

October 13, 2009

Steve Kaplan, Co-Chair, Zoning Code Task Force
Diane Barrett, Co-Chair, Zoning Code Task Force
City and County of Denver
201 W. Colfax Avenue, Room 205
Denver, CO 80202

Via hand and electronic delivery

Dear Steve, Diane, and Zoning Code Task Force (ZCTF) Members,

Over the past several years, our collective organizations and individual members have closely followed the progress of the Zoning Code Update with keen interest. We want to thank the ZCTF and Community Planning & Development (CPD) for their intensive and time-consuming efforts to revise the outdated code and replace it with a tool that will allow Denver to remain a diverse, sustainable, high quality city. The undersigned organizations have united in an effort to put forward a common voice to efficiently consolidate our comments, concerns and suggestions about the new code.

When the draft code language and maps were released in June, our organizations and individual members began the process of digesting and understanding the new form-based code. In order to ensure that the new code allows for development that is viable for today's homeowners, compatible with existing conditions, and will not add to issues of non-conformity, we began to test projects and product types across the city. In these tests, proposed zoning was compared to various existing structures, and both proposed projects and approved but not-yet-built projects to make certain the projects and structures would conform.

Attached you will find some of the results of that testing from various participants in our group. Over the past two months, this testing has been sent to CPD from a variety of individuals and organizations in the development community in an effort to both inform the City of concerns and to better understand the code. It is our understanding that some, but not all, of these submittals have received a formal response or been addressed in individual meetings with CPD staff. Thus, while some adjustments have been made to the draft code, we feel that the code would benefit from a more formal system of submitting comments, receiving responses and identifying any changes in the code that respond to those comments. In addition, when appropriate, responses to comments or updates to the code should be made public at www.newcodedenver.org, providing broader access and transparency to the process as well as avoiding duplication in future modeling.

We recognize the enormous effort needed to apply and test the new code throughout the city. Testing of this new code, both by CPD staff and by knowledgeable outside professionals, is imperative and must not happen in a vacuum. Therefore, we request that all modeling carried out by CPD staff be published for public review. Additionally, while CPD staff has repeatedly stated that non-conformity will not increase, that has not proven out in our testing. Therefore, we request to see results from the City's modeling and testing that prove this to be the case. We've also been assured that opportunities for building a wide variety of product type still exists, yet thus far our modeling seems to demonstrate a "flattening" rather than a diversifying of product types and design flexibility. Clear demonstration by CPD that non-conformity will not increase and that product and design options remain diverse would help to alleviate concerns.

We will continue our efforts to test projects and product types across the city and offer those results to CPD and the ZCTF. Within our organizations, individuals with expertise in zoning and development are willing to make themselves available to aid in the City's efforts to test additional neighborhoods.

We are appreciative of the gradual improvements made from Draft #1 to Draft #2 and remain hopeful that Draft #3 will further address concerns brought forward by those who have tested the new code on their

projects and in neighborhoods throughout the city. However, we have concerns that the proposed timeline for final code adoption will not adequately accommodate the effort and time needed for extensive and critically important testing and modeling of the new code. Compounding that concern is the very limited “overlap time” of the two zoning codes, which has been proposed for only four months after implementation.

As the architects, developers, builders, remodelers, designers and sellers of residential housing in Denver, we have a close relationship to the current residents who live in Denver and future constituents considering Denver as their home. As such, we have a thorough understanding of the types of homes people want to live in and have approached testing with an eye toward what the future residential market will demand.

Certainly, the costs of energy and heating have moved the public mindset toward a more moderately sized and sustainable home. Additionally, neighborhood concerns about the appropriate scale of infill development in established neighborhoods are equally as valid.

However, from initial modeling in various residential contexts, we have some significant common concerns about the potential limitations that exist within the draft code ranging from the lack of flexibility afforded in new-build/Greenfield areas to overly burdensome restrictions on what can be redeveloped in an infill/established neighborhood context to impacts on density and affordability.

New-build developments in Greenfields should have a different contextual approach to zoning than existing neighborhood contexts, as these new developments do not have the same issues regarding established character and close proximity to neighbors. Flexibility in these areas is crucial to creating “livable,” successful developments such as Stapleton, Lowry and Green Valley Ranch.

The new code must also be able to welcome growing families and new homebuyers who need more “home” than an 800 or 1,200 sq. ft. turn of the century house. Zoning regulations in established neighborhoods, which make up the majority of our City, through design standards, increased setbacks or height limitations should not restrict the modest ability to have a third and fourth bedroom, a walk-in closet or a reasonably sized bathroom. Builders and designers are doing more now than ever before to meet the demands of the public (the market) with a limited palette, but the fundamental zoning must enable such creativity to take place.

If our housing stock does not provide families with the type of home they need to be comfortable, not only will neighborhood schools suffer, but the City as a whole will lose out on a wide range of economic benefits as families and homebuyers move out of Denver and into adjacent suburbs and economic development moves with them.

The related issues of affordability and density are additional reasons modeling and testing of the code is critical. Potential unintended consequences of reduced buildable area on single-family zone lots, form-based design standard like a mandatory building step-back, or reductions in allowable density must be evaluated.

In summary we encourage the DZCTF and CPD to:

- Establish a formal system for comment submittal, making responses available and identifying any corresponding changes in the code.
- When appropriate, responses to comments or updates to the code should be made public at www.newcodedenver.org, providing broader access and transparency to the process as well as avoiding duplication in future modeling.
- Publish all modeling carried out by CPD staff for public review.
- Provide support for the assertion that non-conformity will not increase.

- Provide support for the assertion that product and design flexibility will not be diminished.
- Provide a distinct contextual approach for new-build developments in Greenfields .
- Evaluate proposed design standards, such as increased setbacks or height limitations, for their impact on the ability to deliver housing that meets market demands (e.g. a third and fourth bedroom, walk-in closets, reasonably sized bathrooms, appropriate ceiling heights, etc.)
- Evaluate the code for the potential unintended consequences of reduced buildable area on single-family zone lots, form-based design standard like a mandatory building step-back, or reductions in allowable density.
- Work with the undersigned in a collaborative undertaking of modeling/testing to further identify and resolve issues in the draft code.

Though much of what is addressed in this letter focuses on residential uses within the code, we believe many of the same concerns exist in the commercial elements. It is our understanding that a coalition of commercial interests is being formed with the help of the Downtown Denver Partnership. We encourage their similar efforts to test and offer assistance in refining the code.

In the coming weeks, we plan on being an integral part of reviewing the code and resolving outstanding issues prior to publication of a final draft. Please let us know if there is any additional way we can be of assistance.

Sincerely,



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HBA of Metro Denver



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Honorable Paul Lopez, Council District 3
Honorable Peggy Lehmann, Council District 4
Honorable Marcia Johnson, Council District 5
Honorable Charlie Brown, Council District 6

Honorable Chris Nevitt, Council District 7
Honorable Carla Madison, Council District 8
Honorable Judy Montero, Council District 9
Honorable Michael Hancock, Council District 11
Honorable Carol Boigon, Council At-Large
Honorable Doug Linkhart, Council At-Large
Peter Park, Manager, Community Planning and Development
Denver Zoning Code Task Force Members

Attachments: AIA Housing committee presentation, New Town Builders analysis, Oakwood Homes analysis