still have eaves and overhang the four and get closer.

Commissioner Stolzenberg – There are some specific encroachments. While I might be OK with 0-foot side setbacks in general. I would argue that is a Tier 3 issue and separate from this attached lot within the development issue. My stance on the side setback that does exist should be that the point of a side setback is to give you distance from your neighbor on that side. They are not helped by the people on the opposite side getting extra. It should just be more than the same. I get the space for trees. My impression is that most people are not planting trees in a 4- to 5-foot side setback or even an 8-foot side setback. By having 0 lot lines, that allows buildings to be less deep and gives more back yard or front yard space for trees.

Commissioner Yoder – I think it was your suggestion Commissioner Stolzenberg to just leave the detached side setback in the alternative form. Let the districts control that. That has a simplicity that I like.

Chairman Schwarz – I agree. I wonder if by making a new height, we have complicated things. Would it be easier to say if you have an attached building, you must build both sides of the attached. You cannot build up to a property line without building on the other side at the same time.

Commissioner Stolzenberg – This is still about the opposite side, the side that is attached.

Chairman Schwarz – There is the setback thing. I agree with you guys. Leave it set by zone. For the attached side, it is a problem that what this amendment does. It does not say that you must build both halves at the same time. I think you should be required to, so that someone does not build up to their property line. Who knows what will happen in the future with the next lot over.

Commissioner Stolzenberg – I had a similar comment. It should be part of the same development plan. You are not just building up to some random neighbor. The phasing does not matter to me as much. Yes, you have a wall potentially without windows. I would argue that exposed walls that might be covered up in the future and maybe get a mural or something in the meantime are historically big contributors to neighborhood character potentially and not necessarily something to be afraid of.

Commissioner Schwarz – There is no side setback at that point.

Commissioner Stolzenberg – That is unless you own that other lot that would be the future attached part. Otherwise, it cannot be part of the same development.

Mr. Alfele – From staff's perspective, if you are saying attached, it would have to be attached. We can get into the timing of it. We don't see that with attached. You don't see someone building, submitting a development plan, or submitting a building plan with the attached and then only building one side of it. We would not approve a plan that said future attachment. Attached means that it must be there. We cannot force someone to say to build something within a certain period. It would be a rare situation where someone is building a row of townhomes. They have an approved plan to build the row of townhomes.

Chairman Schwarz – I have designed a plan like that where that was the plan. The developer did not have the money to do the other town houses at that moment. He was going to build one and sell off the other parcels. They would be built over time. For a while, you would just have a firewall right there. I want to make sure that what we are proposing does not allow that.

Mr. Alfele – It does not allow it in the sense of zoning. It must be attached. Where we run into an issue is if we run into it anywhere is that we cannot tell a builder, once you get an approved plan, you must build it within an x amount of time.

Chairman Schwarz – To get the CO for one of the units, you would have to have the other one complete. Could you hold up the CO? If you want to occupy this half, the other half must be finished. That sounds like a good incentive to finish it.

Mr. Alfele – COs are tricky. You get into life and safety. I am not as worried about it for a larger development where you are spelling out everything on the development. Where I can see the concern is something just submitted for a duplex go straight to a building permit.

Commissioner Mitchell – Why wouldn't we line it up with the fire code?

Mr. Alfele – That is a discussion we had during the original thing.

Commissioner Stolzenberg – We decided that everyone is going to build it to 5 anyway so they don't trigger the extra requirements. The flexibility might be useful to some. It did feel like a big deal to allow it. It seems like there are 2 scenarios. One is the stick-built townhouse where it is all one structure. It all mutually holds each other up. The other is the 0-lot line building like we see on the Downtown Mall or in Baltimore or something such as row homes where there are distinct lots with firewalls. In theory, you can knock one down and the rest still stands up.

Mr. Alfele – This is the only district where we have the 0-lot lines. There are no other districts. This has not been an issue with that. We are just trying to focus on giving a path. We know we want this type, this form, and trying to get a path for that form. The chairman brings up some good questions that I don't necessarily have answers right now.

Chairman Schwarz – The other thing that got me was the diagrams provided seemed to be saying something different than what you are trying to accomplish. The setbacks looked like they were going through sublot lines instead of lot lines. I don't know if there is a way to clear up that diagram whatever we decide.

Commissioner Stolzenberg – I feel like it makes more sense for the side lot line attached side to get another letter like F and for the middle line to be drawn.

Mr. Alfele – We can clean that up.

Chairman Schwarz – Does that make sense? It looks like it is measuring the sublots and not the lot lines. The first diagram shows 2 lots. The second diagram shows 4 lots.

Mr. Alfele – We can take the dotted lines out.

Chairman Schwarz – Maybe show one dwelling that is on one side of this lot line, and you have a string of townhouses on the other side or show something that is trying to do that. It is not just a duplex along the lot line.

Mr. Alfele – Let me clear out the first graphic to match. The issue we run into is there is no symbol for sublots. We can clear that up.

Commissioner Yoder – With this alternative form, is there any limit on the number of lots you could assemble to build attached housing? I know that in some codes that once you hit 6, you must have a separate building. In theory, could you do Baltimore or DC style job here and have an entire block of attached homes?

Mr. Alfele – I would need to look at the building code.

Chairman Schwarz – I think if they are all still simple, single ownership townhouses, I think they are still considered residential code.

Mr. Alfele – Is the concern that someone would decide to do four?

Commissioner Yoder – I am not concerned. I am not saying we should not allow that. I am just curious if this is controlled by the building code, not the zoning code. That seems like a fine outcome to me.

Commissioner Stolzenberg – I agree. That is not something to really worry about.

Commissioner Yoder – It is a historical building form that many cities have in our wonderful districts.

Commissioner Solla-Yates – There are some parts of the city where it would make a lot of sense to have townhouse be permissible by-right. I think that would be RC. It is something to consider.

Commissioner Stolzenberg – I think the idea here is that it could be RA too. You would not get to build on the back. You would have to have open space back there because the lot covered stuff in your unit. You could fit 3 side-by-side if you would have a 60-foot lot.

Chairman Schwarz – Is it general agreement that we are Ok with the setbacks being set by the district and not being artificially inflated to 8 feet? I still have my concern that we don't have a building that is built up to its property line with no plans for future buildings or future buildings do not end up attached to that.

Mr. Alfele – We have a plan that says this is going to be attached.

Chairman Schwarz – If that block is sold and somebody builds on that property, their neighbor is extra close to them. That seems unfair.

Commissioner Stolzenberg – It would be sold after that was the case.

Chairman Schwarz – If we are good with that, I will back down from it. It sounds like staff hears the concern. Is there anything else we need to change besides the setback? We are going to let the height be determined by the district.

Mr. Alfele – That is correct. We would adjust that if we were getting rid of stories and going with feet. We would match that.

Chairman Schwarz – It looks like you have 60-foot building width maximum. Is that the maximum that we are setting for a string of these?

Mr. Alfele – This gets into that weird area where property lines are. You could be looking at something and not know. It is 60 feet for the building. If there weren't property lines, it is the whole thing. It would be very rare.

Chairman Schwarz – That is property lines and not sublot lines.

Mr. Alfele – There is an amendment in here to talk about that. It gets into that whole extra bonus height where it was benefitting single-family and not the multifamily that I think the intent of the code was. It was clarifying that.

Commissioner Stolzenberg – If you build townhouses and they were sub-lotted, they could only be 2.5 stories. If they were not sub-lotted, they could be 3 stories.

Chairman Schwarz – We are fixing that later.

Commissioner Stolzenberg – The way we are fixing it is through a change in the definition of building saying that if a building spans multiple lots or sublots, it will still be considered one.

Mr. Alfele – Instead of the building code, which says, once you build through the property line, that is what makes it separable.

Chairman Schwarz – I see that the 60-foot building width matters. That means that if we put property lines in there, it is still one building. We are going to cap these things at 60 feet long.

Commissioner Stolzenberg – This might create a lot of problems.

Chairman Schwarz – We want to get rid of the 60-foot limit. Is that what we are saying? Is that the problem you are getting at?

Commissioner Stolzenberg – I think that will be one of the issues. It also says for the purpose of setbacks. In this case, if you are considering the building setback but the setback of 0 is in the middle of the building, what does it mean to consider that for setbacks?

Mr. Alfele – Chairman, it is set by the district. Was it just the concern?

Chairman Schwarz – It says 60-foot building width maximum. Am I missing something on that? I am looking at the first page of the amendment. There is a tiny screenshot there, which probably does not even apply anymore.

Mr. Alfele – That is about density coverage. All that is set by the district.

Chairman Schwarz – That is where it says 2 ½ stories or 35-foot height and says 60-foot width max. If you look down the next 2 pages in, there is nothing there for that.

Mr. Alfele – Everything should be set by district. That would go under massing.

Commissioner Stolzenberg – The issue is with the alternate forms. There are those earlier sections of Summary of the District and Applicability. In that, there is a table that says that.

Mr. Alfele – It was set by the district with the only changes being the attached side.

Commissioner Stolzenberg – My only other comment is that we do have a bunch of numbers on that last page in this ground for transparency entrance spacing. All those are the same as all the residential districts. Maybe they should just all stay set by district. It does not matter unless one of the district changes later. They will still be this.

Mr. Alfele – That is the philosophy. We don't have ways to talk about duplexes, triplexes, and townhouses. We only talk about units. Without introducing those terms into the code, the alternate form was a way to get that form without calling out something that would only be called out in one section.

Commissioner Yoder – With Commissioner Stolzenberg's comment, you are trying to make it easier to update the code in the future.

Commissioner Stolzenberg – If we say that RA should have way more transparency than we previously required because there are not enough windows in the buildings that are going up. With RB and RC, we do not care as much. The 3 are out of sync. This section will stay as they are now. The only thing that really is different here is that the side lot line attached is allowed. Maybe all the other zones should just get a side lot line attached instead of having open form. Unless we think that there is stuff in the district summary and applicability that matter. The applicability restricts to any allowed residential uses. There are technically some non-residential uses in residential zones that would not qualify for this like a church. It seems like it would be the same as just adding that line to the 4 residential zones.

Chairman Schwarz – We will let staff figure that out. We agree that everything should be by district including the unattached side lot line setback. Look at the diagrams on page 4.

Commissioner Stolzenberg – The flipside would be if we think that because it is attached, there should be more transparency or different. We don't have any of that.

Mr. Alfele – There might be an opportunity for staff to look at just adding. We could add a G.1. Once we start adding an H., We are starting to move everything in this code

Chairman Schwarz – We will let you guys figure out how this works out best. It was to make everything by district. That is our recommendation.

Commissioner Stolzenberg – There are other pieces where we have multiple things under a letter or a bullet.

Recommendation is the everything is by district, and unattached lot lines and setbacks are added to the districts instead if possible.

B.03

Chairman Schwarz – We had to deal with some changes to the steep slope section. I was confused about that.

Mr. Alfele – This is to bring the code more into state compliance. There were some questions about a Lot of Record. A Lot of Record is any lot that was created before the critical slope ordinance was created. If you created a lot, you have the right. You get into a lot of the land use. You don't want to create a taking. Everyone has a right of a Lot of Record to build a single-family home. If you have a Lot of Record prior to us introducing the slope ordinance, you get to build a house. We were trying to reintroduce that language. You have the right to build homes. We at least need to put an exemption for that. In the notes you provided, that is

providing even more because we allow more density. Staff were trying to correct this. If you want to increase that, we can do that. Staff were trying to put that back in. It was in our old ordinance.

Chairman Schwarz – Your language says that any structure that was already there could be expanded, enlarged, or extended. I get it that the first dwelling that is on there should be allowed to be expanded, enlarged, and extended. What if there are 4 buildings on the property? Do all of them have that right?

Mr. Alfele – You do get rights with existing improvements to your property. What is supposed to control that is the non-conforming section that says you can only improve things by a certain percentage. They are tied together. Whatever we are allowing, improvements to non-conforming, can be made to existing structures that are not non-conforming. We cannot limit those differently than what we would non-conforming because of that.

Chairman Schwarz – The proposed language seems to imply that they are exempt.

Mr. Alfele – They are exempt from the critical slope.

Chairman Schwarz – I understand how the first dwelling unit must be exempt. If there are multiple dwelling units, if someone has a large shed or garage, is that also exempt? Could they add another stall to their garage if they wanted to?

Mr. Alfele – Only if it is non-conforming or you are only following the non-conforming regulations. It would be exempt from critical slope. I think it was cleaner under the old code because we had 25 percent.

Chairman Schwarz – I am still confused. I am not confused enough to suggest a change. Does anybody else have anything they want to change on this? There were several questions. What you are saying is that if you have a lot that has critical slopes, we want to allow up to 6 dwelling units without reviewing it for critical slopes?

Mr. Alfele – That is correct.

Chairman Schwarz – We have these critical slope regulations, which I think that we are trying to streamline. It protects stormwater. I am a little worried that we are throwing that out. That means that you will get parking for 6 units. You get all the other stuff that goes along with that. I am not in favor of that.

Commissioner Yoder – In theory, I agree. If legally you can build one house, you should be able to build that house and split it into multiple units. You are building the structure; you are having an impact on stormwater. I just don't know quite how we do that in a way that does not just make it a loophole to just ignore critical slope.

Commissioner Stolzenberg – It seems like the distinction is that the city would rather not allow these things and enforce the critical slope rules, even for the mansion. I agree that, in general, we should not treat multi-family more strictly than single-family for things that have the exact same impacts. That is unfair. I hope that we are going to fix all these critical slopes regulations as part of the environmental study. We can move away from it.

Commissioner Yoder – I would be inclined to accept the current proposed change, knowing that there is a bigger effort to look at critical slopes in general and streamline that.

Recommendation is to move staff language forward.

B.04

Mr. Alfele – There were questions about this. What staff was aiming for is a clearer vision. How it is currently written, lots with one dwelling unit will not have additional street facing trees. This is more of staff side than a policy side. It is vague to us. This is talking that if I have one dwelling unit in a mixed-use development and the rest of my commercial uses do not need a front facing entry. We were just trying to clear this up. With accessory structures, this was a second catch. We feel that, with the changes to creating a primary and accessory structure and not putting accessory structures in the front yard, this would not come up.

Commissioner Roettger – Is accessory structure a residential unit?

Mr. Alfele – That is the one thing that we must train ourselves to get away from. We used to have accessory dwelling units. If you have a house and you want to put a suite or something in the back, that is no longer a unit.

Commissioner Roettger – This isn't talking about residential structures. This is just talking about sheds.

Commissioner Stolzenberg – It specifically says, 'no units in an accessory building.'

Commissioner Roettger – That is why I was getting confused with the accessory building. It made sense.

Mr. Alfele – One of the questions that came out of this was if someone has an existing house and they add another unit. They are expanding it to the right. The existing structure would not. How the code is written is what you are proposing is what is under review. Unless you are redeveloping the whole site, removing the house or building a new house, we look at the site. If you are doing an addition, just the addition is being looked at. The code does a good job of laying out the applicability sections for the different types of construction.

Chairman Schwarz – If someone was to have an existing house and they built behind it, it would not necessarily need to be street facing.

Mr. Alfele – It would not be street facing.

Chairman Schwarz – Instead of adding on, they took their second story and divided it, and it became a duplex. Would they have to update the existing structure to meet the entry facing requirements?

Mr. Alfele – No. They might have to do the active depth for that section on the district.

Chairman Schwarz – I know that comes up later.

Commissioner Stolzenberg – If you are doing new construction and you had one unit in front that was in the build-to zone and satisfied the build-to zone and that had the entries, and built another unit in the back, that one still is street facing. It still must have the entry requirements.

Mr. Alfele – No. It is not within that façade depth.

Chairman Schwarz – When I was looking at what an accessory structure is, it seemed like it was anything that shelters people or property. If you have a small shed, that might be off to the side of your house but still

within that front area within your build-to zone or a trash corral or a doghouse. I know that we are not going to require a front porch on those. The code is technically reading it like we would.

Mr. Alfele – With this code, yes. One of the things this code is doing is that it is pulling things to the street and creating an urban feel for those things that are within the façade zone. If that little shed is in a position where it is in the front facing facade, it would need look more like the street. That is more of a policy question.

Chairman Schwarz – With one of your diagrams, the diagram that shows an amenity space, there were pavilions drawn on the back of that. I think they were labeled as accessory structures. What does that mean for those little shade structures? Does it have a front door? I guess the building is going to have a front door. You would have the number of required entrances.

Mr. Alfele – Staff would be more focused on D if the Planning Commission feels that.

Chairman Schwarz – D makes more sense.

Mr. Alfele – If D is not an issue, we can leave it and not strike it out.

Chairman Schwarz – I am in favor of leaving D and not striking out C.

Commissioner Stolzenberg – One question that I had on D is no additional uses. If you have an accessory use, like a home occupation, are you going to run into problems here? Should we say no additional primary uses or non-accessory uses? I don't remember if primary use is a thing we define.

Mr. Alfele – I think no additional primary use is covered. It was just trying to cover the primary use somewhere else.

Chairman Schwarz – It is clear elsewhere in the code that existing buildings are exempt from being required to be updated. If someone adds something in their backyard, that is another primary use.

Mr. Alfele – Yes, it is. Nobody is updating something they are not proposing to update.

Chairman Schwarz – With this one, we are not striking out C. Otherwise, we are accepting the amendments.

Recommendation is to not strike C but keep D with clarification to allow home occupations.

B.05

Mr. Alfele – We have been struggling with this. This is a medium one. Staff have been struggling with it. You all have seen several special exceptions come before you trying to deal with this. One of the questions that came out was about: Does something like a 256-square-foot shed need development review. As the code is currently written, yes. Everything needs development review. We are trying to address that with a different addition or a different amendment related to development review to give a clear path to some of the smaller things. We will get to that when we get to it. As the code is currently written, any activity needs development review. Any new construction or new addition goes through development review. The code is written to bring things to the street. What staff was trying to do was keep that intent and not change that intent. We are trying to bring the primary uses closer, but to allow someone to build that shed or that small workspace that is not your primary. You are not forcing someone to bring something to the street but allowing that in the backyard before you meet the current regulations. I think that would be a larger conversation if we are talking about primary uses not having to meet the current code. You lose a lot of what this code is trying to do. It is trying to

force people to bring things up closer to the street. Staff is not trying to address that, not trying to address these primary uses. If your primary house is set further back, it is still trying to encourage you to come closer to the street in certain situations. If you want to do a garden shed or something in the back, you would be permitted to do it. I don't have an answer to that higher philosophy question. The code is set up to put some burden on people to bring things closer.

Chairman Schwarz – You know where I stand on this.

Commissioner Stolzenberg – There were a couple small things that we could address first. Someone brought up the double lot situation where you put your shed next door. It does seem like a reasonable use of an accessory structure that would not have a primary structure on the same lot. I don't know how we fix it.

Mr. Alfele – We have run into that. Under the old code, you had to designate something that was primary. There was a lot that had a shed way in the back. By default, that became the primary structure. Some of these are band aids. They are not complete fixes but trying to address some of what we have seen that have been issues that did not come in front of you as special exceptions.

Commissioner Stolzenberg – This one seems like one we are introducing with 3.51.b3, no accessory uses permitted on the lot until after the principal use is established. What is driving us to add that? Is there another problem we are fixing that needs a band-aid more even if we are creating that new problem?

Mr. Alfele – It needs more time with that example I was giving. That was an existing condition. It was more just anticipating someone trying to put the shed on the lot. We are trying to establish a primary building first and then these accessory buildings.

Commissioner Stolzenberg – They could always consolidate lots. I don't know how you fix that unless it is in a development plan with an adjacent lot that has a primary use established.

Commissioner Yoder – We must be talking about a small number of edge cases here. Is there an outlet for them. Can they get a special exception?

Commissioner Stolzenberg – They can. It costs a little over $2000, which is a lot for a shed.

Mr. Alfele – There is a relief path for it.

Commissioner Stolzenberg – I wonder if we need to have a minor special exception that has a lower fee for 'silly cases,' where it is obvious that it should be granted. The other small one was the one I brought up was that accessory buildings may not occupy a front yard. You can imagine a shed in the front yard built-to area next to the house. That is fine. Maybe it should be allowed if it still satisfies the form requirements for a primary structure.

Mr. Alfele – We just uncrossed out that.

Chairman Schwarz – With accessory structures, it is very vague what they are. It could be something as small as a doghouse. It just must shelter people or property. If you cover your trash cans with something, that is an accessory structure. I feel that it would be a welcome thing in a front yard rather than trash cans sitting in the front yard. I feel we are getting so overly prescriptive and picky about every little thing that could be built. I would like to see some stuff loosened up in this code.

Mr. Alfele – Would you like to see three go away? Built infrastructure may be located within the front yard.

Chairman Schwarz – We need to get rid of that. In the diagram that you had with the pedestrian shade amenity space showing accessory structures in a front yard.

Commissioner Stolzenberg – That is fair. I am fine with getting rid of it. I don't know what we are getting with it. You don't want a big faceless shed in the front yard. Probably blocking more things than that are fine than it is stopping or allowing that.

Commissioner Solla-Yates – I would suggest that we move it for now and kick to Tier Three. If there is a good option that we can do that is lighter and works well, I don't know what that is today.

Chairman Schwarz – We are not adding C-3. We will consider it later.

Commissioner Stolzenberg – With that piece, I would say kick it to whenever somebody builds something in a front yard that we don't like, and we can react.

Mr. Alfele – We would also need to change 5-A. Buildings may occupy any near side yard provided all developments. They just might need this. You could say any yard.

Chairman Schwarz – Going back to what I thought was a bigger issue, I would still prefer that we say that any new construction that is behind an existing building is exempt from the build-to requirements. With the element construction workshop that they are trying to build, we would have lost more if they had to tear down the house or build it in front. Similarly, we have a lot of historic districts. I feel that it would be problematic to suggest that you must build in front of these structures just to comply.

Commissioner Stolzenberg – You can if you have already met the build-to requirement. The problem is when you have an existing structure, you can't. In a later and different section or different amendment, we have, if you use the existing structure bonus, you are deemed to comply with the build-to requirement. I suggest maybe we should make that broader, and say, when you have an existing structure that is eligible for the bonus in R zones, that would be fine. Your existing structure qualifies because you have the existing range in the setback. It is the other zones where, if you have an existing setback range that is different from the setbacks ranges that are now prescribed. There is also width.

Chairman Schwarz – Along Park Street, there are houses that are set far back from the street that have big backyards that can hold more housing. They would be prohibited from providing that housing without someone building in the front yard.

Commissioner Stolzenberg – They are set back in the existing range they are in?

Chairman Schwarz – Some of them are beyond that.

Commissioner Stolzenberg – By nature of where they are, they are in the existing range.

Chairman Schwarz – If their neighbors are up by the street, they're not.

Commissioner Stolzenberg – I think the existing range is defined as the full range of the closest to the side of something. The closest and furthest is the range. The problem is that you could be in the range but not have the build-to width if you are not 50 percent of the width of your lot.

Mr. Alfele – I want to touch on Chairman Schwarz's like with elements. The amendment staff is proposing would fix that. What we are doing is saying because what they are proposing now would have been their accessory.

Chairman Schwarz – It is a fuzzy definition of what is accessory if that was another office or a dwelling unit.

Mr. Alfele – In the code, we were trying to balance when you must come up. The code wants you to come up. We are trying to get it so that accessory, which we did view, their office being on High Street, as the primary building. This mechanism would have allowed the shop, which would have been accessory to the primary to be built without making changes to the primary.

Chairman Schwarz – I feel that if they had any other use in there, it would have been a problem. I don't see the benefit in making a property like that, making them come up to the street if they are preserving the existing house.

Commissioner Stolzenberg – How do you define it so that it does not apply where you have an existing built form like that, and you are building behind versus you are just not having a build-to that is drawing things to the street?

Chairman Schwarz – If there is any new construction behind an existing building, it should be exempt from the build-to requirements.

Commissioner Stolzenberg – In the non-conforming build-to requirement, new buildings of an interior lot, all new construction, buildings, or structures must occupy the build-to zone requirements are met. Until it is met, new buildings must occupy the build-to zone for their entire building width.

Mr. Alfele – It is a big cornerstone. I don't necessarily disagree. It is going to be a philosophy shift.

Chairman Schwarz – I feel that our zoning code philosophy to begin with was based on 'new city built from scratch.' We are struggling with it.

Commissioner Stolzenberg – A structure existed before December 18, 2023. Then you can build behind it.

Commissioner Yoder – Would it make sense to go forward with what is written but then make this bigger question about building stuff behind existing structures a longer-term thing?

Commissioner Stolzenberg – I would argue that build-to broadly should be discussed again in Tier 3 given all the problems it has raised. I did have this in my additional comments. If you read that half-written memo that I wrote in 2023, I got rid of it. On later reading, when I read it again, in 5.3.c.1, where it says, 'new primary buildings on interior lot, all new buildings must occupy the build-to zone until the build-to requirement has been met.' Does that mean with your first building, you must fill up the thing? If you build one that is 50 percent of the width, you must keep putting new buildings after that into the build-to zone until it is met? I think we have been interpreting it as the first building must fill up the build-to zone. That makes the build-to requirement much stricter than it would be otherwise. You have these 120-foot lots in R zones where your maximum building width is 60 feet. Your build-to minimum is 65 feet or whatever. You cannot be building anything without breaking one of those and getting a special exception or subdividing the lot. I don't know if we should be making people subdivide those.

Mr. Alfele – That was again another tenant of the code. It was to make people break up their larger lots into smaller lots. That is one of the goals of the code.

Commissioner Stolzenberg – Doesn't that conflict with Lucas v South Carolina? It says that you must be able to build something on your existing lot. We can encourage people to subdivide without forcing people to subdivide. In this case, we literally can't build anything without a special exception or subdivision.

Mr. Alfele – There are concerns on the code we have. I am just giving you what the code is trying to do and to have those conversations. Should the code be more about preservation and less about bringing things up to a different urban form? Those are community discussions.

Commissioner Stolzenberg – I think we should have a Tier 3 discussion. You should have a Tier 3 discussion on build-to.

Chairman Schwarz – If that is what everyone agrees with, I am worried that we are going to potentially cause more damage in the near term by doing that than by allowing an exception for buildings behind existing structures. I am thinking again of the properties in the ADC districts. I am worried about what our code encourages in our historic districts.

Commissioner Yoder – Does this change make that problem worse in the near term?

Chairman Schwarz – It leaves it the same. It is a problem. I think it is a significant problem. If you are ready to move on, we will move on.

Commissioner Stolzenberg – I agree that it is urgent. It is out of scope of B.05. That is the tricky part. We don't have a venue to discuss it. It should maybe be at the top of the Tier 3 list.

Chairman Schwarz – We had a little thing in here on B.05 to change. The no accessory building would be located within the front yard. We are striking that.

Recommendation is to go forward with staff changes but strike C.3 and add to Tier 3 for more discussion.

No issues with B.07

B.11

Chairman Schwarz – My comment was to make sure it works with whatever language was chosen for B.01.

B.12

Commissioner Roettger – It seems like the distance between entrances works. I was trying to understand the pedestrian access spacing. That also works. You have an open path, and you have an entrance path. I just want to make sure that you are still able to make the cut-throughs count.

Commissioner Stolzenberg – I think through access is a different section than what was talked about here.

Commissioner Roettger – Improved connectivity through large sites.

Commissioner Stolzenberg – Under blocks, if your block is too large, you can get a block perimeter or length bonus via having a midblock pedestrian passageway.

Chairman Schwarz – This is something different.

Commissioner Stolzenberg – It does say through the intent

B.15

Commissioner Stolzenberg – We had a discussion in the original work session saying that in R-C, staff's interpretation was that the height bonus in R-C for affordable housing that you get up to 4 stories if it is affordable should be at 50 percent AMI like the height bonus of extra stories in zones subject to IC instead of the 60 percent requirement. I thought that we decided that our intent at the time was not to do that. It was to allow things like stack townhouses in R zones with the regular affordable housing bonus in R zones. When I reread this today, are we changing this to when permitted by the zoning district to say that it counts for R-C. Therefore, the R-C requirement is 50 percent AMI. Does this change apply to the 50 percent AMI? If you look at R-C, 2.2.5, Section B.1, the base height is 3.5 stories. The bonus height if you have affordable dwelling units is 4 stories, 52 feet. The idea was to get a 4th story so you can accommodate a stacked home. We had a long discussion about how stacked townhomes were the most naturally affordable housing types in R zones that allow ownership. My interpretation was always that should be the same way that you get the extra affordable units in R-C and not be this much stricter standard of 50 percent AMI.

Commissioner Solla-Yates – Your proposal is that it should be 60 percent instead of 50 percent.

Commissioner Stolzenberg – No. This first part when permitted by zoning district rather than in any zoning district other than the R zones should not be changed. The analysis says the thing we are trying to solve here is that it is not clear that the 50 percent AMI bonus replaces the 60 percent AMI requirement. We have that other thing in the table about R-C zones. It seems like we may have matched them together here. I am trying to get clarity on whether that was intentional or rather it does apply to R-C.

Mr. Alfele – I think I was speaking to when you go to your bonus provisions versus the affordability.

Commissioner Stolzenberg – It does say type, bonus in all other district standards already. The section before that is unit post-bonus in residential district standards. We have added that height bonus later for R-C. Should we also be changing the name of 3 to just a bonus in residential districts?

Mr. Alfele – There are other types of bonuses. That is what we were struggling with. The bonuses were lumped together. Affordable was a little different.

Commissioner Stolzenberg – This is all under the affordable dwelling units bonus section.

Carrie Rainey, City Planner – To Commissioner Stolzenberg's point under subsection 3 that is above this, this is where we are explicitly discussing the R districts. That is where we see the R-C district is still living and then clarifying the text under 4 that you see before you today. That would live under that height bonus for all other districts. R-C is written so that it would explicitly get lumped into that by that rewriting. I believe the reason to consolidate at the beginning was just to account for that as future changes happen and other districts might come in. You don't get stuck in that. We need to go back and update text that may not align with future changes.

Commissioner Stolzenberg – The intent was not to make that a thing. It is a little weird. It says, 'unit bonus in residential district standards.' Then, it is 'height bonus in all other district standards.' Maybe we change 3 to height and unit bonuses. That makes it clear that other districts do not apply to residential. If we are just concerned that there might be new residential districts, we could say, any zoning district other than the residential districts.' To be clear, staff's understanding is not that first clause makes it apply to any different

districts. That makes me feel better. I feel it makes it a little ambiguous. I think staff can handle cleaning it up. I am not too worried about it. We have it on record.

Mr. Alfele – It was intended to be a cleanup to make sense, not a change to any interpretation or intent.

B.17

Commissioner Stolzenberg – My only issue is that the conditions under the next section that the zoning administrator may consider does not explicitly have it. There is already an existing streetscape in good condition as a criterion to consider. I agree that it seems redundant. There are vague criteria. Does it comply with the Comprehensive Plan or help with the goals of the Comprehensive Plan? The zoning administrator could use it to say, 'sure, why not.' I think that it might be helpful to just add where existing streetscapes are determined to be in good condition to the list of criteria in 4.4.5.4.5e. Right now, is it good if they don't build the sidewalk at all? Is it Ok if it is not concrete? Is it Ok if it is only on one side of the street? Is there no way for it to connect anywhere? In this case, there won't be a streetscape. It is going to be different because there already is one. It would be silly to rip it all up and lay new concrete.

Chairman Schwarz – I want to be sure that we are not saying that just because there is an existing sidewalk and it is in good shape, but it happens to be 3 feet wide that it is still Ok. I know that BPAC had looked at this at one point. There was concern that there might be sidewalks. It does not provide the full streetscape that we want. There would be a benefit to tearing up the existing sidewalk even if it is good to get the street trees in, to get a wider sidewalk.

Commissioner Stolzenberg – It is up to the administrator's discretion.

Chairman Schwarz – I am just making sure that the change you are proposing does not say just because it is a good sidewalk, the administrator should look at that and say it is fine.

Commissioner Stolzenberg – The change I am suggesting is that the administrator should consider whether there is an existing streetscape determined to be in good condition. Right now, if you consider 3 feet good condition, which it may not be. I think this was less whether it is substandard but ok. Can you plant trees on this side instead of on that side? Should we rip up all the concrete so we can move it over here for 150 feet?

Mr. Alfele – Staff views this as redundant. We view this section as having to meet all the standards of this section. Why do we have this?

Commissioner Stolzenberg – I would argue that as it is now, if it is in good condition, it says that you can use the existing streetscape to comply without adhering to the standards.

Mr. Alfele – It says that you must comply with all standards.

Commissioner Stolzenberg – It might be helpful to add it to the criteria. Maybe sometimes, there is a case where the administrator says, 'there is 110 feet of good sidewalk here that is 6 feet wide, but the trees would have to be on that side. We don't have to rip it all up.' It is still at the administrator's discretion.

B.24

Chairman Schwarz – It looks like we have some comments here.

Mr. Alfele – If Planning Commission has a good definition of active depth, we would like to hear it. There was a question about motor vehicles. That is not called out as a definition. It is called out in the section. It is called out in 2.10.B.3c. Motor vehicles cannot be used. It does not call out the definition, but it does call it out in the section.

Chairman Schwarz – I am worried that all these things that we have called out happen in dwelling units. We have the D-X zone that has a 30-foot active depth on the primary façade. Primary active depths must go to the full height of the primary façade at all levels. It is also saying that the apartment units cannot have bathrooms, utility, or storage. I feel like we have just dug ourselves into a deep and complicated hole. I feel like, let's prohibit motor vehicle parking and let everything else be.

Commissioner Stolzenberg – The more I think about it, I do not get at all why active depth would apply to the upper stories. The whole thing is for the pedestrian experience. The pedestrian is not looking at the 4 stories and saying, 'there is a bathroom up there.' I don't get it. To be fair, it is only all stories on primary streets. I would say to make the active depth apply to the 1st level. Otherwise, leave it as is.

Chairman Schwarz – I agree with that. I also think that we have an issue where it must apply to a dwelling unit. It is stupid to assume that nobody is going to have a bathroom on the outside wall. Some people like windows in their bathrooms.

Commissioner Stolzenberg – It will only be in your ground floor. It is not that you cannot have it at all. You can have a certain amount of width that can't have it. To be fair, I think so many buildings are only barely meeting the build-to width. Part of the problem is the way we are defining the build-to-width includes area that is not buildable, like your side setbacks. You are immediately knocking that off the table and making the denominator bigger than it should be.

Chairman Schwarz – I think the simplest thing is to prohibit motor vehicle parking with an active depth. It sounds like we are already doing that and are done with it. A more complicated thing would be setting maximum square footage so you cannot have a storage unit that is more than 100 square feet within the active depth. It still allows people to have a closet. I am also thinking of offices. Depending on how deep these active depths are, the 30-foot one is extreme. Even with offices, offices are 8 feet deep. You have a corridor and bathrooms. This is just one more of these things in this code that is so overly prescribed. It does not make any sense.

Commissioner Stolzenberg – I do think we are overkilling all the requirements. 30 feet on the upper floors make no sense. 30 feet is deeper than you can probably see in a building from the street in most cases. As there is something going on that you can see into, isn't that the whole point? If you have a ground floor office, bathroom, or living room, and pedestrians are looking, you are probably going to put your shades up.

Mr. Alfele – This might aid in giving more authority to the administrator because the current definition is very prescriptive. What staff is proposing gives more flexibility.

Chairman Schwarz – It is so many spaces that are just part of normal office and dwelling unit conditions. The other option would be to exclude any spaces that are within a dwelling unit. If you have apartments, you don't look at their closets or bathrooms. We need to look at the other active depths. We need to look at each zone and determine whether those are extreme depths.

Commissioner Stolzenberg – With some of these halls, think about when you walk by The Code Building across from The Omni, that is a hallway. The hallway where you have glass partitions to conference rooms, that hallway would not be allowed. I don't feel that hallway is detracting from the pedestrian experience.

Chairman Schwarz – I think there is a fire stair that has glazing on one side that you can see up. We ignore the fact that most of the time people have blinds. Most offices and dwelling units are going to have their blinds drawn.

Commissioner Stolzenberg – There are fewer extreme things than getting rid of it. I do see where you are coming from. You can meet your transparency requirements and have these spaces, not have any windows. You are still not allowed to have them be these non-active uses even though there are no windows. I would say that we could drop the explicit prohibition of halls and maybe restrooms. With closet, storage, utility, and parking, I get it. At least, I am not meeting your minimum width. There probably are times when you need to have them on the exterior wall.

Mr. Alfele – You could shorten any occupiable space designed and intended for human activity.

Commissioner Stolzenberg – Some would argue that anything is a human activity.

Mr. Alfele – That is determined by the administrator to give a little more flexibility.

Chairman Schwarz – That is a lot of flexibility. That would make me happier.

Commissioner Yoder – That would include hallways. That is human activity.

Chairman Schwarz – With the R-A zones, the active depth is 9 feet. I think that is right. If you read this explicitly, it is saying your coat closet cannot go next to the front door.

Commissioner Stolzenberg – We do have a thing that says basically up to 20 percent of your floor area of your required active depth may be used for inactive spaces, such as storage, hallways, stairwells, and elevators.

Mr. Alfele – The active depth section has a lot of other things that do it. Under the current definition, there were things basically in the law you would not be allowed to do that are currently permitted. It does not speak anything to retail. That was a concern to staff. That was our concern in viewing why we were wanting to give more flexibility on the definition.

Chairman Schwarz – Is it 20 percent in all zones?

Commissioner Stolzenberg – Yes. No more than 20 percent of the floor zones required for active depth may be used for inactive spaces.

Chairman Schwarz – I think that we still have an issue with every level on the primary façade at 30 feet.

Commissioner Stolzenberg – I would be willing to say right now that even though we do not have it on the table, we should get rid of levels. That makes no sense to me. I do not understand it.

Commissioner Yoder – Some newer buildings have the ground floor as retail, and the parking comes all the way up to the second-floor façade. I am looking at this diagram in the code. It shows the first 3 floors where the parking area is tucked behind. Do we need to make it to not get rid of active depth above the first floor but above the third floor?

Mr. Alfele – I would say that is a larger conversation. I would not necessarily go down that 'rabbit hole' on it. To me, that would be a larger conversation with the community.

Commissioner Yoder – I agree. Do we want that? Our code currently prohibits that. I agree. Do we want cars on the second and third floor right up to the facade?

Commissioner Stolzenberg – It beats having it on the first floor by a lot. I am not looking at the second floor. It is pedestrian. If we talk about the public realm, does that really hurt? When your building footprint is driven by having parking, you are basically saying that unless you can fit an extra 30 feet in front of the parking area, that is a weirdly accessed space. Your whole habitable floor area is 30 feet deep. We have many lots on our commercial corridors where that will not fit at all.

Chairman Schwarz – We have been saying that active depth should only apply to the first floor. We are Ok with the language that has been changed here.

Commissioner Stolzenberg – The entire livable portion must be screened with a permanent structure of the following standards, capacity of 60 percent or more, openings 4 inches or less, one dimension; basically, require screens.

Commissioner Yoder – Are you suggesting that we change active depth to only the first floor in what we are putting forth in Tier 2 right now? Are you saying that we are going to do what the language says and come back to the one floor thing?

Chairman Schwarz – I would like to make changes earlier rather than later.

Commissioner Stolzenberg – I might recommend that it be a different amendment, and it not be 24. Unless anybody can explain to me why it was on the upper floors, I do not see any reason not to.

Chairman Schwarz – I think the purpose was that we have this condition, the Water Street Garage or Draftsman or what was going to be the parking garage where the Lucky 7 is.

Commissioner Stolzenberg – The Lucky 7 would have been completely impossible.

Mr. Alfele – This is something a special exception could be requested. I would be concerned with making a big change or suggesting a big change. This is a mandate. There is a way if someone wanted to have active depth changes at upper stories.

Chairman Schwarz – Changed or eliminated?

Commissioner Stolzenberg – I don't see why you could not eliminate it. We often say that you can do a special exception. Exceptions are onerous. It is one thing when it is parking. We are making it so vague as to be any human activity. If you are staying on the 8th floor of your building, you cannot have too much storage space on the street side, it makes no sense.

Commissioner Yoder – It does seem like a major departure to do it without much discussion. Imagine if someone tried to build a Draftsman. I know that there are a lot of reasons why this would not be possible. To build a Draftsman style building on the Downtown Mall where floors 2 to 4 are screened parking. It is not a thing you want to encourage on the Downtown Mall. Would we really want people to build this building on the Downtown Mall?

Chairman Schwarz – This is one of the things that the developer of what was going to be the Violet Crown was running into.

Commissioner Stolzenberg – You could say prohibit parking in any building adjacent to the Downtown Mall. I would not completely disagree. I think saying that you cannot have that upper level is practically the same thing.

Mr. Alfele – Going back to special exceptions, City Council may grant a modification to any physical dimensional standards of this development code by special exception and 210 falls within that.

Commissioner Yoder – We are throwing around ideas. I don't think it makes sense for us to put a number in this amendment.

Commissioner Stolzenberg – It is a fairly large change. I agree that it does not fit within this minor amendment. In 2023, we would have probably made that change if we had thought about it. If it is going to be a living document, I don't know that we need to agonize over every change. Tier 3 implies a whole lot of public input and soliciting public input.

Chairman Schwarz – We are leaving B.24 as staff has proposed.

Commissioner Solla-Yates – My only change that I would like to suggest is removing the word 'halls' from this list. There are halls that can be active and cannot be active.

Commissioner Stolzenberg – Didn't we say earlier that we were making a change to make this even broader than what was proposed here?

Mr. Alfele – I was suggesting if you wanted to even make it broader, say 'any occupiable space designated and intended for human activity as determined by the administrator.' There are specifics within that section that call out hallways and closets. There are other places that are outside the definition. It falls within that 20 percent.

Chairman Schwarz – As long as some developer can look at it and have a general idea when they are laying out their floor plans where things can go. If it shows up in a later section, I guess that is fine. I do agree that circulation space is an active space.

Mr. Alfele – Even pulling that out of the definition when you go into the active depth section, it talks about no more than 20 percent of the floor area of the required may be used for inactive spaces, storage, hallways, stairwells, elevators, and equipment rooms. It is calling out some specific things even outside of the definition.

Chairman Schwarz – Can we strike hallway on that portion?

Commissioner Roettger – We are picturing the worst-case scenario.

Mr. Alfele – For clarification, you are sticking with staff's recommendation with the change being to strike out hallway within the active depth.

Chairman Schwarz – Put this on the list for next year.

Commissioner Roettger – Does that mean a hallway that runs the length of what you see in some storage facilities, a hallway that runs the length of your ground floor where you would have the transparency to see that hallway run the length?

Chairman Schwarz – If you had storage facilities, those storage facilities would probably still be within that active depth. I could see a case where you have a hallway and a bunch of offices that all have glass doors or a case where you have offices that are only 8 feet deep and a hallway that runs the whole length.

Commissioner Stolzenberg – The example that I am thinking about is a hallway that runs along the frontage is the code-based side frontage. I think it is fine.

Chairman Schwarz – If it was a hallway with storage on the other side, that would still be prohibited in most cases.

Commissioner Roettger – If it is just a hallway and you can see the hallway because it runs the length of the frontage. Maybe there are doors to apartments. You would see that. The depth would be what you would see if you were walking down West Main Street. You would just see a hallway with doors inside to apartments.

Commissioner Stolzenberg – We would allow that if it was open and not enclosed. If it was a single corridor building. That would not count as portions of the building. It is more of a balcony.

Commissioner Roettger – That might be something that would be allowed if you were to remove that restriction.

Mr. Alfele – Those hallways would because the façade would start.

Commissioner Roettger – Maybe it is not something that would ever be built. It is a concern about unintended consequences more broadly. It is a good question to ask about making additional changes to the definition.

Commissioner Stolzenberg – The inside of those units in that case would count. If it is all wall on that side, you would not be able to see it. It would not help. We have transparency requirements. Technically, they would only apply to the hallway. You could have a solid wall to the units. If there were windows in those units, I could see that being inoffensive.

Commissioner Roettger – If you said circulation or place for movement, that is different. You are not imagining walls on either side. Maybe it is the term hall that seems to be difficult. What we are trying to say is that you should be allowed to move along the facade. Behind it, is there a blank wall behind it?

Mr. Alfele – I would go back to the intent. When we (staff) have these conversations, we have an intent section for everything. You go back to the intent. That helps refocus on what we are looking at and refocus on the conversation. In the intent section, it talks about facilitating the creation of a convenient, attractive, and harmonious community by minimizing the impact of inactive space on the public realm and promoting a comfortable, safe, engaging, and attractive built environment.

Commissioner Yoder – If we think about our end state a year from now is active depth applies to only the first floor, only for a certain number of floors. With the rest, we don't care. Maybe we don't touch the hallway language because there is still a 20 percent exception. We think that we are going to come back and get rid of active depth for higher force.

Commissioner Stolzenberg – Hallways should have their own special requirement that the transparency applies. If the hallway is against the frontage, the transparency requirements apply on the opposite side of the hallway. That gets to what the intent is here.

I have a new Tier 1 item for you. That should say built environment, not build environment.

Recommendation is to move language forward but add active depth to Tier 3 (allowances and upper stories). Correct 'build environment' to 'built environment' in intent for 2026.

B.26

Commissioner Solla-Yates – I don't like it when zoning drives design. I appreciate that this is best practice to have the most restrictive standard apply. It is not an unusual approach. I have seen that. Forced development is built to the zoning, and not to what benefits the public or what is good architectural practice. My proposal was instead of getting precise percentages, just do half.

Chairman Schwarz – To echo something staff had said, the code intention was to try to split properties up where you could make smaller parcels.

Commissioner Stolzenberg – The intent of the mapping process was that we don't have any split zone lots. I disagree. The average of the two also may be wrong. Maybe it should be the amount of the frontage or the width that is in each district is how much weight that district's maximum gets. If you are one foot into the less restrictive district, you should not get half the less restrictive district.

Chairman Schwarz – I am not sure if it is not all straightforward to calculate like that.

Commissioner Stolzenberg – I hope that we don't have too many buildings spanning multiple zoning districts.

Mr. Alfele – It does not come up a lot. It comes up more when you are consolidating lots for a larger project.

Commissioner Roettger – Someone would look at this before they would consolidate.

Chairman Schwarz – You look at Fifeville. We have RA next to RX-5. If somebody bought an RA lot and decided that they wanted to combine both, I could see that being problematic. I want to keep staff's recommendation as it is. I support breaking up lots.

Commissioner Solla-Yates – In general, I support breaking up lots, except where it makes sense to combine lots.

Commissioner Stolzenberg – It seems like this applies more to the R zones. Building widths are large in the other zones. The other way you could do this is that, for the portion of the building that is in each zone, their width applies to that portion. In any X zones, you have no side setback. You could build right up to the lot line and build another building on the other side, subject to building width. There are still advantages to having less wide buildings.

Mr. Alfele – Nothing precludes an applicant from pursuing a rezoning to address the issue.

Commissioner Stolzenberg – My hope is that this is not common enough that it is worth us overthinking it.

Chairman Schwarz – We are good with leaving this one as is.

B.27

Chairman Schwarz – Anybody have any issues?

Commissioner Stolzenberg – We have this tree list that tells developers what the canopy cover is for each type of tree. We talked about it last month as we got a new tree list when we adopted this code. I don't think we ever heard about that until last month. I assume that this is going to trigger a new one because of the 10-year thing versus the 20-year thing. Can you tell us what the new percentage was?

Mr. Alfele – The city arborist keeps the list. He does update it periodically based on best practices. We are hoping that with coming into conformity with state regulations, the list will make more sense. Right now, it is a little over-planted. This might help with that list being reached. I don't want to get into it. I am not an expert on it. The city arborist has a process for creating the list. It is not random. It is best practice.

Commissioner Stolzenberg – I am not asking for the Planning Commission to be involved in it. This is probably broader than the list. All these code adjacent documents like the ADU Manual can be adjusted by staff as needed. When any of them change, upload it on the next agenda as an informational item not to be discussed so that the world knows rather than replacing a PDF on the website.

No formal group recommendation.

There was a meeting recess at 7:47 PM.

B.28

Mr. Alfele – This is one that staff has thoughts on. Fences take a lot of steps. Even stuff that does not make it through special exceptions, we are dealing with fences. Staff have the opinion that fences were not a concern. When I am talking about fences, I am not talking about the architectural control districts where there are a lot more policies and procedures in place for that. We did not see fences as a concern. We spend a lot of our time on fences. We are trying to find a way to look at it. Fences and walls are intertwined in this code. Fences and walls are tied together. When you look at the different sections, it is not like fences and walls. There are things for each one. It is fences and walls combined. A lot of time and effort went into this. What we came up with was this mandate of redefining fence. The alternative was to rewrite a couple whole sections. The fence and wall section would need to be rewritten along with some of the district standards for it. Staff believe that this is a way to work through that without rewriting the standard. It allows fences to be not a fence until they are 6 feet. The wall regulations stay because that is what it talks to. That was the big split. There are regulations. It is not calling out the 4-foot. It is calling out for both fences and walls. This would keep those regulations for your constructed materials and be there permanently. The 6-foot fence is the privacy fence. That is the sections you get. There are 6-foot-tall sections. That is where staff came from and how fences and walls are tied together in this code. When you start pulling that string, a lot of things start coming undone. This was our suggested solution.

Chairman Schwarz – What is the reasoning that it is causing so much staff time? Is it because handrails or guardrails are considered as fences?

Mr. Alfele – Yes. Anytime you are enclosing a space that is enclosed with railings around things it is a fence. There is a lot of conversation with applicants. That is where a lot of the time has been in working with applicants through this, understanding what is permitted, their options to go through a special exception. Staff are doing a lot of preparations for that to move forward.

Commissioner Stolzenberg – Is it fair to say that your concerns are limited to opaque fences?

Chairman Schwarz – My concern with a 6-foot fence in a front yard in a residential district is that it seems inappropriate. We have the existing fences on West Street. I know there was the corner of Rugby and Rose Hill Drive where somebody put a 6-foot-high privacy fence up. Eventually, they angled it so it would meet the view angles at the intersection. That seems like something we want to avoid. If we are going to set a maximum height, I would prefer to put it at 4 feet. I would also try to find a way to exempt. We should not be regulating guardrails. We should not be regulating ABC barriers. A guardrail is measured from the uppermost walking surface. If somebody has a 4-foot-tall guardrail on their deck, that should be a fence. If it is a 6-foot-tall barrier up there, I don't know how we deal with that. That is different. I don't want to deal with it. I feel like it is not on the ground, so it should not be considered a fence. I know that we have been regulating these as fences. Without understanding all the implications, it just seemed easier for me to lower that height to 4 feet and exempt anything that is a guardrail or an ABC barrier. When I say guardrail, a guardrail that is required by code. I don't know what the implications of that are.

Commissioner Stolzenberg – Guardrails would always be shorter.

Chairman Schwarz – It would be 42 inches. In residential conditions, it is 36 inches.

Commissioner Stolzenberg – The posts might be taller. Would that trigger it if they were more than 6 inches over the highest rail?

Chairman Schwarz – I don't know. Potentially. Do they have to be?

Commissioner Stolzenberg – I don't know. I don't like to think about fences.

Chairman Schwarz – There must be some easy way. I wish there was an easy way to do this and that anybody can build a 4-foot-tall fence and we ignore it if it is a guardrail. I am trying to think of other examples.

Commissioner Stolzenberg – In the R zones, we do limit front yard fences to 4 feet.

Chairman Schwarz – We will have to change all that.

Commissioner Stolzenberg – Walls would be limited to four feet.

Mr. Alfele – Correct. Staff's intent was not to change the wall requirements. I know it sounds silly to not call a fence a fence until 6 feet.

Commissioner Yoder – I am on board with your no 6-foot fences in front yards. Under this definition of fence, what happens if I am going to build a 6-foot privacy fence in my front yard?

Mr. Alfele – That is where staff has taken the position of that would have been allowed until 2023. We did not feel it was. It was a historic issue.

Chairman Schwarz – What happened in 2023? You could have as few windows as you want on your façade. You could put hallways and storage rooms.

Mr. Alfele – It is a true point. Staff would probably be in the position that this is still sticky. There is a path forward. It is a special exception. It is not great. We could continue with that. It just exempts something like guardrails, as the Chairman suggested.

Commissioner Stolzenberg – I would be much happier with saying, 'there are special exceptions if it was not $2300 and 6 months.' For a homeowner, that is very intimidating and a lot of money. To the extent that we have fence rules, I don't care about fences that are not opaque. It is about letting you see into the yard and into the active depth to see what people are doing in their houses. We already don't allow chain-link.

Chairman Schwarz – I am not sure that I want the fences that we have on the railroad. As nice as those are, I don't want to see those all over town.

Commissioner Yoder – Do the transparency requirements apply to fences as well? It is just the façade.

Commissioner Stolzenberg – You could have a 6-foot fence that you cannot see through. We require that you have windows behind it that you can see into.

Commissioner Yoder – Is the reason why we don't want to define a fence as 4 feet or taller because that would include things we don't want to regulate as fences? It does not solve the problem.

Mr. Alfele – Staff was thinking more about the transition requirements. They speak to 6 feet. We are tying that to where you can in a 6-foot fence instead of a section.

Commissioner Stolzenberg – That would not be all the way up to the front. That would be further back. Technically, must the transition be the whole edge? Would we now be requiring a lot line fence that you are not allowed to have in your front yard?

Mr. Alfele – There is already that conflict right now. You would not have a transition in a front yard. It would only be set back.

Commissioner Stolzenberg – It is in your front yard.

Commissioner Yoder – On the side yard, but all the way up to the front lot line.

Commissioner Stolzenberg – I need to look at our definitions.

Mr. Alfele – One of the thoughts with staff is that it was fixing 2 things addressing that disconnect on where it calls for a 6-foot fence as a transition requirement and not permitted in yards where it is called.

Commissioner Stolzenberg – Your side yard does not include your front yard. A required transition must be located along the entire length of the common alley or street lot line shared with the district. I guess that your fence would have to go up to the front lot line where you would not be allowed to have that fence.

Chairman Schwarz – We can put another exception for fences required at transitions.

Commissioner Stolzenberg – Or don't have it go up to the lot line. That is ridiculous.

Mr. Alfele – Where staff was drawing the line is when you look at fronts like frontage screen regulations. Most of them will say maximum height of 6 feet.

Commissioner Stolzenberg – Front screens are not imagining any of those are on the side lot line. They are imagining street or rear. All these graphics have it on the street side.

Chairman Schwarz – If we go with 6 feet and somebody has a deck that is 3 feet in the air and they put a 4-foot guardrail on it, is that a 7-foot fence or a 4-foot fence?

Mr. Alfele – It would be measured from the grade.

Commissioner Roettger – Thinking of walking down the sidewalk as a shorter person, you can see over a 4-foot fence. There are also people who put bushes, shrubs, and all sorts of things that you cannot see through. It feels safer if you can see.

Chairman Schwarz – If we limit it to 4, what unintended consequences are we still leaving you with?

Mr. Alfele – The biggest one would be that if there was a situation where someone had to do a transition and it is saying that you had to do a 6-foot fence, and the code says you are not allowed to have a 6-foot fence in that yard.

Chairman Schwarz – Can we add some language to those transition zones to fix that?

Commissioner Stolzenberg – I would say that with transition fences, it feels weird for them to have to extend to the front of the lot. I feel that they should go along the side yard.

Mr. Alfele – I think that 4 would be better than nothing. It would clear it up some. It would still be something you would have to look at. It would help with some because it would help with what you have seen through special exceptions. It will limit the special exceptions that come forward if somebody wants a bit of privacy.

Commissioner Stolzenberg – The other places it would apply are the places where we don't allow a fence such as The York Property across from Monsoon that we reviewed. You are not allowed to have a fence over there. They wanted to create that patio area.

Chairman Schwarz – If we allow up to 4 feet, that should allow it there?

Commissioner Solla-Yates – Am I reading the 6-foot language that you proposed correctly? It was that it was banning 6-foot, not allowing 6-foot. Can you clarify that?

Mr. Alfele – It is saying that it is not a fence until you get to 6 feet. That would mean that if you want to put 5-foot, 11-inch fence, it would just be a feature.

Commissioner Yoder – What if we did the 6-foot fence and said no fences in the front yard of R districts? You can put a feature or a wall.

Commissioner Stolzenberg – Right now, we are banning anything over 4 feet fences.

Mr. Alfele – It is not saying fences. It has tied the 2 together to its heights.

Chairman Schwarz – My proposal would be 4 feet and making sure each zoning district if there is any number in there that we verify that it corresponds. We would be allowing up to 4 feet within downtown or wherever else. I would still exempt guardrails and handrails as required by code just in case. The ABC barrier should not be more than 4 feet. An ABC barrier should not be over 4 feet.

Commissioner Stolzenberg – In transition screens, it says all fences and walls provided must meet the wall and fence design installation standards. If we don't allow it in the front yard, does that mean if it is meeting

the standard, it is not in the front yard. I clicked on 2.10.14 (fences and walls). It is a section that says, for requirements, see 4.50.1.'

Recommendation to change to 4 feet and exempt guardrails and handrails.

B.30

Mr. Alfele – It was brought up about why we are protecting public right of way and sidewalks from lighting. Basically, we have always had a zero spillover at the property lines. There are a couple of policy reasons for this. With this one, public lighting is treated as infrastructure and needs to be controlled by the city, not controlled by the spillover. This was trying to clarify that it was not allowing you to spill over. This was not taken into consideration where you have multiple parcels in your development. This is what staff was trying to clear up. If you have multiple parcels, you are allowed to spill over and not stop at the property line.

Commissioner Solla-Yates – The development that my house is in included some nice lamps on private property but light the public right of way. It feels safe and nice.

Mr. Alfele – I think that would be a larger conversation of what we would want with lighting the right of way and how we control it.

Chairman Schwarz – Are those lights on your property?

Commissioner Solla-Yates – They are on the private property adjacent to the sidewalks spilling light into the public right of way.

Commissioner Stolzenberg – Do we have a process over a development for putting in streetlights as distinct from interior lighting? It is a thing that sometimes happens.

Mr. Alfele – The most recent one was where we had to get the easements for those private lights on public.

Ms. Rainey – At Kindlewood, we have some examples of public lights and easement. Even though the light is on private property, they had to put an easement to allow us to take over as a public light to control it.

Commissioner Stolzenberg – Those would not be subject to the 'no spillover' requirement.

Mr. Alfele – They are public lights even though they are on private property. They have a public easement. We still run into the fact that most of our public lighting is still dim.

B.31

Mr. Alfele – Unfortunately, this ties back to the way we were tracking these. They do not necessarily fall in order. We want to keep the working document number the same. Under our old code, we had 2 critical slopes. You had a critical slope for zoning and a critical slope for subdivision. Critical slopes for zoning had a list of what made it a critical slope: the slope, distance from a waterway, the run of the slope. In the subdivision ordinance, a critical slope was any slope over 25 percent. Since we have a consolidated code, this was pulled over. We are trying to clarify. Any slope over 25 percent went away as a critical slope. That is what staff is trying to do here. This was intentionally brought over from the subdivision ordinance as a standalone regulation. Whatever comes out of the environmental review will reshape our critical slopes. This is to get away from calling any slope over 25 percent a critical slope. It needs to follow the guidelines of what a critical slope is.

B.32

Mr. Alfele – Staff is also working to try to improve the development review processes. With this code, everything must go through development review. Under our old code, single-family and 2-family, single-family attached, single-family detached, or 2-family were all exempt from site plan review. That does not mean that they are exempt from following the zoning. You still have zoning compliance. There is a zoning compliance check done with the building permit. Under this code, everything goes through development review. Staff have been doing a workaround for those things to go. The development community is used to those types of developments going straight to building permit and not going through development review, which adds a lot of time. We have an internal policy that conforms with the development code that allows that to happen. This is to codify it. As staff was looking at this, staff was interested in finding ways to get more things straight to building permit that did not have to go through development review to cut down on time. Staff can do their development review check at the building permit. The problem that we ran into is there were no internal mechanisms set up. Once we get through this round of review, there will be a dedicated step. We are going to be shifting some dedicated resources to looking at missing middle and how to speed that up. Utilities had some concerns about when they would see things, where we were going to want to place the cutoff line is going to be all residential districts. The maximum you could get would be 12 units. You are getting 6 affordable units. Our thought was to try to speed that up. The issue that we are running into is that there is no infrastructure built into our systems through utilities, engineering, fire to do that yet. They are used to those things. There are a lot of single-family homes. That is how our building codes are set up. We run into a big issue when you get into the residential building code, the commercial building code, and the cutoff is after 2 units. We want to get there. Our goal is to get more straight to building permit. We are not in a place to do that. When this is codified, it is our current practice and allows some things to go straight to building permit that we are built for and work how we can get our things that are in the residential district straight to building permit. We would not go through a lengthy development review process. It will take getting some people we don't have at the 'table' yet. It will be what comes out of the environmental review on stormwater and utilities. We know that there is a lot of concern with some of the utilities and how those are treated.

Commissioner Stolzenberg – Would 3 townhomes or 3 detached homes be residential code?

Mr. Alfele – Finding that cutoff was the hard thing because if you do 3, because we don't have type, where we are going to go and we look at this as a group, we will probably have to bring certain types back into the code like townhome. We don't have that now. We just have units. If we said 3 units, it might be somebody who does 3 single-family homes, which is great. They could do a triplex. That is commercial zone or commercial building with a sprinkler. It becomes difficult to do when you are only talking unit count.

Commissioner Stolzenberg – Could you say up to 2 units per lot or sublot? On a townhome, it must be a sublot for it to count as IRC and not jump to building code. If you have 3 townhomes and they are not on separate lots, they don't qualify per the residential code. If you said up to 2 per sublot or lot, that would allow townhomes without bringing technical types in.

Mr. Alfele – We are saying that this is what it is saying. It is what you propose. It is not what is there. We are saying up to 2 units.

Commissioner Stolzenberg – Three units would not be allowed even if they are each on a different sublot. If they were on different sublots, they would qualify per the residential code.

Mr. Alfele – The friction point is some of our internal projects in the review. It is not how many. You could have 4 on a property. If you are proposing a duplex or 2 units, you go straight to the building permit. You

don't go through development. It is not the total number. What we are saying is what is being proposed. There still is the possibility someone could have 2 units, and they are proposing 2 attached units. It now becomes 4 units. At least, we have the organizational skill that could work. It is more about what is being proposed. Where we have traction internally, we don't have traction yet for what we are hoping to get to in the future. Ideally, if it is residential, there is a mechanism set up to catch some of the other department's reviews and we can do our review.

Commissioner Stolzenberg – Does this mean minor development plans go away?

Mr. Alfele – That is correct. As part of the development updates, we are getting rid of major and minor development plans. We are going to have just 1 development plan that will be open to anyone. It will be an NDS-only document, just a zoning check. It is envisioned to be something that is approved in maybe 1 or 2 rounds at the most. It would get you vested in the zoning. You can take that to a bank so you can do your engineering. We will be going to major and minor site plans. If it is for small things, we can get through it quicker, lower fee. Major and minor development plans are going away. It will only be a development plan.

Commissioner Stolzenberg – It is not required. You have a 2-unit project, and you want to get some kind of approval from the city to take to your bank. You can go through development review.

Mr. Alfele – Anybody could get a development plan for a single-family home if they wanted to. We don't anticipate it.

Commissioner Stolzenberg – Before we said the minor development plan, you could basically do it on a napkin. It is supposed to be quick and simple. Now we are saying that it is going to be just the development plan. There will be the requirement. Will it have to be the same? It must be an engineer, architect, surveyor.

Mr. Alfele – For the development plan, we need to be able to review it against the code. We want to make it as easy as possible. We want to be able to review it. It needs to be to scale. How the code is set up is that everything needs that final site plan. Things that need a final site plan, even minor final site plan, we are going to try to lower that threshold, so it gets through quickly.

Commissioner Solla-Yates – Can you talk about townhomes? Townhomes would or would not qualify.

Mr. Alfele – It is difficult because we cannot speak in those terms. It is just unit. If you had 2 units and you wanted to add 2 units that you will attach to them to make 4 units in a row, that would work. If you are going to do 4 townhomes or 4 units, we would say that you must go through development review. We are not set up yet to handle it. When we get into it to see how we can break down some barriers, I feel that we will have to reintroduce the term 'townhome' to the code. That is what we have experienced over the last 18 months. There is such a difference in the building code where they use that terminology. To bring down the barriers, we will have to pull that back in. How that looks, I am not sure. That is what I anticipate. It is not necessarily Tier 3. It is the next focus of development. As part of development review, what barriers we can break down to get more of the missing middle, we need to introduce townhomes as a term in the code that would help break down some barriers.

Commissioner Stolzenberg – If you were to introduce it for the process parts, that seems fine to me. I think what we were intending with just saying units were the zoning requirements.

Mr. Alfele – That might be where it comes from as we look at the actual development review process. I know where we are as an organization, where we cannot take that big of a 'bite of the apple' quite yet to allow something like a 12-unit apartment to go straight to building permit. We would love it because that was 6

supported units. That is the direction we are going. We are not there as an organization to do it. This where we are at to be able to handle as an organization.

Commissioner Stolzenberg – Is there a sense that a developer with a 12-unit apartment building would need to bring something to their bank before they could get to building permit? I would think that they would.

Mr. Alfele – As a city, we would love to break these down. We recognize that is the type of housing that we would like to get. Going through a 6-month development review process is a barrier. How can we break that down? From our standpoint on the zoning/planning side, we know we can do our check. We can do our check at the development review. We can do our check at the building permit. We can do a zoning compliance check at either place. There are other people that are not at the table yet to do that building permit. They need this process to do the review.

Commissioner Stolzenberg – If development review is now not that engineering review, does utilities still do review?

Mr. Alfele – Development review speaks to just development review. The development plan speaks to the document. When I say development review, I am talking about getting from pencil.

Commissioner Stolzenberg – That is the distinction that I was missing.

B.33

Commissioner Stolzenberg – I feel that there might unintended consequences of doing it this way.

Mr. Alfele – Where staff comes from, we need a good definition of building because we tie things to bonuses. The current definition of a covered or enclosed structure, either temporary or permanent, is intended for occupation or shelter. It is not as robust as we would like. When we were looking at it, when do these bonuses apply? I know we have had some conversations in the past. What we don't want to do is incentivize a single-family home, not multi-family that gets the bonus height.

Commissioner Stolzenberg – Structure is any constructed object more than 30 inches in height. Is a townhome a structure? Is a row of townhomes a structure or is it a building? A building can go across lot lines

Mr. Alfele – Where we are running into issues was you have multiple disciplines from what building code says is a "building" on one property. That property line becomes 2 buildings even if it looks like one building from the outside. It is 2 buildings. Trying to line up at least a little bit with theirs. This is tied to the bonus side where we were saying that was making an issue for us because of the bonus section.

Commissioner Stolzenberg – Specifically, the more than one unit. I wonder if the answer is to change it to 'spans more than one sublot.' If you go back to the example of the attached townhomes on different zoning lots. If you go to four, we are saying that it is one building for determination of unit count. Even though you have 4 zoning lots, each is allowed to have 3 units if it is one building even though one unit is on that zoning lot.

Chairman Schwarz – I agree that this should be sublot.

Mr. Alfele – What we have always struggled with is that this is considered a building. Suddenly, you put on property lines. When we say sublots, we can, from a planning zoning standpoint, understand what that means

for the development code. It will not change the sublots. A building is still going to be considered one building. They do not view sublots as anything different as a big lot.

Commissioner Stolzenberg – When you say building, you mean building.

Mr. Alfele – That's correct. With building and utilities, a lot is a lot whether it is a lot or sublot.

Commissioner Solla-Yates – I am not sure I understand why it matters.

Commissioner Stolzenberg – There are all these different things. There is building footprint, building coverage, and building setbacks. All those things are to the building or of the building. There is building height, which is more than 1 unit. There is building width. All those things have the word 'building' in it. If you say footprint and you have duplex, each of the units is on its own sublot. Is each of those allowed to be 3000-square-foot footprint? Is it cumulative? Similarly, are they allowed to be 2.5 stories or 3 stories? Is one unit more than one unit building height?

Mr. Alfele – With things like the footprint, they do speak to cumulative. That does a better job than what the bonus height does.

Commissioner Stolzenberg – I feel that the problem is what is building height where we did not specify. I feel that some of these use different ones. Some say cumulative and some don't.

Mr. Alfele – A building located on a lot might be wider than the maximum building width.

Commissioner Stolzenberg – I want to say that we should just specify for each one of these things. I would argue that footprints should be combined. The extra height for multiple units should probably be for the lot. The idea was if you were putting in multiple units, we would rather you make it taller and squeeze them in rather than covering up more of the lot and reducing space for open space for trees.

Chairman Schwarz – Why do you want footprint combined?

Commissioner Stolzenberg – With footprint, the idea was the buildings could get too big. That was thinking about buildings that would not be sub-lotted. For width, I would argue that townhomes should be counted separately for width. Width is about you walking along the street. You want there to be a different building to get that visual differentiation to make it a more interesting walking experience. That is the effect we want in the public realm.

Mr. Alfele – Building footprint is measured for each individual building or structure.

Commissioner Stolzenberg – I think the thought was that thinking about detached buildings and not necessarily attached. It is complicated. I feel that it is different for each of these. I feel that this change might be too big.

Chairman Schwarz – We should not be allowing a building to span 2 lots. They should go through the effort of combining into one lot if they are going to do that. I am trying to think if the building code even allows that. I don't know. It seems weird to have a building straddle 2 lots.

Mr. Alfele – I would think about it through the townhome analogy. If you have a row of townhomes sitting on a parent lot, they did a sublot. If you have a building that looks like Water Street, do you want it to be 1 building per individual lot, so they don't get any bonus height, or it is 1 building. Since it is a townhome, they

get the bonus height. Is it more envisioning that bonus height for being that I have an over/under duplex or 3-unit apartment?

Commissioner Stolzenberg – If there are sublots, I am Ok with the higher height. If it is just one on a zoning lot, I don't know about more height.

Chairman Schwarz – I agree. My worry is more where you said the building footprint is. You have one building that spans 2 lots. We have a maximum building length of 200 feet in some districts or whatever it is. We don't want that to be artificially elongated because it is 2 lots. That is where I see that as this being more complicated.

Commissioner Stolzenberg – This is saying that you would consider it as one building.

Chairman Schwarz – That seems good.

Commissioner Stolzenberg – If you talk about the row of townhomes, let's say that you build a new street. Paynes Mill was built 5 years ago as a bunch of single-family homes. They built a row of townhomes, each on their own zoning lot. Should each one, until you get a side setback, be subject to the 3000-square-footprint? I don't think so. Should the whole thing be the building width or each individual townhome? I think each individual townhome. Should they get the extra height if they are all on their own lots?

Mr. Alfele – If you had a duplex, under the old code, you had a 2-family unit on one lot. Under this, we would say that you get extra height. As soon as you put a property line down the middle of it, you don't get the extra height because you are one individual building on each property.

Commissioner Stolzenberg – Unless you put another unit on your property somewhere else if it is a different zoning lot.

Mr. Alfele – It speaks to the number of units in the building, not the number of buildings on the lot.

Commissioner Stolzenberg – I don't know that I fully buy it. It says building height as the height of the building. I don't totally buy that necessarily means that underneath building height where it says one unit, more than one unit also implies one unit in the building. I see where you are coming from. I don't know if that is what we were going for in 2023.

Mr. Alfele – That is where staff would need some help clarifying. That is how staff looks at this. It is the number of units in a building to get the height. It is not about the number of buildings on site.

Commissioner Stolzenberg – I think we just narrowly fixed the building height thing to mean one unit is one unit per lot. More than one unit is more than one unit per zoning lot.

Mr. Alfele – We can come back to that. We know we are running into that as staff with how we read the code and use it. We would love to have clarification. It might not be something we can come to now.

Commissioner Stolzenberg – I know that there are development plans being submitted in Belmont where they are trying to do 3 townhomes in the back. Unless they get the extra height, it is not going to work. They will be short. Maybe with the loosening of the R zone story thing, it won't be as big of an issue.

Chairman Schwarz – That seems like an easy change. I was under the impression that it was dwelling units per lot and not per building. Do you have any thoughts on that part? Is that an easy fix?

Mr. Alfele – I don't know. I don't want to say. There might be some possibility.

Commissioner Stolzenberg – If we put somewhere in 2.10.9, where it talks about height, that is the section of height.

Mr. Alfele – It would need to be something like one unit per lot or more than one. It would need to be probably added in there.

Commissioner Solla-Yates – I am trying to keep the specific example we were talking about when we were doing that. That was an existing building and 3 townhomes in the back yard.

Mr. Alfele – The unintended consequence is that you have a single-family home. You have a single-family home behind it; you get extra height.

Commissioner Stolzenberg – You are squeezing in extra units on a zoning lot. Maybe that single-family home is a smaller footprint because you can get the square footage vertically.

Mr. Alfele – There is the possibility of just getting larger suites.

Commissioner Stolzenberg – It is a pressing issue because developments are being held up by this problem right now. When you combine it with getting rid of the stories, once you are at the heights, it is not as big of a deal. Once your top floor is above 30 feet above ground level, a bunch of extra fire code requirements kick in. Nobody is going to do those.

Mr. Alfele – There is probably an opportunity to explore and fine-tune this down the road. As a community, we probably want more. I have a single-family home in front. We want to build something like a duplex in the back or something that is denser.

Commissioner Stolzenberg – I take back what I said before. The sidewall height is the same one unit/more than one unit thing. With those 28 feet on the sidewall, that top story is not going to be a full story.

Chairman Schwarz – What is the proposed change?

Commissioner Stolzenberg – The proposed change is changing it from one unit per lot/more than one unit to more than one unit per lot under building height. That is the main thing driving this change.

Mr. Alfele – The main thing was to get clarification on that bonus. If the current definition is not an issue, we can keep the current definition. I cannot promise that we can get that in with this round. We can explore adding that language into the districts.

Chairman Schwarz – For the purpose of this code, we are not going to do that part.

Commissioner Stolzenberg – I worry about the unintended consequences of this definition change. I would rather not do that.

Recommendation is to say no additional primary uses.

B.34

Chairman Schwarz – We had the question about attached townhomes.

Commissioner Stolzenberg – I did have a new thought. That thought was drawing out 33.

B.35

Chairman Schwarz – I would like to expand it to 2 dwelling units. If you are telling me that you have an existing residence and they put another dwelling unit in the back or on top in the existing building, the existing building does or does not have to meet the active depth requirements.

Mr. Alfele – The one you are not changing does not. It is only about what you are changing. If you are adding interior and not changing anything on the outside, you don't need to go through development.

Chairman Schwarz – If you attach it on the back, does the front have to be?

Mr. Alfele – No. Only if it is outside the active depth.

Commissioner Stolzenberg – Is all that specified somewhere? There is that table that has little dots. It says 'generally.' The example somebody was telling me about the other day was that Holiday Inn on 29 that is being proposed for affordable housing. They just want to change the inside; except they want to fill in the indoor pool and add an outdoor pool. That triggered the whole site plan.

Mr. Alfele – They wanted to change the interior. They wanted to add a pool outside. We said that everything where you are adding the pool needs to meet the code. There are some transition elements because of the use that comes into play. Only what you touch needs to come up to the code.

Commissioner Stolzenberg – That makes a lot of sense. I don't think that it is totally clear. I may have to talk to them before they got the final word on this. There is 'addition' in the applicability thing. It says, standards generally apply.' It does not say 'standards generally apply,' just to the addition part.

Mr. Alfele – It has been the department's longstanding position. That is a common practice. If I am working on this, I don't have to fix this. Where that project got tricky is what they were trying to say. 'We are nonconforming.' That means we never have to do anything that meets the code. That is not accurate. Nobody would have to do anything. We would be sitting in our offices all day. I get the confusion. We have legal backing on this. When you look at the residential section and where it is broken down into a lot on a page and a building on a page. When you are nonconforming for your parcel, it does not mean you can get away with all this stuff on the lot section. I get where it is confusing. Those are still development standards. A nonconforming lot means you are nonconforming because you don't meet the street frontage. It is not you are not nonconforming for the subdivision because you don't have a build-to requirement. I get their confusion because it says a lot on that sheet.

Commissioner Stolzenberg – The only other comment that I had on this one is the no additional uses. It should probably be no additional primary uses.

Mr. Alfele – It was trying to clarify D, which we found to be just not written as well.

B.36

Chairman Schwarz – You had another access in there.

Mr. Alfele – That is a good catch. What staff was getting at is the only exempt for any of your setbacks were for access easements. I have a sewer line going through my front yard. We don't have anything to give you an exception for that.

Commissioner Stolzenberg – If you were putting in a new sewer line, which would create an easement, should we also allow it to be modified based on that? Should we just say that you can't put in the sewer line there because you will have to build in that area?

Mr. Alfele – We are anticipating this to be like 5th Street. 5th Street is a good example. There is a sewer line that runs along the west edge that has a 40-foot easement. You could not build up to 5th Street. It just was impossible because the infrastructure does not give us a way to it. The workaround is that you put an access easement on top with utilities. That is not what we want.

Chairmans Schwarz – I have had some discussions with BAR applicants who have said that they cannot provide their streetscape because their build-to zone is not large enough to allow that. As a practice, is the city doing this and moving those setbacks back?

Mr. Alfele – I think there is an ability to set setbacks back. The right-of-way easement and easement are totally different. That is one of the ways you can do your exemptions for your streetscape.

Chairman Schwarz – Where there is not enough room in the public right-of-way for the required streetscape, the clear walk zone and streetscape zone must be provided on site as a permanent access easement. That is later in the code. Have we, in practice, been doing that and moving the build-to zone back proportionally behind that access easement?

Mr. Alfele – That has not come up on any projects.

Ms. Rainey – The only one is the Kindlewood Phase 3 project. You guys saw their special exception permit for their street facing entry spacing. They are putting in an additional pedestrian easement that did result in that building being set back further.

Chairman Schwarz – I am thinking of the proposed hotel on Market Street at the end of The Mall where the Artful Lodger is. They were adamant that the city had told them that they had to build up to their build-to zone. There was not enough room for the trees. There are no street trees here. I believe that was the applicant lying to us. We get that this has happened more than once with the BAR. It is nice to know that. If it is the policy of staff to allow the movement of that setback if there is an access easement. I think the BAR can push harder by asking for street trees.

Mr. Alfele – We have been consistent. We want a good green space.

B.38

Chairman Schwarz – This is the same argument that I had before. It seems like we are not protecting existing buildings outside of the R zones. We do not allow for construction behind them.

Mr. Alfele – Where staff came from this is that you have seen some of these come forward where the existing structure is causing an issue because they are not meeting either for the build-to or the percentage. There was an opportunity to tie it to something that was existing to give that time to the preservation bonus and say, you conform. I do think it is worth a bigger conversation. This seemed easier to tie to something that already existed.

Commissioner Stolzenberg – A change that I proposed to this that is smaller and more within what could be in scope tonight is that a project that is eligible for the bonus could qualify. If you have a house, you only have enough room at the back to add 2 more. You are not using the bonus because you are not going to four. You could put 3 back there. Your front house is now not qualifying. It is not filling up the build-to width. You still must go through the special exception process. You are eligible for it as part of the project process. You are just declining to use it.

Chairman Schwarz – I like that.

Recommendation is to change utilizing to eligible for similar language.

B.40

Commissioner Yoder – My comment is more of a Tier 3 thing. This addresses the conflict between easements and build-to width. We still have the conflict between build-to width and transitions.

Mr. Alfele – This is an elements issue with the transition needed between the shop and the low density.

Commissioner Yoder – That's correct.

Mr. Alfele – That would probably be a deeper conversation. In that case, what tripped it was the use. The use would have been something that was allowed in both districts if it was just based on height. It would not have been an issue. The code does a pretty good job there. It recognizes that you could have 2 different districts but the same use. You don't need to transition between them.

Commissioner Yoder – I don't have any issue with it as it is written. It was just a question.

Chairman Schwarz – To clarify, how many on this Commission are thinking that these build-to zones are something we will need to look at and potentially get rid of? That is something for staff to think about.

Build-to width needs to be moved to Tier 3.

Adjournment

The meeting was adjourned at 9:15 PM.