

The City of Oakland hosted its third Residential Technical Advisory Group (TAG) meeting on Wednesday, October 7, 2009 from 7:00 p.m. to 9:00 p.m. in City Hall, Hearing Room 3 to solicit feedback from TAG members and members of the general public. City staff presented proposed development standards for the zones for the Urban Residential General Plan designation, permitted uses in all of the residential zones, and preliminary mapping of the proposed RM-4 zone and Residential/Commercial (RC) overlay zone. The following is a summary of this meeting.

Excluding City staff, approximately sixteen people attended this meeting including 12 Residential TAG members; the remaining attendees consisted of Commercial TAG members and other members of the general public. The meeting started promptly at 7:00 p.m. Attendees were given the following meeting materials (which can be downloaded from the Citywide Zoning Update website (www.oaklandnet.com/zoningupdate under the appropriate meeting date in the “Schedule+Meetings” section.):

1. Agenda
2. Comparison of Existing and Proposed Development Standards for Urban Residential General Plan Classification
3. Comparison of *Existing* Permitted Activities and *Proposed* Permitted Activities
4. Permitted Activities for all Residential Zones
5. Residential Areas within Urban Residential General Plan Classification (Map)
6. Urban Residential General Plan Classification and Existing Zones (Map)

Residential TAG members and City Staff oriented themselves at the tables while other members of the public observed the meeting from the additional seating organized behind the tables.

I. Introduction

Planning staff welcomed all participants, presented the meeting’s agenda and the Zoning Update’s latest schedule.¹

II. Summary of proposed developments standards for Urban Residential zones

Staff began the discussion by introducing the five proposed zones for areas designated as Urban Residential in the General Plan ranging from RU-1 through RU-5. Zones RU-1 through RU-3 would be applied to Urban Residential areas that consist generally of established residential neighborhoods that are not located along the City’s major corridors, and were the focus of the Residential TAG. RU-4 and RU-5 would only be applied to Urban Residential areas located along the City’s major corridors, and were the focus of the Commercial TAG. A major difference between these two categories of zones is the proposed method of regulating height and bulk. Zones RU-1 through RU-3 would regulate height and bulk in the typical manner with these regulations being set for each base zone. In contrast, height and bulk is proposed to be regulated along the City’s major corridors (in RU-4 and RU-5 and in all commercial corridor zones) by a separate height/intensity map that is not linked to the base zone but rather by local context. A separate height/intensity map was also used in the recently adopted Central Business District zones.

- Can you clarify how height will be tackled for the Commercial areas?

Staff response: The proposal is to regulate height in Commercial and Urban Residential areas located along the City’s major corridors with a separate map that defines maximum height/intensity based on local context and not tied to the base zone.

- Have you taken commercial zoning out on Foothill Blvd.

Staff response: The portions of Foothill designated as Urban Residential is proposed to be rezoned to RU-4 or RU-5 in some locations.

- There’s a large hole on MacArthur BART. Why?

¹ The schedule of all upcoming meetings for the Zoning Update is available at the project website at: www.oaklandnet.com/zoningupdate/

Staff response: It is not shown on the map because it has a commercial General Plan designation and we are only discussing residential zoning tonight. The MacArthur BART station area is designated by the General Plan as Neighborhood Center and is currently zoned as an S-15 Transit Oriented Development Zone. Tonight we are discussing zones for areas designated by the General Plan as Urban Residential.

- If you are separating use from FAR and height [re: separate height/intensity map for zones RU-4 and RU-5], then why not do the same for all zones and do a form-based code?

Staff response: Separating the regulation of FAR and height is only being proposed for the corridor zones at this time; you are welcome to attend the Commercial TAG meetings to suggest that.

Staff response: Staff is in the process of updating the existing design guidelines for 1- and 2-unit residences and developing new design guidelines for commercial corridors and multi-family buildings. At our preliminary internal staff discussions, we have discussed potentially including some form-based code components as part of the design guidelines.

- What is the timing for the design guidelines?

Staff response: Staff is currently working on developing a work plan for public process that will probably start sometime next year after the draft zoning text and mapping for the base residential and commercial zones are presented.

- How close are these to the General Plan Guidelines? I feel there is a huge jump from R-50 to RU-5 near upper Telegraph Avenue along Highway 24. I thought it is "Maintain and Enhance?"

Staff response: Telegraph Avenue is not mapped as R-50 currently. The height map will address concerns over density/intensity.

- Can you explain what form-based design guidelines are?

Staff response: Form-based codes are an alternative to conventional zoning. Form-based coding tries to guide architects and developers towards a specific end product. The regulations and standards in Form-based codes, presented in both diagrams and words, are keyed to a regulating plan that designates the appropriate form and scale (and therefore, character) of development rather than only distinctions in land-use types.

- To help better understand form-based coding, I suggest reading a book written by a friend and colleague of mine, titled *Formed-Based Codes* by Daniel and Karen Parolek and Paul Crawford. It provides greater predictability. It provides certainty and is clearer about the content of the code. It makes for a less inexact process. The architect, developer and public will know what will be the end product. It puts up front the requirements rather than zoning where there are loopholes.
- You mentioned a 15 x 15 square foot backyard. I believe at the present moment, Open Space is not allowed to be on the roof. Do you propose to change that? Also, if you have a 15-foot deep by whatever backyard next to a 40-foot tall building, that open space will not be a very desirable space. We should allow the Open Space requirement to be higher and on the roof, etc.
- I think that the proposals for the minimum setbacks are a little tough on the neighbors.

- I'm not suggesting that. I think Open Space should be allowed on top of the building not just in the backyard. I can see it for air and space issues but not for creating a lively urban space. It doesn't make for good living space to have tiny setbacks.
- I do not understand the rationale for reducing the fifteen foot [front] setback to ten foot setback [for RU-1]. Where are context considerations for RU-1? Setbacks should reflect context. If everything else is 15', it should be 15'. Don't arbitrarily change it from 15' to 10'.
- You can average the existing setback on the street.
- Maybe design guidelines can address adjusting for context.
- As defined in the book [*Form-Based Codes*], you should calibrate codes according to street context.
- Every neighborhood in RU-1 is different (i.e. some buildings are from 1870 while others are from the 1970s). You need to look at it neighborhood by neighborhood.
- I believe the previous comment hints on the fact that zoning is a blunt concept (i.e. like an airplane seat; it is assumed that one size fits all, when in fact it doesn't). Zoning is a method of categorizing large portions of land and saying they are identical. It will get us cookie-cutter developments. You need to reflect existing problems while at the same time, not treat every place like it's identical. We need to do better than Euclidean zoning.

Staff response: That's the challenge that we're trying to effectively manage –to ensure a level of predictability so both neighbors and developers know what to expect at the outset, and yet to also have a little flexibility and/or discretion to address special circumstances.

- I think it might be a good idea to keep it [minimum setback] at 15 feet and establish criteria to allow lower setbacks instead of just rolling them down to 10 feet. You should only get the lower setback if the context supports it.
- I like the idea of expanding the rear setback in the RU-3 to 15 feet. R-70's setback of 10 feet has never worked, so I like the change.
- I've previously worked with the City in developing Design Guidelines and they do require context sensitivity. How will zoning relate to the design guidelines and review? Maybe we can just add an "asterisk" for this and say it will be addressed with design guidelines.
- What's our goal? Do we want every project to be discretionary? Or, do we want rules laid out and you have the liberty to build what you want as long as it follows the rules? Predictability is an issue. If you follow the rules, you get to do it. If you want to bend the rules, you have to go through a process. With this method, only projects with CUP nuances will be discretionary.
- I like the idea of predictability. It will encourage better looking buildings than what we see now.
- I can speak from experience that predictability helps neighbors get along. It makes for friendlier communities and fewer battles.
- The Commercial team is going out talking to neighborhoods. Is the Residential team going out? I predict trouble in Adams Point. If you tell them that they are upzoning, there will be problems.

Staff response: Adams Point, in particular, is proposed to be zoned as RU-2 which is similar to its existing zoning R-60. We are not upzoning Adams Point.

- I'm curious about neighborhood discussion.

Staff response: We do plan to talk to neighborhoods once we have worked out draft mapping proposals. We are also planning to hold another set of community meetings in the spring to present draft mapping proposals.

- I applaud 60 foot height limits because that shows that Staff is working to make the Building Code and Planning Code consistent.
- You haven't shown us how many R-70 zones there are and how many parcels are developable for high-rise developments such as 90' buildings. I think you should test some sites. I don't want to see 60' buildings where they won't fit.

Staff response: Yes, we intend on testing a number of sites.

- You should test how many realistically can be zoned for that capacity. And what is the potential to buy up lots and merge them? Some people will want to merge lots to build taller buildings.
- It would be helpful to have a map of existing land uses. Have you done it? We've been told a map as such exists from the late 1990s (supposedly in Poplar Warehouse). I know that the 1981 land use map can be found, but what is the status of the 1998 map?

Staff response: We can provide existing land use information, but there's always going to be caveats.

Staff response: The 1998 maps were done with Prismacolor pencils and there's a total of 12 large sheets.

- Can anyone go into the Poplar storage?
- In many parts of Oakland, there haven't been many changes in thirty years. The 1981 map may still be accurate.
- We need better standards for what constitutes private and public Open Space. Balconies that serve as entrances to the unit should not be counted.
- I agree. We need to revisit Open Space.
- Will this take the place of the Open Space standards section of the Code?

Staff response: No.

III. Summary of proposed permitted uses in all of the residential zones

Staff began the discussion about permitted and conditionally permitted uses in all of the residential zones. Staff mentioned that commercial uses are proposed to be prohibited in the Hillside Residential Zones (as they are today), and that limited commercial uses would be allowed in existing nonresidential facilities on the ground floor in the Detached Residential, Mixed Housing and Urban Residential (RU-1, RU-2 and RU-3 only) Zones. Staff also introduced the concept of a Residential/Commercial overlay zone that was being introduced for the RM-3 and RM-4 zones, which when applied, would also allow for the establishment of a limited range of new commercial uses and nonresidential facilities. As a preliminary proposal, staff indicated that areas intended to be mapped with the RC overlay zone consisted of areas, mostly along secondary corridors that already had

concentrations of existing, viable commercial uses; many of these areas are mapped with commercial zones today. The following questions and comments were received on the proposals presented:

- A lot of these buildings with existing commercial facilities were built a long time ago. Why are we saying 2009? Majority of the photos you have displayed are older commercial spaces in residential areas. Do you have any recent examples of existing commercial facilities that were recently built?

Staff response: The reason the reference year is 2009 is to distinguish between nonresidential facilities built before (considered “existing”) and after the potential date this zoning update will be adopted. The reference date should probably actually reference 2010 because that is the more likely adoption date.

- Home occupations seems like a relevant issue for discussion right now. They are viable and prevalent activities. Right now the regulations do not allow employees or walk-in trade. I believe it should change and include employees.

Staff response: Non-residential facilities would include live/work and we would allow some commercial uses in these spaces. You can have employees in live-work facilities.

- In El Cerrito they’re hosting a huge event “Come learn how to have a home-based business.” El Cerrito is confronting home-based businesses. Oakland is missing out on a lot of business tax revenue.

Staff response: Our current Home Occupation regulations are quite liberal. One can do any home-based work (i.e. internet website that sells merchandise as long as the home facility is not the warehouse that stores the merchandise; beauty shops as long as there is not more than two hair dryers). We already do collect business taxes. The only time employees are allowed is if they are medical assistants. It is illegal for there to be an employee if he/she does not currently reside in the home facility. We do allow architects, real estate brokers, etc. We just don’t want retail. There’s been lots of internal discussion about home-based occupations. Enforcement issues are the major problem.

- I’m writing a book as we speak about Home-Based Occupations. I agree that regulations should prohibit walk-in trade; however, I believe that two employees are okay as well as clients by appointment. It seems like we’ve equated home occupation with live/work. Where’s the distinction?

Staff response: Staff has spent a considerable amount of time addressing this issue.

- As far as I know, the Code is silent on the question of what kinds of work you can and cannot have in home occupation. You are allowing a big change by saying I can use a former storefront for business.

Staff response: A lot of live/work units are former commercial storefronts.

- What if you have an apartment on top and want a couple of employees on the ground floor? What is great is that there isn’t a regulation for a minimum or maximum percentage of floor area. I love that Oakland doesn’t specify a maximum percent of floor area that can be commercial. Keep it that way.
- So all of the commercial facilities are existing facilities in residential zones? So, if you don’t have any existing commercial facilities now, then you won’t have any later?

Staff response: Correct. Except in areas with the Residential/Commercial overlay zone, commercial uses are prohibited except in existing nonresidential facilities built prior to the date when new residential zoning is adopted and goes into effect.

- What about convenience markets? Does that include alcoholic beverage sales?

Staff response: You wouldn't be able to do a convenience market.

- How do you deal with space that was commercial but went to residential? Can you convert it back to commercial use?

Staff response: Yes, if you can prove that it was originally built as a nonresidential facility.

- What about the notion of flex houses? In New York, sometimes the ground floor is used as residential and sometimes it's used as commercial. We don't want to have to go to the Planning Department every time the economy changes. We should implement flexible regulations that respond to the present and future economic situations.
- I am wary of the impacts of an Overlay Zone that allows more commercial when Oakland has lots of commercial zones that aren't being used. Foothill and E. 14th aren't built up.
- In response to the comment in support of allowing employees to work at a home-based occupation, I'd like to say that they are disruptive. It's a pain in the neck just to have a business next door, let alone to have it add more employees. I'm speaking from experience of living next door to one.
- I agree they can be an issue, especially odors, noises and other nuisances, but they can be managed with time-limited use permits for example.
- Home occupations can be a way to reduce trips and vehicle miles traveled, but as soon as you bring people in (i.e. employees), you lose that benefit.
- Sometimes home occupations grow. We should have a percentage cap on how much of a residence can be used for commercial because it eats away potential housing and bedrooms.

IV. Summary of proposed mapping for RM-4 and Residential-Commercial (RC) Overlay Zone

Staff distributed the Map of the Residential-Commercial Overlay Zone and RM-4 Zone, and briefly highlighted the major concepts and plan areas. The example of High Street was presented. Some R-50 will be zoned to place the R/C Overlay on this.

- Be careful where you put the Residential-Commercial Overlay in residential areas.

Staff response: We did field studies at all of the RM-4 proposals.

- The RM-4 proposals look fine to me; however I worry about Claremont and Telegraph, but I know others will oppose me.
- I'm confused, what are the RM-4 proposals? From what I see, I'm not impressed with your designation of my neighborhood. It should be RM-2 for Piedmont Avenue. I'm not happy with it and I know my neighbors will not agree with RM-4. You may be reducing what the map says is the currently zoning of the neighborhood (R-70), but you're proposed zoning does not reflect what is actually on the ground.

Staff response: This mapping that we are showing today of RM-4 is a first pass based on the General Plan and the existing zoning. Lines on the map may not look like this at the end of the process; we're going to be doing a more fine-grained level of analysis that includes more

field work. That level of detailed mapping you're looking for is not yet done. We will get to this later after we've reached consensus on the zoning framework, the proposed uses and development standards—which is not to say we're all going to agree in the end.

- The Commercial team is showing areas of primary and secondary importance. Are you mapping the APIs and ASIs and using those to determine density? Can we see it?

Staff response: The presence of API's and ASIs are part of the mapping criteria.

- I'd like to endorse the CR Overlay. The mapping looks good to me. A lot of Downtown spaces are sitting empty. We don't want just opaque glass fronts. I think we should allow more flexible uses in storefronts.
- So you are turning the red areas [on the map] that are commercial with cross hatching to RM-4/RC Overlay to permit more commercial uses?

Staff response: Yes that is correct.

- When can I give you my comments on this map? I have a list of areas of concern that are zoned too high:
 1. Between Telegraph and I-980 from Merrimac St. to MacArthur Bl.
 2. Between Telegraph/Shattuck Aves. And I-980 from 41st St. to 51st St.
 3. Southern portion of Haddon Hill (along streets like Newton and Lester Ave); parts of this area are now zoned R-40 and are mostly one-family houses)
 4. Portions of the area bounded by 3rd and 5th Aves. And East 15th and East 17th Sts. (including both sides of those streets)
 5. Area bounded by Brush, Market, 13th and 11th streets.

Staff response: We'll take a look at those areas as we proceed further developing the proposed citywide mapping. We encourage everyone to send in their comments.

- When will we see the meeting minutes?

Staff response: Per our usual practice, we will be providing a summary of this meeting to all TAG members.

- The Commercial team is talking about *minimum* heights of 35 feet on corridors. I don't like the idea of a minimum of 3-story heights along corridors. I question it because it forces a property owner to build more than 2 stories. Are we sentencing ourselves to no 2-story buildings and parking lots instead if a property owner decides he/she doesn't want to build a 3-story building for whatever reason? I'd rather have a 2-story building than nothing.

Staff response: We're looking to the future of the City; once a new building gets built – let's say a 2-story building—it's likely going to be there for the long haul.

- I've been involved with reviewing projects along College Avenue. There are lots of small scale parcels, 3,000 square feet or less. One issue was that the first story was not tall enough. You need a 15' first floor minimum.
- I didn't see much on pitched roof vs. flat roofs in the prior meeting notes. What is the resolution? Where is the height for RU zones?

Staff response: The discussion on pitched roofs vs. flat roofs is still underway.

V. Conclusion/Next steps

Staff concluded with the project's upcoming schedule:

- Landmarks Preservation Advisory Board (LPAB) on November 9th
- Community Workshops on November 7th and 12th to present draft preliminary proposals on residential and commercial zoning
- 5th and final TAG meeting in early December.

TAG members were encouraged to send in their comments via email (preferred) or by regular mail by Friday, October 30th and the meeting was adjourned.