LEGAL REVIEW 2017: CADRE COMMENTS & SUGGESTIONS

May 23, 2017

The comments below represent initial suggestions by the CADRe Code Audit Sub-Committee. Comments in black are in response to proposed revisions to the Code, as suggested in the Legal Review.

In the case where a revision represents a substantive change that we feel is inappropriate for the Legal Review and better served by potential Amendments following the update to the Comprehensive Plan, we have noted as **Substantive Change.**

Text in blue represents general suggestions regarding sections of the Code that have not been revised. We ask that these suggestions be considered during and after the Comprehensive Plan Update.

General comments:

- Any proposed changes should be presented in blackline format. The draft document has portions that are blacklined, but several chapters are not, making it very challenging to decipher the proposed changes and deletions.
- Rather than simply eliminating those provisions that currently provide authority to NDS Director or Planning Commission to grant waivers or modifications to certain requirements or standards, consider modifying the ordinance to Council to grant them by Special Exception, as the County has done (to comply with the *Sinclair* decision). This would retain the important flexibility provided by these provisions, while maintaining compliance with *Sinclair*.

Section 1 Administration

Division 6. Sec. 34-106. (Moved to Division 5. Sec. X): Legal Review has defined the City's "zoning administrator" as the NDS Director. The term "zoning administrator" has implications in state law, such as from whom certain rights can vest, etc. The new language allows for the NDS Director to delegate such authority but such delegation is much tighter than previously. ***Suggestion*:** Because of this rewritten section: will the authority each employee will be granted also be clear, i.e. written job responsibility guidelines? Need to be clear on who has the authority to interpret the code.

Division 6. Sec. 34-108. (Deleted completely). This section allowed the Zoning Administrator to grant variances to building setbacks of less than one (1) foot. Va code Sec. 15.2-2286(A)(4) allows the Zoning Administrator to administer such modifications. ***Suggestion*:** keep text as is, *Sinclair* case should not be considered relevant here; this is a properly delegated administrative decision, not a ministerial one.

Sec. 34-x (a) Interpretation of zoning ordinance: 90 days seems excessive for a written response from the Zoning Administrator. Consider 45 or 60 days to be consistent with response times for Site Plan submittals (See Sec. 34-823. - Action required.)

Section 2 Zoning Permits and Procedures

Division X.- Zoning Verifications, Section 34-x (a): This provision seems too vague "No land shall be used" -- what does that mean? Also, this provision doesn't exempt single family properties from the tree removal provision. Is this intentional? Currently, trees are removed

from single family properties without consulting the City because no specific permit is required to remove trees.

Section 3.0 Zoning District Regulations

Section 3.1 Residential Zoning Districts

For discussion during the Comprehensive Plan Review:

- Are the "U" districts necessary for low density residential? Might be a good time to look at what purpose they serve and whether they have been successful in achieving that purpose. Otherwise, just convert back to standard low density residential.
- Charlottesville needs to incorporate a Cottage Housing ordinance to allow for new housing types that increase affordability while using the land more responsibly.
- Look at reducing frontage requirements and minimum lot areas to promote infill development opportunities.
- R-3 Development Standards: DELETE. Consider creating general multifamily districts--medium and high density without the complicated and outdated requirements.
- Townhouse Standards: Revise.
- Consider deletion of the as-of-right maximum Dwelling Units per Acre. Control density by building form: (height, setbacks etc.).

34-350 (b)(1-3): **Substantive change** to add in encouragement of only by-right density. Are we trying to discourage SUP or mitigate where necessary? Why delete the text about how higher densities may be permitted where harmonious…?

Section 34-xxx Building Types (after Section 34-352)

Substantive Change: This section lists that SF attached dwellings are permitted within R-2 and R-2U, and MHP. But in the current code, SF attached are also permitted in R-3, R-UMD, R-UHD, and MR as well. **Substantive change** to remove SF attached units from these districts (unintentional?)

34-353: **Substantive change-** Maintain height defined in feet, remove reference to stories. The usage of stories does not reflect the reality of what is currently allowed, it does not cover half stories, mezzanines, attic stories or basements. For example, 35 feet can easily contain 3 stories instead of 2. 45 feet is 4 stories, not 3. Current code language was meant to ensure that anything defined in stories had a maximum height in feet, not the other way around.

34-x. Alternative required yards: (a) This language is problematic. Check language to ensure that the minimum setback can be determined by using the average OR the minimum established within the zoning district. This provision should provide greater flexibility rather than creating problems. (b) The required building separation of 50 and 75 feet seems excessive in an urban situation. How does this compare to other areas that abut a low-density district? Consider stepping down building height if it is within a certain distance to low density residential, instead of a 75-foot setback.

Where are the new density limits / DUA limits and options to go higher by SUP contained in the new draft? The Residential matrix was deleted, but I do not see where this information was replaced. If these provisions were eliminated and replaced with the language in Section 34-350(b), "Purpose of Multi-Family Districts" which appears to limit densities to the current by-right limits, that is a **SIGNIFICANT SUBSTANTIVE CHANGE**. These significant changes are detailed below:

Zoning District	**Current Ordinance (in Residential Use Matrix)**	**Proposed Legal Code Audit (per Section 34-350(b))**
R-3 Residential	max 21 DUA by-right, up to 87 DUA by SUP	Capped at 21 DUA by-right, option for SUP for higher density eliminated
R-UMD ("University Medium Density")	max 43 DUA by-right, no option for SUP for higher	No change proposed
R-UHD ("University High Density")	max 64 DUA by-right, up to 87 DUA by SUP	Capped at 64 DUA by-right, option for SUP for higher density eliminated
McIntire/5th Street Residential Corridor	max 21 DUA by-right, up to 43 DUA by SUP	Capped at 21 DUA by-right, option for SUP for higher density eliminated

Also, what about all the other non-residential uses that are currently permitted in residential districts per the residential matrix? Is there a proposed replacement matrix that maintains these uses?

Examples: Houses of worship, temporary outdoor churches, cemetery, Health clinic, private clubs, wireless facilities (antennas, attached facilities, etc.), day care facility, schools (elementary, high school, college) funeral home, library, municipal govt. offices, property management, parking garage/lot, indoor health/sports clubs, parks, utility facilities, utility lines, consumer service business.

If these uses are eliminated from the residential districts this too is a SIGNIFICANT SUBSTANTIVE CHANGE

Section 3.2 Mixed Use Zoning Districts

General comment: eliminating the Commercial Districts category and merging them into the Mixed-Use category is a **substantive change**. There may be some merit to this change by simplifying the regulations, but it merits discussion and careful consideration to avoid

unintended consequences. Also, requiring all residential in these districts to be mixed use when it is not currently required, is a **substantive change** that merits discussion.

General comment: in all districts, retain the use of limiting building heights by feet rather than stories. In all cases, the maximum heights would be effectively reduced by switching from a measurement of feet vs. stories, as described previously, which is a **significant substantive change**.

For discussion during the Comprehensive Plan Review:

- For all mixed-use districts, incentivize affordable housing through increased allowable density (increased height for example), rather than requiring an SUP for density above 43 DUA to require affordable housing contribution.

- Many of the mixed-use corridor districts have such similar restrictions (height, DUA, setbacks, etc.) that they can be combined. Complete a comparison to reduce the number of different mixed-use districts.

- Courtyard and Plaza and Loading Zone info should just go into a general comments section if it is repeated for each district. Should it read off-street loading areas shall be screened from view from public streets?

Sec. 34-XXX General Regulations (1-2): reintroduction of the percentage for mixed use is a **substantive change**. Percentages were intentionally removed from this code section. Revisit with Comprehensive Plan update to determine what the City wants to accomplish with Mixed Use Districts, buildings, projects. Why is (1) 12.5% and (2) is 25%?

(3). **Substantive Change**- If a development meets the overall mixed-use requirements, then we do not feel that each building in the complex needs to be mixed-use (section currently proposes only qualifying for added height in an SUP for each building being mixed-use).

(5) Rewrite this section to encourage courtyards versus only requiring them when a development takes up an entire block. Allow courtyards as a means to vary the front setback requirement, as is demonstrated in Virginia Beach.

Sec. 34-541 (1)(b): If we are moving to a table format, then it is best to just have all information directly in the table versus using one table to refer to another table. Suggested format is confusing and not user friendly. Both building height and streetwalls should be measured in feet for consistency. How is accessible defined regarding courtyards and plazas-- what is the intent here? Why are building types added to the chart? Seems like another layer that is unnecessary and potentially confusing. Consider removing the minimum height of a streetwall for Downtown and the reference to containing exactly 3 stories-- this is problematic for almost any development within the zoning district.

The general regulations section attempt to refine the definition of City Block in the context of courtyards is inappropriate. The concept of a courtyard is primarily an expression of a streetscape objective, and so should be determined by a linear distance along a street frontage, not the area of a lot or assemblage of parcels. If the Traffic engineers' basis is the standard, then a figure equaling the 100,000 SF (2.25 AC) referenced should be the standard.

Section 34-xxx General Regulations

(2) Downtown Extended District:

(2)(b)(vi) residential density: **Substantive change** to only allow the additional density up to 240 DUA by SUP if the building or development is mixed use.

(3) Downtown North District
Streetwall Regulations: new requirement if adjacent to residential: limited to 3 stories max. **Substantive change**
Stepback requirement: currently only required if facade of building faces adjacent low-density residential district. 10 feet back after 3 stories along 70%. Draft: StepB-2, which requires it in all cases. **Substantive change**

(7) Urban Corridor District:

Section (7)(b)(ii) required yards: **Substantive change**: while the setback is the same, the draft deletes important text that provides that "in circumstances where a building will have frontage along more than one (1) primary street, these setbacks shall apply only to the primary street having the highest functional classification rating; the other primary street(s) shall be deemed linking streets for purposes of determining the required setbacks under this section." (see Sec. 34-758(1) in current ordinance)

(8) Central City Corridor District:
Section (8)(b)(2) required yards: **Substantive change**: while the setback is the same, the draft deletes important text that provides that "in circumstances where a building will have frontage along more than one (1) primary street, these setbacks shall apply only to the primary street having the highest functional classification rating; the other primary street(s) shall be deemed linking streets for purposes of determining the required setbacks under this section." (See Sec. 34-778(b)(1) in current ordinance)

Section (8)(b)(vi) Residential Density: current ordinance permits 43 DUA in mixed use building or development, with no option to go higher. Draft provides option to go up to 120 DUA with SUP in mixed-use building or development. This is a **substantive change**, although one that has merit. Note that density for non-mixed use building is 21 DUA by right, up to 120 DUA by SUP, and that is not proposed to change.

(10) South Street District
Section (10)(b)(iii) building height: current ordinance says minimum height of "25 feet containing a minimum of two (2) interior floors." (See Section 34-762(1) of current ordinance). Draft changes this to "with no more than two (2) stories." **Substantive change**

(11) Corner Corridor District: correct "missed-use development" to read "mixed-use development".

Section (11)(b)(ii) required yards: current ordinance requires setback along a linking street as follows: 5 foot minimum, 12-foot maximum. 50% of the area within any setback shall be S-1 landscaped buffer (see Section 34-770(2) of current ordinance). Draft changes this to: "LS-5A, 50% planted as S-1 buffer" which requires 0 foot required along 75% of streetwall, 12-foot max along 25% streetwall." This is a **substantive change**. Query whether this is an error; perhaps LS-7 was intended, which would match the current requirement?

Section (11)(b)(vi) Residential Density: current ordinance permits 43 DUA in mixed use building or development, with no option to go higher. Draft provides option to go up to 120 DUA with SUP in mixed-use building. While there is merit to this change, it is nevertheless a **substantive change**. Note that density for non-mixed use building is 21 DUA by right, up to 120 DUA by SUP, and that is not proposed to change.

(12) B-1:
Section 12(b)(iii) - this adds side and rear setbacks to the B-1 district that do not exist now. This is a **substantive change.**
Side will be Y-8, which is triggered if adjacent to residential district or use, and requires a 1 foot for every 2 feet in height, or 10 foot minimum.
Rear would be Y-1B, which would require 20 feet if adjacent to residential district or use (same changes to B-2, B-3, M1 and EC, apparently)

Section 12(b)(iii) the change in building height of 45 feet to 3 stories max is a **substantive change**. Right now, 45 feet enables a 4-story building.

Section 12(b) (vi) re. Residential density: in the current ordinance there is an option for additional density by SUP up to 87 DUA. The draft proposes to only permit the additional density for a Mixed-Use building or development. That is a **substantive change**.

Section 12(b)(vii) building types allowed: it is not clear that multi-family units are allowed. It references MFD (SRO with SUP). We assume that means that multi-family buildings are allowed by right but it should be clear.

These same comments above generally apply to the B-2 and B-3 districts.

Mixed Use Matrix:

- General commercial, less than 4,000 SF is not allowed in B-1. How is "general commercial" defined? Such a small use, however defined, should be permitted in a B-1 district.
- Residential Treatment facility is currently by-right in B-1, but draft shows it now allowed at all (same comment re. B-2 and B-3)
- Data Centers less than 4,000 SF are currently allowed by right in all commercial districts. Draft would limit it only to the mixed-use districts, and not even allowed by SP in B-1, 2 or 3. This is **substantive change.**
- Similar comment regarding larger data centers: allowed by-right in B-2, B-3, M-1 and IC, yet not at all in new draft
- There are numerous other **substantive changes** to the commercial matrix
- **** General Office would not be allowed in B-1??? It is a by-right use now. This is a **significant substantive change.**

(15) M-I District: no specific comments.

(16) Emmet Street Commercial Corridor:

Section (16)(b)(vi): Residential Density. The current commercial use matrix does not permit residential uses in the ES district, except as part of a mixed-use development per Section 34-458. The draft purports to permit density of 21 DUA or higher for mixed use developments, but then it purports to allow 21 DUA in "all other districts" (meaning not mixed use). However,

Section (vii), building types allowed, lists only mixed use buildings allowed for residential. That creates an inconsistency. Also, allowing up to 21 DUA for non-mixed use developments is a **substantive change**, although it has merit.

(17) Industrial Corridor:

Section (17)(b)(vi) Residential density: current ordinance allows multi-family by-right up to 21 DUA, and up to 64 by SUP, with no requirement that the building or development be mixed-use. The draft provides that the option to request a higher density by SUP is *only* permitted in mixed use buildings or developments. This is a **substantive change**.

Section (17)(b)(vii) Building types allowed: current ordinance allows multi-family by right, current draft only permits mixed use buildings. This is a **substantive change**.

(18) WMW and (19) WME : No specific comments

(20) Cherry Avenue: During or after the Comprehensive Plan, consider rewriting the Cherry Ave district to be better aligned with other similar mixed use districts. Remove the reference to vary the streetwall by 4 inches every 50 feet and the FAR provision. For FAR, do you mean a *maximum* of .5 FAR? As written in the Legal Review, no flexibility is provided.
Is it necessary to prohibit residential on basically every primary street in the City? We would recommend picking a few major streets, and not worrying about the rest. Seems overly restrictive and anti-residential.

Section (20)(b)(vi) Streetwall. Current ordinance streetwall limit is 35 feet (see Sec. 34-658(a). Current draft permits this to increase to 40 feet. This is a **substantive change,** although it has merit.

Section 34-658(b)(1) of the current ordinance contains a provision permitting the Planning Commission to approve a reduction in the requirement for the front setback "to accommodate topographical conditions." This has been deleted in the draft audit, apparently to comply with *Sinclair*. This is a **substantive change** to eliminate this option; we suggest it be available by Council approval of a special exception.

General comment: Section 34-660 "Bonuses, square footage" of the current ordinance appears to have been deleted. This is a **substantive change** if so. This provision allows bonus density in exchange for the provision of amenities such as child care facilities, additional landscaping, training centers, and courtyards/plazas. This provision should be retained.

Uses Permitted: Moving towards a more generalized table of use categories versus being overly specific is a good idea, so long as we are covering all the uses and uses currently allowed aren't removed. The Use matrix needs to stay in its current format-- the proposed format is much more cluttered and difficult to decipher. We also noted that uses have been entirely removed from the matrix such as the allowance for office space in B-1. Just leave AS IS.

Section 3.3 Planned Unit Development Districts

The Legal Review proposes to eliminate the PUD rezonings entirely. PUD's are an important method to design unique solutions to unique sites, an essential zoning tool. The PUD is one of the only opportunities the City currently has to produce creative design and great places that the comprehensive plan contemplates. It is difficult to name a by-right SFD or SFA development that is a newly developed "great place" in the City.

Sec. 34-503 (1): a size or other criteria should be defined if wetland disturbance is to be prohibited. Preserving 5 sq. ft. of low quality wetlands may not be worth creating an inferior urban design. Suggest using the Federal (ACOE) criteria for a wetland mitigation as the threshold.

Sec. 34-516 (c): This "c" is mis-numbered and should be a "b." Subsections (1) through (5) may be duplicative and should be combined. That info is already required in the prelim site plan. The new text in (2) is good in concept, and happens in current practice, but potentially opens Pandora's box. Will the City Engineer require stormwater calculations at this stage, for example? That is currently happening at the preliminary site plan stage. Lisa's comment in 34-517 attempts to address this by specifying that the prelim site plan must be truly schematic for the PUD to work as intended. This is very important.

Section 3.4 Overlay Districts

34-282 (a): There is a new requirement that an applicant for a BAR COA must be the landowner. There is no provision for an owner's representative, agent, or tenant, even if they have the authority to change the building.

34-282 (c) (2): Is it necessary for pre-application conferences to be held for projects over $350k? This number should probably be higher as it would unnecessarily slow down work on single family residences. Perhaps this is at the NDS director's discretion if a project is worth more than $350k. What is the format for a pre-application conference? Is this a work session or a non-binding appearance before the BAR?

34-287 (b)(3): There is currently a requirement that one member should be a licensed contractor OR a landscape architect. Both are highly valuable and should be required in the BAR's composition.

Section 3.5 Generally Applicable Regulations

34-971 (c)(1): Why is the waiver by City Council removed? If potential waivers are removed from the code, then ensure a general catch all waiver section should be added to retain these rights. Create a waiver provision for reduction to required off-street parking standards.

34-971 (c) (2): What section is being referenced? Keep language as is to avoid requiring additional parking for a change of use. Language as proposed seems to require more parking on already developed parcels, creating a suburban standard for Charlottesville.

34-972 (b)(2): No driveway within 3 feet of a property line. This now applies to commercial districts. Why? In residential districts, this requirement prohibits shared driveways on a property line and minimizing pavement.

34-972 (b)(4): Why should residential driveways be 20 feet wide minimum?

34-972(b)(6): This is an improvement. However, the property width should be larger than 30 feet. Most lots in 10th and Page are about 40 feet wide yet still too small for driveways. This requirement should also account for the average setback of houses along the street or the availability of on-street parking. There is (or was) a variance for a house's setback if the existing properties on the block are closer to the street. However, that variance is void if a driveway is required. The few infill projects in the 10th and Page neighborhood negatively impact their blocks as the properties become all driveway in the front yard.

34-973 (b)(6): Consider eliminating this requirement. So long as spaces are provided within a certain distance of the use, it shouldn't matter whether the spaces are on-site or not.

34-983 (a): Why are we requiring off-street loading areas and parking spaces for loading vehicles for every non-residential use? This provision seems to be pushing a land consumptive suburban standard that is not necessary for most uses. Allow greater flexibility. As we develop, continue to ensure that adequate on-street loading areas are provided.

34-985 (b)(5): Why limit this reduction to certain districts? Shouldn't we promote this reduction for all districts?

34-1003 (f)(2): Should the details of lumen be moved to the SDM? It seems like this could change as lighting technology evolves.

34-1029 (b)(13): How are we defining vehicle or trailer sign? This section seems to prohibit anyone from advertising on their vehicle within the City. This section would also prohibit any food truck or vendors from having signage.

34-1101 (3): What about a church spire or a clock tower? Allow for waiver process of 34-1101 for unique circumstances.

34-1101 (4): Why is this provision changing again when it was just amended a year ago? Are enclosed and occupiable meant to specifically describe residential space? **Substantive change**-This provision goes too far and will be interpreted to disallow any usage of rooftop areas.

34-xxxx (6)(a): Note: This section was added to the code to allow for the encroachment of low decks into the required yard areas as noted.

34-xxxx (6)(b): Note: This section was written specifically to allow front porches that encroach into the required yard. Seems fine to substitute porch for appurtenance.

34-1121: Site Triangle. The addition of (b)(4) "When zoning district regulations require a building to be placed within such area." and (5) "with the approval of the city's traffic engineer…" vastly improve this regulation. We should verify that there is no conflict in the SADM that would void these exceptions.

We would encourage leaving parking design details in the ordinance unless there are contradictory provisions contained in the SDM.

Sec. 34-985 rules for computing off-street parking spaces could reasonably be adjusted to address gross versus net floor area for some/many uses. Depending on the definition of "net", many areas that typically comprise the net floor area do not contribute to parking demand (such as mechanical rooms, elevators and stairs, storage rooms, etc.).

Sec. 34-1120 subsection dealing with modifications or waivers to critical slopes should consider adding contract purchaser and perhaps long-term lessee as eligible applicants.

Section 4.0 Improvements Required for Developments

Generally, an accepted plant list, addressing various categories of required plantings, should be made available to simplify planning and ensure appropriate plants are selected for the intended purpose and to increase the likelihood that plants will survive and thrive in the various locations and conditions required. Plants not on the list should be allowed where proposed by licensed landscape architects, landscape designers and other professionals familiar with plant materials and applications.

Sec. 34-863. Size of Plantings. Why not include shrub size in gallons as well as inches? Most shrubs are sold in 1-3 gallon sizes.

Sec. 34-864. Bonding Requirements

(b)(3) – requires replacement of landscape material based on whatever the current NDS list is instead of the original landscape plan. Why not allow both? If not, then the landowner should be allowed to replace from the original landscape plan.

Sec. 34-864, perhaps retitling "Surety requirements" and adding letter of credit as an acceptable form of surety. Subsection (1) should add a landscape architect to the list of acceptable entities to provide the performance bond (surety) estimate. Sub-section (3) should address the circumstance where the 60-day period following a water emergency lands in a time unfavorable for landscape planting, and allow for an appropriate extension of time to perform.

Sec. 34-866,

- subsection (a) is too vague – "unnecessary destruction of existing trees or other natural landscape features". Unique site conditions, sub-surface utility needs, grading, survivability of "lonesome pines" (versus excessive cost to remove later once stressed and/or dead) and other factors can all necessitate the removal. Who is to decide what is necessary if all other provisions of the ordinance are satisfied?
- Subsection (b) says each development shall preserve existing trees of 8-inch caliper or larger, versus the developer shall demonstrate reasonable efforts. This section may make it difficult to remove any trees for development purposes.
- Sub-section (c) is overly broad and must be limited in some way. If the intent is only tree protection fencing, then so state. If it is possible that tree wells, irrigation and aeration or other urban forestry tricks and techniques are contemplated, that can be far reaching and costly, and not typical of an E&S plan.

- Current code states "the planning commission or the director shall refuse to approve any site plan that proposes unnecessary destruction of trees or other natural features." BUT…
- Sec. 34-869 (a) (3) gave NDS ability to waive requirements of this section based on "unnecessary or unreasonable hardship to the developer." This is being DELETED.
- This will now leave landowners with no way to avoid being required to save every tree, shrub, and weed on a site because it is 'necessary'.

Sec. 34-867,

- subsection (2) perhaps suggest replacing shape with "spread at maturity". In subsection (4), should this reference the standards and specifications of the adopted Streets that Work document?
- (2) Site plan shall show location, size, type, and shape? New wording adds "with sufficient detail to demonstrate …that minimum landscape requirements have been met. Also adds "unless greater detail is required." This just seems to potential require MORE, and is not just editing.
- (3) Plant schedule includes "or gallon size" but in Sec 34-863 above this is not permitted.

34-868(c) Update per Streets that work.

34-868(d) We have existing conditions where tall street trees coexist with power lines. High Street would not be the same without its canopy trees, which are carefully pruned around the lines. We do not want anything in the code to prevent us from at least replacing what we have.

Sec. 34-869,

- deleted subsection (3), City attorney states that NDS Director and staff cannot approve waivers of ordinance requirements. It's done all the time, across the Commonwealth, and particularly where the standards for, and latitude allowed, are specified in the ordinance. The two subsections in this section alternately refer to 10-year and 20-year canopies. Why not refer uniformly to canopy at maturity, and include that specification for each plant species in the published plant list?

Tree cover requirements.

- (b)(2) tree cover is to be preserved or planted to achieve ten percent cover for density of 21 units per acre or more. Where you have zero lot lines and are seeking high density, is 10% too high. Do the Flats and The Uncommon have this?
- (b)(5) This answers my question. Old language would have subtracted building footprint and driveway access from gross site area before calculating tree coverage. This "edit" now INCLUDES building footprint. This is a BIG change and will certainly reduce density permitted by right. Also, the further deletions at the end of this paragraph further eliminate current "deduction" areas such as flood plains, wetlands, or lands for public use.
- How can we legally build back in some flexibility on this issue?

34-869(b): Why is the canopy coverage date different depending on zone - 10 years in R and B districts vs 20 years in all others?

34-869 (b)(5): Does this include the parking modified areas, or only parking exempt? Add waiver option back in, even if it must require City Council approval. Director should be able to process this if reasonably specific.

This should be revised to reflect new West Main zoning designations.
34-869(e): If flexibility will be allowed in reviewing plantings to permit those not on a master list (as it should be - there are plenty of good plants and trees that might not make it onto a list), a list of prohibited plantings will still be helpful. Developers won't waste their time asking permission to plant them, and city staff will know right away not to approve them.

Sec. 34-870

- (a) (1) and (2) – Exception for requiring trees in "areas subject to zero (0) setback requirements or "areas where the maximum permitted building setback is fewer than ten feet" is being ELIMINATED. How can you require trees along a street with zero setback? Ensure that language does still provide for exemptions.
- (c) (4): Eliminate this section or modify. Strict spacing requirements are not always applicable, and this is not regularly enforced.
- (d) prohibits planting of trees inside the right-of-way while the Streets that Work plan includes curbside buffer zone tree planting requirements for most, if not all, of the street typologies. Revise to match STW if STW is now generally accepted as good planning practice.

Sec. 34-873 subsection (e) states that parking lot buffers shall be designed and constructed with materials that will filter stormwater runoff from paved surfaces. Some better definition of what is intended is warranted or some recognition should be expressed that parking areas are most often designed in the broader context of an overall site stormwater management program.

Sec. 34-874 subsection (a) refers to a concrete chock, which we think is meant to refer to a wheel stop, which might be more understandable. Alternative, durable materials to concrete are now available, and can include permanent coloration for greater visibility, and so the specified construction material should be deleted. Subsection (b) would seem to unintentionally omit curbing as an effective means of retaining cars completely within a parking area.

Sec. 34-875. Multifamily "and mixed-use" developments – Landscaping requirements.
Substantive change--scope of this section has now been enlarged to include mixed-use and all multifamily

(a) This used to apply to just R-3. Now it will apply to R-UMD and R-UHD. This will be an additional hardship for high-density. We don't know what the recreation SF is, but adding 25% of that to landscaping might be a huge challenge. Why is the landscape requirement needed in all zoning districts? What about mixed-use downtown or in 0 setback areas?

(b) appears to create an additive landscaping requirement that may be difficult to achieve. What is the intent here? If it is to ensure that the greater of yard landscaping or buffer requirement plantings are provided, then so state.

34-896 (a) & (b):

- Until the SADM is updated, maintain some discretionary review of entrances and exits of developments - within reason. Each site has unique conditions, and the SADM is a poor tool for urban planning.

- (a) Access points from public streets used to "may be" designated by the director. Now they "shall be in accordance with the Standards and Design Manual." What the heck is that? How is this changing "for a development of 50 units or more, reasonably direct vehicular access shall be provided from all residential units to 2 public streets" which is being deleted?
- (d) Travel lanes to adjacent lots "may be required" is now "shall be provided in accordance with engineering and safety requirements." What are these and who determines them?
- (d) appears to suggest a shared driveway requirement between adjacent lots at the discretion of someone on Staff. Is this intended to provide for stubbed out inter-parcel connection? Or a driveway, generally perpendicular to the right-of-way, along or splitting the common property line between two parcels. This needs more discussion and better definition.
- (f) Developments greater than 43 DUA "must have access on a public collector or arterial street, or have access to a collector or arterial street within 200 feet along a 56 foot right of way developed to city street standards." This is now being changed to include developments containing greater than 21 DUA.
- Legal explanation is "because 21 DUA seems to be the default base density referenced in most of the city's zoning districts." Maybe that is an outdated concept or assumption.

34-896(f): For DUA over 21, is it really necessary that they are within 200 feet of a 60' wide ROW? What is the reason for this requirement? Is this easy to achieve throughout town?

34-897

- Sidewalks requirements built "to the reasonable satisfaction of the director or commission…. that the same are reasonably necessary to protect the public health, safety and welfare and that the need is therefore substantially generated by the proposed development." This language that is beneficial to a landowner is being eliminated. It is important to make certain that landowners have a protection against "unreasonable" and "unnecessary."
- (e)(1): Is this requiring that for projects with a public street on the back and front that there be a sidewalk connecting the two rights of way? What does staff's addition mean precisely? Is it just saying that a pedestrian pathway must follow the right of way to connect lots (a public sidewalk), or are rear lots also part of this?
- (e)(4): Need to verify what widths are specified in the SADM and whether that is overkill for internal circulation.
- (f): Why is the Cherry Ave district the only one with specific sidewalk width requirements? Are these applicable elsewhere?

34-912:

- reverse staff's change "within every development". Hydrants and distribution systems should be provided <u>for</u> every development. Theoretically, this means that those existing on adjacent properties could suffice. We are assuming this is not necessarily referring to FDCs or PIVs.
- Hydrant locations and fire flow requirements are now determined by insurance (ISO) standards. The new code language adds "or the Standards and Design Manual, whichever requirements are more strict." What was wrong with the nationally recognized ISO standards?

Sec. 34-913. Drainage; stormwater management; soil erosion.
Substantive change- (5) "In cases where a hillside must be graded for construction, suitable protection for the hillside must be provided for slopes in excess of 10%. Such protection shall be in the form of terracing, retaining walls, planting of suitable vegetation or a combination of the above in order to avoid excessive runoff and soil erosion."

This is all NEW language. It will be costly. Also, exactly what determines exactly what methods have to be used? This is not just "EDITING"

34-931 (k): Limbed-up trees should also be permitted as with other sight triangles within the city.

34-933(a): Staff's question is a good one. If veterinary clinics are soundproofed, why are they not allowed in more districts?

34-934(c): The requirement for multiple exit lanes should be considered on a case by case basis. This is not something that affects street function but just the function of the private garage.

34-935(3): **Substantive change**- Staff's revision to include all zoning districts means that deliveries are still constrained to 8am-6pm within ALL zoning districts. This is probably a bad idea within commercial districts.

34-935 (8): **Substantive change**- Again, the inclusion of all zoning districts makes this on-site parking requirement seem excessive.

34-390-(1): Why is the minimum pavement width for townhouse access 24ft. Can it be less if one-way? Is this a fire truck concern?

34-366 (a)(3): What is the purpose of requiring recreational space in residential developments? Isn't that the point of living in a city - recreation is (should be) nearby.

Sec. 34-369 – Non-residential uses.
Current code says retail stores and consumer service businesses located in a multifamily project of at least 72 dwelling units "shall constitute permitted ancillary uses."

- (a) Suggested revised code now says "Non-residential retail or service uses, <u>where permitted</u>, are subject to the following:" Are these uses still constituted as permitted ancillary uses."
- (a)(2): Why can't non-residential uses exist above residential ones? Does this really matter?
- (a)(3) – such stores can have a "non-illuminated identification sign: of not more than 2 SF on the flat surface of the façade of the building. This is a tiny sign area. It is unrealistic and needs to be increased to something reasonable for that business to market and advertise and survive.
- (b)(2): Why do we care if the property management office looks or doesn't look like one of the townhouses?

34-xxx Affordable Dwelling Units (a): This paragraph is confusing. Nowhere else in the code do we use FAR. Maybe provide a formula for calculating the affordable dwellings to go with this paragraph.

Section 5.0 Definitions

Change of Use: "substantially differs" is not clear.

Driveway: What is the difference between a private road and a driveway? Each should be defined to avoid confusion.

Dwelling Unit: Defined as containing one complete set of living accommodations suitable for residential occupancy. Requirements for a bathroom and kitchen have been deleted. What defines a "complete set of living accommodations"?

Dwelling, single family detached: Does this mean that a SFD dwelling can be attached to a commercial building without dwelling units? Not sure if that's necessarily a problem, but is that the intention?

Dwelling, SRO: Defining it as having a single room is fuzzy. "Room" should be also defined to clarify that kitchens and bathrooms do not count or this definition should just be based on square footage.

Grade: In a case where a building's walls are parallel to and not more than fifteen feet from a public sidewalk **or right of way**, the grade **shall** (as opposed to "may") be measured at the sidewalk or edge of right of way. This definition needs to be tight to prevent confusion.

Grade refers to "…finished ground level adjoining a building…", but it is not clear if this is pre-development or post-development ground.

Should add a definition of gross floor area and net floor area and gross site area. Net floor area is commonly used as a basis for computing parking for certain uses

The critical slope definition refers to waterway, but waterway is not defined in Zoning Ordinance. Is the "and" before subsection (iv) intentional or do they mean "or". As written, all four conditions must apply for the definition of a critical slope to be met, correct?

Would greater clarity in the definition of "Frontage" be helpful in instances where a property enjoys multiple contiguous frontages? At what point does one frontage end and the adjacent, contiguous frontage begin?

Consider expanding the definition of "Owner" to include holders of long term leases, however that might be defined (min. 10, 25 years?)

Principal building enjoys two definitions in the same section – consolidate to avoid confusion going forward.

Building Height: we have already identified as a significant issue when converting heights in feet to heights in stories. What public purpose is advanced by making this conversion? Some

districts might make sense with stories (low density single family, townhome, etc.) while others (mixed use districts) certainly do not. If the basis for building height limitations in any zoning ordinance is regulation of air and light to adjoining properties, massing relationships and/or fire protection standards based on available or required equipment, then using stories is counter-productive, unless a story is further defined to have a maximum height, in which case the circular reasoning becomes meaningless. And it becomes confused when streetwall requirements continue to be expressed in terms of feet, not stories. Moreover, the recent efforts to refine building height definition in the West Main Street ordinance changes specifically mention height in terms of maximum feet, not stories.

Occupancy, residential: This definition is incredibly confusing and we question whether it is legally enforceable. Look for other definitions, as necessary.