



**Environmental
Planning
Commission**

*Agenda Number: 2
Project Number: 1001620
Case #'s: 07EPC 40084
14 August 2008*

Staff Report

Agent	City of Albuquerque Planning Department
Applicant	City of Albuquerque City Council
Request	Amendment to the Zoning Code
Legal Description	Proposed Section 14-16-3-20
Location	City- Wide
Proposed Zoning Categories	TOD-MAC (Transit Oriented Development – Major Activity Center); TOD-COM (Transit Oriented Development - Community Activity Center); MX (Mixed Use); ID (Infill Development); and PND (Planned Neighborhood Development)

Staff Recommendation

CONTINUANCE of 07EPC 40084 to the 18 September 2008 EPC hearing, based on the Findings on page 7.

**Staff Planner
Russell Brito, Division Manager**

Summary of Analysis

The EPC deferred the current, revised version of the Form Based Code (FBC) at their special, 24 July 2008 public hearing to allow for additional public testimony and to begin public discussion amongst board members. The EPC originally scheduled the FBC to be heard in February 2008, but the applicant requested deferral to allow for modifications and revisions in response to comments from citizens, community representatives and other stakeholders. This supplemental staff report should be read after review of the previous staff reports and record.

The most recent version of the proposal is to create a Form Based Code with zones for mixed-use development in a variety of contexts to encourage a more efficient and sustainable urban form. The FBC would become a new article of the Zoning Code, Section 14-16-3-20, with regulatory language that is a “hybrid” of traditional zoning and a pure, form based code. The result is a set of design standards and regulations that can be utilized by property owners and developers through a zone map amendment and site development plan review process at a public EPC hearing where neighbors and other interested parties could participate and provide input.

The FBC as submitted is intended to fulfill the directives and guidance of the PGS, but some additional information is desired by Planning staff. Additional comments from outside groups, citizens and other interested parties have been and continue to be submitted. Comments from City departments and other agencies are currently not part of the record, which points out the need for additional review time. Notable public comment was evident at the 24 July 2008 EPC hearing, which revealed a varying degree of knowledge and understanding of the current version of the proposal. The EPC normally holds at least two hearings on major proposals such as this to ensure a meaningful recommendation to the City Council. This is especially important given that the EPC would ultimately be charged with reviewing and acting on zone change requests for FBC zoning and accompanying site development plans. Staff recommends a continuance to the 18 September 2008 EPC hearing.

City Departments and other interested agencies reviewed this application from June 2008 to ONGOING.
Agency comments were used in the preparation of this report and begin on page 9.

BACKGROUND, HISTORY AND CONTEXT

This is a proposal to create a new Form Based Code (FBC) with zones that allow mixed use development in a variety of contexts to encourage a more efficient and sustainable urban form, contained in a new article of the Zoning Code, Section 14-16-3-20. The Form Based Code was introduced at the November 5, 2007 meeting of the City Council per Ordinance 07-116 and referred to the Environmental Planning Commission for comments and recommendations. The proposal was scheduled to be heard by the EPC on December 20, 2007, but was deferred at the City Council's request to February 21, 2008. Further deferrals resulted in the first EPC hearing on 24 July 2008.

The EPC deferred the request to 14 August 2008 to allow another opportunity for public comment and ongoing education before public discussion amongst the board members. This supplemental staff report should be read after review of the previous staff reports and record.

Neighborhood Comments Received at and Subsequent to the 24 July 2008 EPC Hearing

Parties interested in the FBC and what it may or may not accomplish, have submitted several letters and other correspondence. In general, neighborhood perceptions and concerns do not appear to be entirely based on the realities of the current submittal. There is expressed trepidation about the FBC from both individuals and neighborhood associations, but much of the anxiety appears to be related to the previous iteration of the FBC, which was changed by the applicant to address neighborhood concerns. Misperceptions and Planning Department responses include:

- Decision making authority given to Planning Department with little input from affected neighborhood(s).

Response: Only the Environmental Planning Commission (EPC) or the City Council will have the authority to change existing zoning for individual properties to an FBC zone. Requests will have to be heard in conjunction with a site development plan at a public hearing with public notice and the possibility for a pre-hearing facilitated meeting.

- High-density residential development will devalue surrounding properties.

Response: This is a speculative argument without even anecdotal evidence to support it. The required site development review for FBC developments will allow applicants and interested parties to present their proposals and positions to the EPC at a public hearing, including market research, appraisals, etc. to support a particular assertion. Compare and contrast with the following bullet.

- Existing homeowners will be forced to move due to increase in taxes.

Response: This is another speculative argument without even anecdotal evidence to support it. Property tax assessments for one type of use do not directly apply to other, different types of use (e.g. tax assessments for single family homes do not affect the tax assessments for nearby

commercial uses and vice versa). Any increase in property taxes will be due to an increase in the marketable value of a property or an increase in the mill levy formula. Compare and contrast with the preceding bullet.

- High-density residential development could interfere with traffic and parking.

Response: One of the major intentions of the FBC is to increase ridership on existing and future transit routes, thereby reducing the need for residents to drive personal vehicles. Another important goal is to locate residents in close proximity to jobs and services so that walking and bicycling become viable options for commuting and shopping trips, thereby reducing the need for residents to drive personal vehicles.

- Public is not adequately informed about the FBC.

Response: Following the introduction of the Form Based Code to the City Council on November 5, 2007, the sponsor of the Bill, Councilor Benton, and council staff held several public outreach meetings in each Council District. These meetings have provided an opportunity for the public to be informed and to comment on the proposal. The interested public raised many concerns with the proposal, particularly with the initial, hurried pace that was once pursued by the sponsor of the Bill. Since the original version of the FBC, it appears to have been revised to address a majority of the concerns and issues raised by the public.

The current version of the FBC has been available for public viewing and distribution for several months now. But, based on the concerns expressed by interested parties thus far, additional outreach and education may be necessary as the proposal proceeds through the review process and on to the City Council final action.

- No protections written into the code to protect established neighborhoods.

Response: The changes made to the original version of the FBC are in response to concerns raised by citizens, developers and other interested parties, including protection of established neighborhoods. The public hearing process with its required public notice is the best protection for neighborhoods written into the proposed FBC.

- Additional training needed for Code Enforcement personnel.

Response: Code Enforcement personnel will be enforcing site development plans that will have been reviewed and approved by the EPC based in part on reviews and recommendations by planners already trained to review site development plans against FBC design standards. No additional training of Code Enforcement personnel will be necessary.

- Existing Zoning Code will be “guttled.”

Response: The proposed FBC and its zone categories are optional and must be requested for an individual site by a property owner and/or developer via the existing zone map amendment process and with an accompanying site development plan. The FBC is intended to supplement, and not supplant the existing Zoning Code. It is actually a hybrid of a “pure” form based code and the existing Zoning Code because: 1) it does not separate residential and commercial uses on an individual site and allows for flexibility in design and layout as long the “form” meets the specific requirements; and 2) it does require review and approval of a zone change and a site development plan for an individual property through the existing, Zoning Code established, EPC process.

- FBC zones will supersede Sector Development Plans.

Response: Part of the review and approval process for a FBC zone change is a justification as per R-270-1980, the City’s existing zone change policies and criteria. The applicant will have to address any applicable Sector Development Plan, its intent, goals and policies as part of a zone change justification (R-270-1980, Section 1.C.). The public review process will illuminate and hopefully rectify any real and/or perceived conflicts between the intents and goals of individual Sector Development plans and those of the FBC.

Comments Received from Commercial and Housing Developers Subsequent to the 24 July 2008 EPC Hearing

The comments and concerns submitted from the NM Chapter of the National Association of Industrial and Office Properties (NAIOP) and from the Greater Albuquerque Housing Partnership (GAHP) appear to be more informed and measured in their scope and content. NAIOP expresses support for the FBC, believing that it will be beneficial to developers and neighborhoods, but does have some concerns with some of the language as proposed. NAIOP concerns and Planning Department responses include:

- The FBC does not seem to be energy conscious in terms of design requirements for first floor ceiling heights and façade glazing.

Response: The ultimate goal of the FBC is to allow for more sustainable development in terms of energy use (transportation and buildings) and design by mixing uses and encouraging pedestrian and bicycle travel. Intimating that the entire proposal is not “energy conscious” because of two design requirements is not valid. Altering and/or revising the two cited design requirements, either for the entire FBC or on a site-by-site basis, could easily address this concern.

- Sector Development Plans will trump the FBC.

Response: The EPC and/or the City Council will determine if a Sector Development Plan “trumps” the FBC or vice versa at a public hearing. The public review process will illuminate and hopefully rectify any real and/or perceived conflicts between the intents and goals of individual Sector Development plans and those of the FBC.

- Densities should be allowed to meet the market demand and economics.

Response: The FBC as written walks a fine line between incentives for property owners and developers to take advantage of the FBC zones and ensuring that existing neighbors and neighborhoods are protected from development that may have adverse effects on their properties and quality of life. Additional flexibility to “meet market demand and economics” may erode or negate protections for existing neighborhoods, possibly making the proposed language untenable for some City Councilors.

- Street sections should be reviewed by the Fire Marshall and Public Works Transportation (Municipal Development Department).

Response: The Planning Department concurs with this statement. Comments from other City departments and outside agencies are forthcoming.

- Overall, the NAIOP list of specific questions and comments dealing with the FBC request clarifications of language, and some cases the relaxing of some regulations.

Response: Each of these specifics need to be reviewed in conjunction with comments from the EPC, comments from other City departments and outside agencies before a recommendation is sent on to the City Council.

The GAHP conveys support for the FBC and believes that it bring “new affordable and market rate housing opportunities to neighborhoods that have seen decades of neglect.” Comments from the GAHP are technical in nature and generally include (with Planning Department responses):

- Clarify MX zone eligibility criteria for existing zoning and lot size.

Response: The eligibility criteria for the MX zone appears to be crafted in such a way that they add a layer of protection for existing neighbors and neighborhoods to ensure that development that occurs in close proximity “fits in” with what is already there.

- 45 degree angle plane for height of buildings within 75 feet of abutting R-1 through R-T zone should be measured from 26’ above the property line (26 feet is the maximum height in the R-1 through R-T zones)

Response: This proposal sounds reasonable, but the measurement of the 45-degree angle plan from 26 feet should not start at the shared property line, but rather from above a defined setback from the shared property line.

- Requirement for a first floor lobby would add great additional cost and no benefit to some types of development.

Response: Altering and/or revising the first floor lobby requirement, either for the entire FBC or on a site-by-site basis, could easily address this concern.

- Decreasing the clearance for balconies to nine feet.

Response: Planning Department staff agrees. This could decrease building costs and heating/cooling costs if the clearance carries through to the interior.

- Increasing the exception for provision of on-site open space if property is located 1200 feet from a park, plaza or other usable open space at least one acre in size.

Response: This change may erode or negate protections for existing neighborhoods, possibly making the proposed language untenable for some City Councilors.

- Removing existing zoning criteria for all ID zone requests.

Response: Again, this change may erode or negate protections for existing neighborhoods, possibly making the proposed language untenable for some City Councilors.

- Revisions to building frontage and articulation regulations for ID development.

Response: This change may erode or negate protections for existing neighborhoods, possibly making the proposed language untenable for some City Councilors. But, perhaps there could be an exception for purely residential and/or live-work buildings with no commercial ground floor space.

- Increased flexibility for building types and the ability to modify/combine types on a site by site basis.

Response: This could be acceptable with some very specific language to guide applicants, Planning staff and the EPC when it is appropriate and only if acceptable to affected neighbors and neighborhoods.

CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION

Comments on the previous version of the FBC have been received from the Advanced Planning Division that outline proposed changes to make clarifications and to ensure compatibility with green building codes.

PNM has concerns that should be addressed by the applicant.

Comments from other City departments and outside agencies are forthcoming. These comments are needed for a final Planning staff analysis and recommendation and for the EPC to make an informed recommendation to the City Council.

NEIGHBORHOOD/PUBLIC CONCERNS

Some inquiries have been received by the Planning Department, but much of the community is not familiar enough with the proposal to give distinct comments about the whole or specific parts (see preceding section on neighborhood comments). Notable public comment was given at the 24 July 2008 EPC hearing and more should be expected at the 14 August 2008 EPC hearing.

CONCLUSIONS

The most recent version of the proposal is to create a Form Based Code with zones for mixed-use development in a variety of contexts to encourage a more efficient and sustainable urban form. The FBC would become a new article of the Zoning Code, Section 14-16-3-20, with regulatory language that is a “hybrid” of traditional zoning and a pure, form based code. The result is a set of design standards and regulations that can be utilized by property owners and developers through a zone map amendment and site development plan review process at a public EPC hearing where neighbors and other interested parties could participate and provide input.

The FBC as submitted is intended to fulfill the directives and guidance of the PGS, but some additional information is desired by Planning staff. Additional comments from outside groups, citizens and other interested parties have been and continue to be submitted. Comments from City departments and other agencies are currently not part of the record, which points out the need for additional review time. Notable public comment was evident at the 24 July 2008 EPC hearing, which revealed a varying degree of knowledge and understanding of the current version of the proposal. The EPC normally holds at least two hearings on major proposals such as this to ensure a meaningful recommendation to the City Council. This is especially important given that the EPC would ultimately be charged with reviewing and acting on zone change requests for FBC zoning and accompanying site development plans. Staff recommends a continuance to the 18 September 2008 EPC hearing.

FINDINGS – 14 August 2008

1. This is a request to create a Form Based Code (FBC) that will allow mixed use development in a variety of contexts to encourage a more efficient and sustainable urban form, contained in a new article of the Zoning Code, Section 14-16-3-20.
2. The Planned Growth Strategy (PGS) directs the City to create new zones as options for new growth that are pedestrian and transit oriented as opposed to automobile oriented.
3. The proposed FBC zones are not mandatory, but may be requested through the existing Zone Map Amendment and site development plan review processes at the EPC.
4. The submitted FBC furthers the majority of applicable Comprehensive Plan goals and policies. Additional information is needed, such as allowed uses for each zone to ensure that applicable goals and policies are furthered.
5. Comments from City departments and other agencies are still needed to ensure regulatory language that is applicable, enforceable and understandable.
6. Comments from outside groups, citizens and other interested parties continue to be submitted, which may lead to language adjustments that bring about regulations that are consensus-based and comprehensive.
7. The EPC normally holds at least two hearings on major proposals such as this to ensure that a meaningful recommendation can be made to the City Council.
8. A continuance of this request will allow additional time for clarifications and changes from the applicant and City staff that can respond to comments and ensure full compatibility with applicable Master Plan goals and policies, the Zoning Code and the City Charter.

RECOMMENDATION – 14 August 2008

CONTINUANCE of 07EPC 40084, an amendment to the City's Zoning Code to create a Form Based Code, to 18 September 2008, based on the preceding Findings.

***Russell Brito
Division Manager***

cc: COA/City Council, P.O. Box 1293, Albuquerque, NM 87103
COA/Planning Department, 600 2nd St. NW, Albuquerque, NM 87102
Evelyn Feltner, 2014 Utah St. NE, Albuquerque, NM 87110
Donna Yetter, 2111 Hoffman Dr. NE, Albuquerque, NM 87110
Douglas Heller, AIA Albuquerque, 202 Central Ave. SE, Suite 103, Albuquerque, NM 87102
Wendy Statkus, 1623 Los Tomases Dr. NW, Albuquerque, NM 87102
Peter Armijo, 515 Constitution Ave. NW, Albuquerque, NM 87102
Daniel Laird, 603 Cedar St. NE, Albuquerque, NM 87106
Silvio Dell'Angela
Frank Martinez, 501 Edith Blvd. NE, Albuquerque, NM 87102

Attachments

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Zoning Code Services

Office of Neighborhood Coordination

City-wide

11/5/07 – Notice will be e-mailed to all NA contacts w/e-mail and article in the “Neighborhood News” newsletter - siw

Advanced Planning

Bill 0-07-116

- The Bill 0-07-116 requires the Planning Department to administer the Form Based Codes. This will require a staff with design (architecture, urban design and landscape architecture) background.

Form Based Codes

- Page 23, 14-16-2-1 Building Forms - Residential Building Forms (a) Detached single-family dwelling requires parking loading and trash disposal from an alley. The Form Based Code does not specify the size of site it where it may be applicable. In the built up neighborhoods, there may not be an alley if someone is building on a single vacant parcel. Does this assume that a City garbage truck will back into a narrow driveway or 'ribbon driveway'? This comment is also applicable for Side yard Dwelling, Townhouse, Rowhouse, Courtyard Townhouses and maybe other building types, if there is no alley, especially in the older part of the City. It may be necessary to address this and clarify in the Code.
- Page 33, Commercial or Mixed Use Building Form - Flex Building (a) Access and Entry - The main entry to each unit should be 'distinctly' marked. While the Form Based Code requires residential dwelling units, including a single family house to mark their entry with stoops, porches etc, it requires no such distinction for commercial or office type uses. There is no requirement to distinctly identify entry to buildings either under the 'Articulation' title.
- Page 43 and 44, 14-20-2-2 Frontage Types. The sketches should be labeled plan and section views. The sketch for Portal (Arcade) is confusing, a space separation should be provided between the plan and section view.
- Page 51, 14-20-2-5 Building Design (D) Wall Openings. The Form Base Code prohibits windows where horizontal dimension exceed vertical "except where otherwise prescribed in the Form Based Code". It is not clear where they are allowed. This is restrictive. This will provide unnecessary restriction on a warehouse where horizontal windows may be appropriate in some locations. Frank Lloyd Wright houses often have horizontal widows.
- Page 52, 14-20-2-5 Building Design (F) Glazing (1) The required light transmittance factor of glazing is a minimum of 90% for the ground floor and a minimum of 75% on the upper floors in a façade facing 'A' Street. This requirement may be contrary to green building codes which require

energy efficient glazing with an e factor. According to window manufacturer, a 90% transmittance factor may not be possible or desirable to be achieved.

- Page 74, 14-20-3-3 (TODCOM) allows multifamily residential on the ground floor and requires 75% minimum glazing on ground floor up to 8' height. This may not be practical or desirable in a residential development on the ground floor facing a street.

PUBLIC WORKS DEPARTMENT

Transportation Development (City Engineer/Planning Department):

- Reviewed, no comments.

Hydrology Development (City Engineer/Planning Department):

- No comments received.

Transportation Planning (Department of Municipal Development):

- Reviewed, and no comments regarding on-street bikeways, off-street trails or roadway system facilities.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

Utility Development (Water Authority):

- No comments received

Water Resources, Water Utilities and Wastewater Utilities (Water Authority):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT,

WATER AUTHORITY and NMDOT:

Conditions of approval for the proposed Amendment to Zoning Code or Subdivision Regulations Text shall include:

- a. None.

New comments for 7/17/08

Transportation Development (City Engineer/Planning Department):

- See Transportation Planning comments.

Hydrology Development (City Engineer/Planning Department):

- Hydrology supports the idea of the alley concept on the west side of Yale to help blend the grades of the properties with the residential behind. This alley will serve as the drainage outfall.

Transportation Planning (Department of Municipal Development):

Findings

- *Page 3-132, Street Type Standards.* The typical street sections shown on pages 3-133 through 3-138 describe only a mid-block condition for the ten (10) different street types. In every case, the mid-block width is the basis for right-of-way standard being proposed. In no case is there a graphic showing the additional right-of-way that will be required to accommodate left and right turning lanes or connections to adjacent access roads (BV-115, BV-125, BV-135A, BV-135B) at the upstream or down stream street intersections. The existing adopted right-of-way standards for collector, minor arterial and principal arterial are based on the width requirements at the intersection NOT at a mid-block location.
- The street type standards section also proposes a standard curb radius for an arterial street between 15 feet and 25 feet. For an arterial street which is expected to accommodate large turning vehicles, such as buses, garbage trucks, moving vans in order to maneuver safely without conflicting with oncoming traffic, a *minimum* curb radius of 25 feet is required.

Conditions

- Provide a clear graphic showing the typical standard right-of-way width for each street type at the intersection location. Amend the table of standards for each street type, as necessary, to designate the required right-of-way based on the intersection location NOT the mid-block location.
- For all arterial street types which are expected to accommodate large turning vehicles, such as buses, garbage trucks, moving vans, a *minimum* 25 foot curb radius will be required, and in exceptional cases, a curb radius greater than 25 feet may be permitted as approved by the City Engineer.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- No comments received.

RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT

and NMDOT:

Conditions of approval for the proposed Form Based Code shall include:

- a. Provide a clear graphic showing the typical standard right-of-way width for each street type at the intersection location. Amend the table of standards for each street type, as necessary, to designate the required right-of-way based on the intersection location NOT the mid-block location.
- b. For all arterial street types which are expected to accommodate large turning vehicles, such as buses, garbage trucks, moving vans, a *minimum* 25 foot curb radius will be required, and in exceptional cases, a curb radius greater than 25 feet may be permitted as approved by the City Engineer.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division

Environmental Services Division

City Forester

PARKS AND RECREATION

Planning and Design

Open Space Division

Open Space has no adverse comments

POLICE DEPARTMENT/Planning

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

No adverse comments.

FIRE DEPARTMENT/Planning

TRANSIT DEPARTMENT

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

Reviewed, no comment.

ALBUQUERQUE PUBLIC SCHOOLS

The City of Albuquerque is proposing a **City Wide** creation of a new form based code with zones that allow mixed use development in a variety of contexts to encourage a more efficient and sustainable urban form. This will have no adverse impacts to the APS district.

MID-REGION COUNCIL OF GOVERNMENTS

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has conducted a preliminary review of the proposed code and has concerns regarding the code. PNM will need more time to conduct a more rigorous analysis of the code and the impact on service to PNM customers. Areas of concern, as an example, include: 14-20-2-8 Mechanical Equipment (A), which indicates the location of franchised utility facilities and 14-20-3-2 Permitted Building Forms – Composite Matrix, which apparently does not include any utility facilities as permitted uses. PNM will be providing more complete and detailed comments to the EPC.