

REPORT TO THE CITY PLANNING COMMISSION

FREQUENTLY-HEARD ZAP TOPICS

(Discussion questions have been added to help CPC members with their discussion. The questions are for facilitating conversation and are not intended to force an answer from the CPC. Additionally, edits have been tracked for the section on Stormwater because an error was discovered.)

ADU's AND DUPLEXES IN THE LOW-DENSITY RESIDENTIAL DISTRICT

Comments Summary: Many comments were received about allowing accessory/subordinate dwellings in the Low-Density Residential District (LDR), for the purposes of aging in place, affordable housing and wealth building. This was also a popular issue during the preparation of *Rochester 2034*. On the other side of the issue, many people have concerns about the impact of these additional dwelling units on the character of low-density residential neighborhoods, especially with respect to overcrowding.

Staff Response: After hearing both sides of this issue during the preparation of *Rochester 2034*, it was apparent that the plan needed to provide direction for moving forward, especially with respect to the future of zoning alignment. The plan concluded: "Over time, if Rochester's population increases, the City should consider additional affordability strategies that increase housing options, such as allowing one extra (subordinate) unit in this Character Area [Low-Density Residential]." At that time, the City acknowledged that, unlike high-market cities around the country, Rochester still has vacant developable land and a reasonable housing market so advancing this controversial housing policy was not immediately necessary. The draft Zoning map also significantly increases the amount of area covered by Medium Density Residential (MDR, akin to R-2), which would allow these units as of right. That is the direction being taken currently for the ZAP.

It is important to note, however, that the existing code does not, and the proposed code will not, limit the number of single-family homes on a single lot as long as the yard, space, and bulk requirements are met. If those requirements are not met, then a property owner has the option of seeking an Area Variance from the Zoning Board of Appeals. There is a path for seeking an approval for a second dwelling on a property.

Secondly, if an "in-law apartment" is needed in the LDR, it can be achieved by reconfiguring or building an addition to the principal dwelling unit as long as the entrances are shared and the dwelling still operate as a single-family home. City code does not prohibit a second kitchen in a single-family home as long as it does not ultimately operate as a two-family home.

Lastly, the proposed code will eliminate the current provisions of the Prohibited Variance, allowing property owners who are struggling financially the opportunity to apply for a variance for an additional unit on a property.

Discussion Question(s):

1. Do you support the *Rochester 2034* direction: "Over time, if Rochester's population increases, the City should consider additional affordability strategies that increase housing options, such as allowing one extra (subordinate) unit in this Character Area [Low-Density Residential]."

2. If not, under what circumstances would you propose the regulations allow Accessory Dwelling Units?

CPC Response:

LEGALIZATION OF THREE+ DWELLING UNITS IN LDR

Comment Summary: There were comments that if the proposed Code will provide an exemption to built-as and legally converted duplexes in LDR from the abandonment and destruction provisions of the nonconformity regulations, then all other nonconforming residential uses should also be exempt. Mortgage financing can be impeded when a lender sees that the nonconformity provisions of the Zoning Code do not allow the reconstruction of a building if it is destroyed. Cash sales are required when mortgages are denied which can inhibit reinvestment and limit potential owner occupants from purchasing these properties.

Staff Response: Staff discussed the counter argument that non-conforming multi-families in converted buildings in LDR may have a greater adverse impact, and the general goal of the Code is that “(t)he continued existence of certain nonconformities may be inconsistent with the Comprehensive Plan and thus the gradual elimination of such nonconformities is often desirable.” This suggestion will be considered by the ZAP team and the City Planning Commission. **Discussion Question(s):**

1. Do you agree with exempting legally existing 2-family dwellings from nonconformities limitations?

2. Should this be extended to other legally existing residential nonconformities? If so, which? (See map of existing 3 and 4-family dwellings throughout the city.)

CPC Response:

FMU DISTRICT

Comments Summary: The community expressed concerns with the new FMU District. While the FMU is based on bolstering the potential for large obsolete commercial and industrial buildings to be repurposed and reoccupied by allowing a wide range of uses and maximum flexibility, the concern is that it is very permissive and is often located adjacent to residential district boundaries. Specifically, concerns expressed include:

- In case of demolitions in FMU, regulations must address new construction, especially height allowances.
- Uses allowed in FMU, such as Drive-throughs, Car sales, and Sexually-oriented businesses, are not compatible with adjacent residential uses.

Staff Response: The ZAP team reviewed the draft regulations with an eye on these concerns. Mistakes in the Use Table were found and will be corrected as follows: For Sexually-oriented businesses, the Use Table is modified as follows:

- RC (Permitted – Both retail stores and escort agency)

- Move entire RC column to IND (This appears to have been an oversight)
- FMU (Permitted- Only the retail stores, the rest should be Prohibited)
- NMU (Permitted- Only the limited retail store)

Also, an additional standard will be added for Emergency Shelters (Specially Permitted in FMU) that will prohibit them within 200' of a residential district boundary.

Further protections will be established as part of the District Regulations and Design Regulations that are forthcoming.

CPC Response:

Staff note: In light of the fact that more will be known regarding this issue when the next round of Code provisions are released, we advise that this issue be discussed at a future meeting.

PARKING REGULATIONS

Comments Summary: Many comments have been received over the last year about parking requirements. Most of the comments are about eliminating minimum parking requirements, but many comments suggest that not requiring onsite parking provisions will negatively impact residential streets. Of particular concern are border areas where nonresidential districts abut residential districts so that parking demand for commercial uses may, in part, affect the adjacent residences.

Staff Response:

Again, the ZAP is taking direction from *Rochester 2034*, which states:

“Parking minimums are car-oriented regulations intended for car-oriented places that fail to recognize, let alone encourage, the urban environment, its transportation choices, its historic context, or emerging trends. Parking minimums often pose a barrier for new shops, businesses, and housing to be established, especially in cases of repurposing historic commercial or industrial buildings. In most cases, businesses and residential buildings should be able to supply sufficient parking and accessibility to patrons through: nearby parking lots and garages; shared parking agreements; on-street parking; bicycle parking; transit access; being in a walkable environment; ride sharing services; and other emerging trends in transportation options and preferences. Limited amounts of on-site parking spaces, if any, can be combined with each of these options to make the development economically viable. Under current regulations, when the required amount of parking is installed, it often perpetuates an overly car-dependent culture and covers valuable real estate with asphalt. The recommendation to transition away from conventional parking requirements is consistent with an emerging movement across the country to eliminate parking minimums in favor of promoting alternatives to driving. Parking maximums should be retained, with a variance needed for proposals exceeding the cap.”

The proposed code will follow the recommendation of *Rochester 2034*. The regulations are forthcoming in the next release. Within that release will be the provisions around the Transportation Access Plan (TAP)

which will require analysis of how people will be accessing a new business and any potential impacts on neighboring properties.

Discussion Question(s):

1. Do you see the need to deviate from the Comprehensive Plan at this time?

CPC Response:

DRIVE-THROUGH RESTAURANTS

Comments Summary: Comments around the subject of Drive-through restaurants are varied. Many comments applaud the restrictions and would like to see drive-through restaurants prohibited in the FMU, rather than Specially Permitted. Comments also suggested Drive through restaurant should be Specially Permitted in NMU and permitted or specially permitted in IND.

Staff Response: This topic was discussed at the May 24, 2021 CPC meeting and it was decided to continue the discussion at a future meeting so it's being included in this report.

It should be noted that the draft Use Table treats drive-throughs for restaurants different than drive-throughs for banks and pharmacies. The latter is meeting a critical need of the community and is therefore proposed to be allowed in more districts.

Discussion Question(s):

1. Should we allow (i.e., allow as-of-right, allow through a Special Permit, or prohibit) drive-through restaurants in BMU, NMU, and/or FMU? Please note that any built-as drive through restaurant would retain its rights to a drive-through restaurant use regardless of any lengthy vacancy. (See map of existing drive-through restaurants)

2. Should there be an allowance for a pick-up only, i.e. no order board, drive-through? (see example site plan)

CPC Response:

CLIMATE RESILIENCY

Comments Summary: Comments included suggestions and inquiries related to climate resiliency built into the proposed code and map. Issues brought up include: infrastructure for electric cars and electric bikes, building density, walkability, mass transit, solar and wind energy, and urban agriculture.

Staff Response:

“The City of Rochester and surrounding areas are already experiencing changing climate conditions, particularly related to increased temperatures and changing precipitation patterns. Projections indicate that these trends will continue. These changing conditions present significant risks to the natural environment, economy, energy and agricultural systems, and public health and safety. They are also an opportunity to envision a more resilient Rochester.” - City Of Rochester Climate Vulnerability Assessment 2018

To reduce greenhouse gasses, the main contributor to climate change, the City’s Climate Action Plan (2017) recommended actions within broad categories, some of which are relevant to zoning, including sustainable development (e.g. mixed-use development), alternative transportation (e.g., walking, transit), stormwater management (porous pavement, greenspace), reuse of vacant and underutilized properties, open space networks (community gardens), and renewable energy (solar, wind).

The proposed zoning code response:

- Sustainable Development- The proposed Zoning map puts more acreage into mixed-use categories (i.e., Boutique Mixed Use, Neighborhood Mixed Use, Flexible Mixed Use, and Downtown Mixed Use). Additionally, existing built-as commercial and mixed-use buildings will be allowed as-of-right occupation in residential zoning districts. The proposed code and map increase density allowances through increased acreage in MDR with up to 4 units allowed as-of-right. Code provisions in other forthcoming sections will include changes in minimum lots sizes and commercial unit square footage allowances. Additionally, the new Pocket Neighborhood is a strategy for allowing dense communal living.
- Alternative Transportation – More acreage is placed in upzoned residential and mixed-use districts along transit corridors. New drive-through restaurants are prohibited from NMU and BMU to support a pedestrian-oriented sense of place. Design standards (forthcoming) will continue to require transparency to support walkable commercial corridors. All of these efforts, along with continued infrastructure investments and the nature of a compact urban environment, will also contribute to making the city more bikeable. In addition, the proposed parking regulations will include requirements and standards for EV charging stations.
- Stormwater Management - Residential minimal lot coverage requirements will not change are proposed to be increased from 50% to 60% in the new code to be consistent with the existing built environment of a typical city lot, thereby keeping greenspace requirements to help manage stormwater runoff. However, it is proposed to remove the exemption for accessory structures under 144 sq.ft. The forthcoming landscaping provisions will also consider stormwater management.
- Reuse Of Vacant And Underutilized Properties – The new FMU district is meant to reflect the growing popularity of loft residences, unique businesses, artisanal crafts and production, and creative adaptive re-use of legacy industrial buildings of the late 19th and early 20th century. In addition, changes in regulations related to nonconformities will allow easier financing of existing nonconforming buildings so that abandonment is less likely. Lastly, existing built-as commercial and mixed-use buildings will be allowed as-of-right occupation in residential zoning districts.
- Open Space Networks - The Use Table introduces two new uses to the Zoning Code: Urban Farm and Community Garden. The difference between these two uses is essentially related to the scale of operation. Both uses allow on-site sales. Urban Farms are allowed season-lengthening facilities,

such as high tunnels and hoop houses. This same provision is not included for Community Gardens, which is a concern expressed in comments. Should this provision be added?

- Renewable Energy - In the current Zoning Code, solar and wind energy facilities are regulated in the sections on accessory structures and height exceptions. The proposed Code classifies them as principal structures/uses and allows them either as-of-right or by Special Permit in all districts except Collegetown. Standards are added in the new code to ensure compatibility with adjacent uses.

Discussion Question(s):

1. To what extent should provisions require E-bike charging stations and indoor bike storage?
2. What are your thoughts on requiring that development of multifamily apartment buildings provide one bicycle parking space for every unit proposed, with 80% of those spaces being protected from the weather.
3. Do you agree to the increased lot coverage requirement? (See example survey map of typical city lot)
4. Is requiring on-site management of stormwater (e.g., rain barrels, rain garden) something to consider?
5. Should some use of porous pavement be mandated in certain situations?
6. Should non-residential uses in residential districts be denied any increase their existing lot coverage?
7. Should lot coverage regulations for parking lots be more restrictive, e.g., Instead of allowing 65% of the lot to be covered, only allow parking lots 50% coverage limit?
8. Should there be lot coverage requirements in the non-residential districts? There are none proposed.
9. Urban Farms are allowed season-lengthening facilities, such as high tunnels and hoop houses. This same provision is not included for Community Gardens, which is a concern expressed in comments. Should this provision be added?

CPC Response:

SHORT-TERM WHOLE-DWELLING UNIT RENTAL

Comments Summary:

Many comments have been received regarding Short-Term Whole-Dwelling Unit Rentals, often referred to as “Air BNB’s.” Some comments are in support of this use. Most comments claim that these uses are a “threat to the character of single family residential neighborhoods.” One comment stated, “This type of use opens up opportunities for non-owner occupied investors to exploit city properties for maximum income generation, and minimum investment.” Additionally, “it threatens the quiet enjoyment of neighboring property owners, and also has the potential for more vehicles and paved yard area or on-street parking.” Words like “very destructive” “no cohesiveness” were used to describe them. Also heard: “Residents of modest means can't buy into some of these neighborhoods because they get outbid by investors, and not clear if/when this trend will end.” Some comments suggested that this use be required to be registered, get a C of O, get lead tested, pay commercial taxes, and/or pay hotel taxes.

Staff Response:

These comments were also heard during the *Rochester 2034* public engagement, which is what led to prohibiting Short-Term Whole-Dwelling Unit Rentals in LDR and MDR. The ZAP Team originally proposed to the CPC that this use be combined with the definition of Hotel. Subsequently, the ZAP consultant recommended otherwise so that the Short-Term Whole-Dwelling Unit Rentals could be allowed in more districts than where a Hotel is permitted. The consultant introduced the term, Short-Term Whole-Dwelling Unit Rentals, which is a term being used in other cities. In short, it is proposed that they are subject to a Use Variance in LDR, MDR, and IND; a Special Permit in H-V; and, they are permitted in all other Districts.

Discussion Question(s):

1. Are the revised definitions, combined with the revised standards, sufficient to make these terms clearer?
2. Is it reasonable to not allow Short-term Whole Dwelling Unit Rental in LDR and MDR?

CPC Response:PUBLIC PROCESS

1. Comments Summary: Comments suggested that the community needed the entire code in order to make comments on the sections currently released.

Staff Response: At the request of several community members early on in the process, and for practical purposes, the City is sharing the code in three batches so that the quantity of information is not overwhelming. The map and use table were first and with that it was thought that people would at least need to know what uses would be allowed in the proposed districts. The community has been reassured that the comment period is additive so they will still be able to comment on the map and use table during future comment periods.

2. Comments Summary: The City should facilitate “hyperlocal zoning” or “localized zoning” relying on neighborhoods to create their own zoning.

Staff Response: The basic requirement for a new Zoning Code, as clearly set forth in the NYS enabling legislation that authorizes land use regulations, is that new regulations must “be in accord with a well-considered plan” (General City Law 20(25)). The first step in determining whether the ZAP process is meeting that requirement is identifying what is meant by a “well considered plan”. Much of the case law on this issue grapples with what documents, policies, maps, codes, etc., constitute the plan. Thankfully, we do not need to decide this issue as we have a brand new comprehensive plan, *Rochester 2034*, which without question meets all the requirements of a “well considered plan”. Despite having a plan, however, the City is further engaging the community in multiple workshops to discuss draft code and the draft map to solicit additional input. Community interests are at the center of the ZAP and balancing competing interests and the community at large is the role of City staff under the direction of the broader vision, principles, and goals provided by *Rochester 2034*. Additionally, the members of the City Planning

Commission, the ZAP Steering Committee, are engaged in the process as community representatives who will serve as further direction into the process of developing the code and map.

In addition, the notion of neighborhoods creating their own zoning regulations is extremely problematic in terms of equity and practical consistency. There are large portions of the city that lack the capacity and active engagement to effectively create their own zoning regulations. It is important to note that the current 2003 Zoning Code allows for the adoption of neighborhood design guidelines and no neighborhood has ever used this provision.

3. Comments Summary: Commenters requested more information on the ZAP website. Specifically, one of the items requested is a map of the existing zoning so that the community can compare existing and proposed zoning.

Staff Response: During the week of March 14, additional info was added to the website, including an interactive map that easily facilitates this comparison.

Discussion Question(s):

NA

CPC Response:

ENFORCEMENT

Comments Summary: Many commenters expressed concern about enforcement regulations and capacity.

Staff Response: General regulations pertaining to enforcement will be forthcoming. However, capacity to enforce the Code is a City budget issue and is beyond the scope of this ZAP process. It will require a broader discussion with the Mayor and City Council. The ZAP team agrees that a well-designed code will reach its full potential when coupled with robust investment in enforcement resources.

Discussion Question(s):

NA

CPC Response:

MAPPING COMMENTS

Comments Summary: Many comments are being received about the map. Comments range from broad comments about area or corridor-wide zoning to questioning the proposed zoning of a specific property or properties.

Staff Response: All mapping comments are being individually reviewed by the ZAP team and the following criteria are being applied to the review:

- Built-as form of existing buildings
- Existing uses and density
- RTS routes
- Lot sizes
- Adjacent buildings and uses
- The unique context of the area/property in question

Substantial map changes resulting from this review process will be reported at a later date.

Discussion Question(s):

NA

CPC Response: