



City of Portland, Oregon
Bureau of Development Services
Land Use Services

FROM CONCEPT TO CONSTRUCTION

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BHD MEMO

Date: March 19, 2017
To: Bill Cunningham, Bureau of Planning and Sustainability
From: Kimberly Tallant, Bureau of Development Services
CC: Susan Anderson, Rebecca Esau
Re: BDS Comments on the Better Housing by Design (BHD) Discussion Draft

Thank you for the opportunity to review and comment on the Better Housing by Design (BHD) discussion draft code changes. This important project will revise Zoning Code development standards in Portland's multi-dwelling zones (R3, R2, R1, and RH) outside the Central City to better meet Comprehensive Plan policies calling for diverse housing opportunities to meet the needs of a growing Portland. We appreciate the chance to participate in informing this critical re-write of the Zoning Code's development standards.

The comments below highlight our primary areas of concern and provide detailed comments on the proposal. The primary areas of concern are organized into potential implementation issues, and policy concerns. We look forward to working with BPS staff to address our concerns and to providing additional feedback as the project develops. Please direct questions about these comments to Laura Lehman on my staff.

Primary Areas of Concern

Potential Implementation Issues

1. Complexity: BDS has concerns that code being proposed is overly complicated, will be challenging for applicants and property owners to understand, and will add to the time it takes to conduct permit reviews. Efforts should be made to reconsider the structure and requirements of some of the standards being proposed, particularly FAR and outdoor area.
2. Floor Area Ratio: Introducing floor area ratio as a development standard will present a challenge for existing one-and-two dwelling development in the multi-dwelling zones. Because floor area ratio has not been used as a tool for single dwelling development before, we foresee issues with consistently applying the standard to structures that differ greatly from the commercial buildings that are currently subject to the regulation. Because the standard applies to existing development, applicants for remodeling projects that include additions will need to provide more detailed plans to evaluate existing and proposed floor area and may be subject to repeated Adjustment Reviews. This, in addition to other code changes being made, will add to the time it takes to conduct plan review.

3. **Visitability:** These regulations are close to Building Code requirements for accessibility and those reviewers are best qualified to evaluate projects for compliance and exceptions. We encourage you to look for ways to include the provisions in the Building Code or Title 24. If standards remain in the Zoning Code, they should be simplified so they are easily understood and consistently implemented. The purpose statement should also clearly specify when and how it is appropriate to modify the standards.
4. **Detached Accessory Structures:** Changes to eliminate maximum 20-foot height and setback exceptions for detached accessory structures on lots over 7,500 square feet has potential to create many nonconforming situations, and is inconsistent with recent code changes.
5. **Required Outdoor/Common Areas:** The standards for required outdoor areas and common areas are very complex and difficult to understand. Consider simplifying these standards.

Policy Feedback

1. **Floor Area Ratio:** As stated in the code commentary, single-dwelling development is currently the predominant development type in most multi-dwelling zones. Homeowners often choose to serve as their own contractor when making alterations to their homes. Homeowners may not have expertise in drawing detailed building plans, and introducing floor area ratio as a development standard will require much more detailed plans for remodeling projects that include additions or changes to floor area. This requirement will increase permitting requirements for these projects and could result in equity impacts that disproportionately affect homeowners and small developers. In addition, it is recommended that you strengthen the commentary for “Reasons for regulating FAR...” and why the proposed building coverage, height, and setback standards with the removal of maximum density standards wouldn’t achieve the desired development type.
2. **Minimum Required Site Frontages:** Requiring a minimum site frontage length for development in the multi-dwelling zones presents a barrier to development and could favor larger developers with more resources to aggregate sites for development. Similar minimum site size limitations in Pleasant Valley Plan District have resulted in very little development in the area since its adoption. Consider whether this standard may result in little new residential development due to difficulty in acquiring enough adjacent property to meet minimum site frontage requirements. Applying this restriction in and around neighborhood centers, where additional density/development is desirable, has the potential to push development outside of these areas and further from neighborhood centers/transit options.

Detailed Comments

We offer the following additional detailed comments.

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1	9	33.120.030	Include additional language in the RM1-RM4 zone characteristic descriptions that speaks to the allowance for limited retail and office uses.
2	9	33.120.030	On 33.120.030.B, on the 4 th line, there is a reference to the R2 zone that is probably intended to refer to the RM1 zone.
3	9	33.120.030	It seems odd to note in the zone descriptions that design review is typically required in a zone – this is not a characteristic of the base zone, and is not consistent with the descriptions of the mixed-use and employment zones. Consider removing that sentence from the descriptions.
4	9	33.120.030	The RH zone is described as “urban-scale” – the RX zone should also include this language for consistency. Insert “urban-scale” after “high density” in first sentence of RX description.
5	17	33.120.100.B.2 and 3	It’s not clear whether these are qualifying situations and therefore an Adjustment is prohibited. If so and for clarity, state at least for B.2.a.1, 3 and 4, and B.3(1), (3) and (4) that Adjustments are prohibited.
6	17	33.120.100.B.2 and 3	The location of outdoor seating should be specified, at least for RM1 and RM2 zones. These would likely about single-dwelling residential zones. Hours of operation are difficult to enforce, but even the CR zone restricts hours of operation. Perhaps only outdoor seating adjacent to the street should be allowed.
7	17	33.120.100.B.2	a.2 – 1,000sf of retail per use is small.
8	23	33.120.100.B.8	b.2 – Consider excluding outdoor play area from the maximum 3,000 square feet for daycare uses, because state regulations are based on interior

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			space and these uses shouldn't be penalized for providing outdoor area.
9	27	33.120.110.B	Not clear why these commercial uses are identified as accessory as opposed to limited retail as is done in 33.120.100.B.2. The existing provisions in the code for accessory commercial uses have been rarely used, if at all, and with the proposed allowances for commercial uses it is not clear what differentiates an accessory use from those listed in 33.120.100.B? Suggest incorporating this language with that in 33.120.100.B. If retaining language in 33.120.110, clarify that these requirements apply only to sites where retail and office uses are not allowed by 33.120.100.B.2.
10	27	33.120.110.B	It is confusing to allow retail in RM zones with two different sets of regulations – one based on FAR and one based on percentage of floor area. Consider using one approach or the other.
11	33	Table 120-2	It is not clear what function this table serves if all of the housing types are allowed. This is true particularly if Manufactured Home Parks are only allowed in their new base zone.
12	37	33.120.206	The title of this section should be changed to "Minimum Required Site Frontage for New Dwelling Units."
13	37	33.120.206.C.2.b	For clarity, it would be helpful to restate the sentence as, "Development is allowed on a site where all the multi-dwelling residentially zoned lots that share a side lot line...."
14	37	33.120.206	<p>The minimum frontage requirement is overly restrictive and is not necessary to obtain connections in areas lacking connectivity. The City currently has other tools in Title 17 that could be used to get quality connections over narrow sites.</p> <p>For example, imagine two side by side 80 ft. wide lots in this zone. PBOT could get a small public</p>

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			<p>right of dedication on the first site that could operate like a private driveway and allow vehicle access to the first site. When the second property developed, PBOT could get another small dedication that could be utilized as an adjacent pedestrian path (like a common green) adjacent to the built narrow (public) driveway. Per this incremental approach, the first dedication could serve as vehicle access to both sites, while the second dedication could serve pedestrians and bikes while providing more green space and open area for both sites in an area that is controlled by the City and would exceed any outdoor requirements currently proposed onsite. It would also allow mid-block connections for new streets on deep sites. This could be accomplished using the existing regulations in Title 17.</p>
15	37	33.120.206	<p>The minimum frontage requirement is applied on the Jade District, 122nd/Hazelwood, Rosewood/Glenfair 16neighborhood centers and the Midway town center. Applying this restriction in and around neighborhood centers seems counter-intuitive – neighborhood centers area areas where additional density/development is desirable, and this regulation has the potential to push development outside of these areas and further from neighborhood centers/transit options.</p>
16	37	33.120.206.C.1	<p>Has BPS analyzed how many sites will be affected by the minimum frontage requirement? Requiring a minimum site frontage length for development on any site in the multi-dwelling zones presents a barrier to development and could favor larger developers with more resources to aggregate sites for development. Consider whether this standard may result in little new residential development due to difficulty in acquiring enough adjacent property to meet minimum site frontage requirements.</p>
17	37	33.120.206	<p>BDS has been put in a difficult position before where other bureaus tried to implement their codes</p>

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			using the Zoning Code and specifically use the term “prohibited”. Are we certain that PBOT is currently using all of the tools available to create these connections? What is to be gained by the Planned Development review? If parking is still required and big rear setbacks apply, it seems like there are limited options for site design that achieves minimum density. If we are hoping to couple private driveways, it seems like the Zoning Code or PBOT could do that without a review. Using the word “prohibited” also ties PBOT’s hands when flexibility is desired.
18	39	Table 120-3	A 0-foot front setback in RX zones may present a challenge when providing visitable units. A [2] footnote should be added to the table pointing you to 33.120.284.C for minimum setbacks on flag lots.
19	41	33.120.210.D.2	Should the sending site retain some minimum amount of density?
20	41	33.120.210.D.2.c	Clarity is needed on the implementation of FAR transfer for tree preservation. Consider what will happen if a tree dies or is removed after the FAR transfer has been completed. Is a covenant or other assurance needed?
21	41	33.120.210.D.3	Can the receiving site be a historic or conservation landmark?
22	43	33.120.210.D.5.c	Change “preservated” to “preserved”.
23	45	33.120.211.C.2	The phrase “Deeper housing affordability bonus option” is not totally clear. Consider using a different term in the place of “deeper.” Maybe “Enhanced Inclusionary Housing Bonus Option”?
24	47	33.120.211C.2.b	Can the site be a historic or conservation landmark?
25	47	Table 120-5	Should the Deeper Housing Affordability bonus be included in footnote [2]?

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26	49	33.120.212.B.1	This section contains a typo – it refers to the R1 zone, which is now the RM2 zone.
27	51	Table 120-6	The effectiveness of the tree preservation exceptions should be tracked over time. The relationship of density or bulk to a tree is tenuous and the track record of retaining these trees throughout the preservation period and beyond is not clear.
28	59	33.120.215.B.1 and 2	<p>Why delete reference to “maximum” height in this section? In the second sentence, for example, a straight reading of the standard doesn’t clarify for the reader whether this is a minimum height or maximum height standard.</p> <p>Also, why is there a figure for B.2.a but not for B.2.b?</p>
29	59	33.120.215.B.1	Regarding sites in the RM4 zone that are not within a Historic or Conservation district and are within 1,000 ft of a transit station, we would like to see a map of where these sites would be.
30	65	33.120.220.B.1.a and b	Is the maximum 55’ building height cited inclusive of stair and elevator overruns, and walls or fences separating rooftop decks?
31	65	33.120.220.B.1.a and b	This standard provides a 5-foot setback for buildings less than 55 feet tall, and a 10-foot setback for buildings 55 feet and taller. It appears this standard was intended to coincide with the maximum height for projects that may use the community design standards – however, the community design standards allow a building up to 55 feet tall. Should these standard be reversed so that a 5-foot setback applies to buildings up to 55 feet tall, and the 10-foot setback applies to buildings taller than 55 feet?
32	65	33.120.220.B.2.b(2)	Does the exception for tree preservation need to include some sort of provision for future preservation of those trees (i.e. a covenant or other

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			mechanism to require them to be preserved for a period of time)?
33	65	33.120.220.B.2.a	This standard limits parking area in the special rear setback. Should this standard limit vehicle area, or is it intended to only limit parking areas?
34	65	33.120.220.B.2.b	The minimum rear setback in the eastern pattern area seems partially based on tree preservation - what if trees are located in the middle of a site? It seems like a broader exemption for tree preservation would be appropriate. The exemption would work well only for sites where the trees are clustered in the same area on the site. This standard seems to restrict site flexibility too much in order to gain a larger rear setback, and it seems unclear how many properties could realistically utilize the proposed exemption.
35	65	33.120.220.B.3.b	Please include something in the purpose statement about the intent for the raised ground floor standard
36	65	33.120.220.B.3	<p>b. What if this standard doesn't match neighborhood character? Also, what happens on sloped sites?</p> <p>d. The reduced setback standard is based on length, but perhaps it should be based on height; what if it is a 3-story house? Window wells should be allowed in 3' setback; what about fire access?</p>
37	67	33.120.220.B.3.i	This exception for buildings containing common area seems to conflict with the purpose of preserving rear yards in this area.
38	81	33.120.220.D.3	This criterion allows eaves to project up to 2 feet in required setback if the eave is at least 3 feet from a lot line. The building code allows an eave to be within 2 feet of lot line. Consider allowing an eave to extend to 2 feet from the lot line, consistent with the building code.
39	83	33.120.225.C	This standard would exempt from building coverage, as an example, on a site sloping down

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			from the street a 15' foot tall building (as viewed from the backside) and 11' as viewed from the street, with the floor being 4' below that. That could be a pretty substantial building that is exempt from building coverage.
40	83	33.120.225.C	Make sure that this language is consistent with definition of floor area proposed with Code Reconciliation Project.
41	83	33.120.230.A	What does the term "patterns" mean in the last sentence of the purpose statement? When applying this purpose statement to an adjustment to the standard, we would not know how to apply this term.
42	83	33.120.230.B Figure 120-6	If the standard and figure is intended to refer to the articulation of a single building, with the length broken by an inset of at least 10' wide, there should also be a standard regarding the minimum depth of this inset.
43	85	33.120.230.C	The façade articulation standard appears to apply to street-facing facades but that is not clearly stated in the standard. If this standard applies only to street-facing facades, please state that in the standard.
44	85	33.120.230.C.2	It is not clear in C.2 if 25 percent refers to area or length of the façade.
45	89	33.120.231.C.2.b.	The term "adjacent" is confusing. It seems the courtyard might be interior to the site as long as there is a connection to the street. Adjacent makes it sound as if it is an extra large front setback.
46	93	33.120.232	Make sure these standards align with those being developed in the Residential Infill Project
47	93	33.120.232.A.	Almost all "higher-density" residential development would be subject to ADA requirements. Can the purpose statement tie these requirements to development types that do not trigger ADA and

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			explain why lesser standards apply for potentially the same number of units?
48	93	33.120.232.B.1.	If these standards are meant to accommodate people in wheelchairs, it is not clear why one stair would be allowed.
49	93	33.120.232.B.3.	Not clear what the 200 square foot accomplishes if it just needs to accommodate a 10-foot square. It seems like the 200 feet might then include hallways or other smaller rooms or closets.
50	93	33.120.232.C.3	Suggest expanding this sentence to read, "Lots where all of the new dwelling units will be added to an existing residential structure, with no increase in floor area."
51	95	33.120.233.B.2	Move the sentence beginning with "The bottom of qualifying windows" to before the sentence starting with "Required ground floor windows", and rewrite the sentence beginning with "Required ground floor windows" to read as follows: "Qualifying ground floor windows must meet at least one of the following:"
52	95	33.120.233.2 and 2.a	Ground floor commercial window percentage should match or be closer to that in the adopted mixed-use zones, which is 40 percent; 25 percent is too low. 2.a "working areas" needs to be defined. Suggest cross-referencing MUZ language for active ground-floor windows.
53	95	33.120.233.B.2.b	Should this sentence read "Glazing in pedestrian entrances to the Commercial use that allows views into working areas"?
54	95	33.120.233.C	The purpose statement needs to address the intent of this standard. Note in writing the purpose statement that an adjustment for a house that has 10-15 stairs would still allow surveillance of the

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			neighborhood (as evidenced in the photo in the commentary).
55	95	33.120.233.C	This standard has been removed from the Residential Infill Project because it was seen as being too open to abuse and therefore difficult to implement. It is our understanding it is being replaced with another standard.
56	97	33.120.235.B.2.b	While we understand other jurisdictions use 30 inches, we recommend you consult with Urban Forestry about this depth.
57	99	33.120.240	Should change the title if indoor areas are also allowed. With the exception of the last sentence the entire purpose statement is based on the benefits of an outdoor area, so why include indoor?
58	101	33.120.240.B.2	There needs to be something included in the purpose statement as to the intent of the 50% outdoor/indoor aspect of the regulation.
59	101	33.120.240.C.2	Shared common area must be designed so a 20-foot square can fit entirely within it. This seems insufficient for larger sites and doesn't seem large enough to qualify as a quality "outdoor common area." Consider increasing this requirement for larger sites or relating this requirement to lot size.
60	101	33.120.240.C.2.a	There is a typo on the first line – "shared common area is provied..."
61	101	33.120.240.C.2.c	Says that "each individual area must meet C.2.a above" which references outdoor common areas, not individual areas. Change to "C.1".
62	103	33.120.240.C.6	The standard requiring at least 50% of the perimeter of the outdoor area to be surrounded by dwelling units is far too prescriptive, and would preclude the most common set up of open space where the building is located towards the front of the site with the entirety of the open space being behind and adjacent to one wall of the building.

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			This standard would also prevent outdoor area from being provided in the special eastern pattern setback. Consider deleting this requirement.
63	107	33.120.255	<p>Pedestrian Connection is defined as: <i>A pedestrian connection generally provides a through connection for bicyclists and pedestrians between two streets or two lots. It may be a sidewalk that is part of a street that also provides vehicle access, or it may be a self-contained street created solely for pedestrians and bicyclists.</i></p> <p>Pedestrian connection in this section seems to be used interchangeably with pedestrian circulation system. However, by definition they are not the same.</p> <p>It is recommended that you remove “pedestrian connection” references from the standards that are intended to be for internal circulation systems vs dedicated connections between streets.</p>
64	107	33.120.255.B.1.c	<p>Note that this new standard will trigger nonconforming upgrades, and on large developed sites this will require putting pedestrian paths through recreational fields, or reconfiguring entire parking lots to meet this standard as part of the nonconforming upgrade.</p> <p>Changes or clarification of this standard is being considered through the Code Reconciliation Project. Make sure this section is updated as a result. It seems like this pedestrian connection is through the site and is intended to be accessible to the public. If so, a public easement should be required. This is another standard that PBOT may already have authority to require and depending on the layout of a large site, could trigger adjustments.</p>
65	117	33.120.270.C.3.c.	It is not clear why this standard is so prescriptive. We had a project that consisted of attached houses along a block frontage that turned the corners with additional attached house development (see 16-

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			287694 LDS). Seems like any lot lines with shared walls should have a 0 setback.
66	131	Table 120-6	For the “Buffering from Abutting Residential Zones” standard, consider allowing pedestrian paths to be located within the buffer, with a maximum pedestrian path width of 5 feet, similar to what is allowed in 33.120.235.C.1.
67	135 141 143	33.120.280.C.2.b, D.1, D2, and E1..d	If it’s okay to have structures in setbacks on smaller lots, which are closer to one another, what is the impact of allowing the same on larger lots, where if anything the structures in setbacks have less of an impact? This new proposal will create a lot of nonconforming situations for little if any benefit.
68	143	33.120.280.F.1	What kind of detached mechanical equipment is up to 20’ tall? Might it be possible to reduce the maximum height for mechanical equipment?
69	147	33.120.283.D.2.d.	Make sure this reference is consistent with Floor Area definition being proposed with Code Reconciliation Project.
70	149	33.120.283.D.4	May want to title this subsection “Exception for attached houses...” instead of “Alternative for attached houses...” as a way of clarifying that these standards are not adjustable. Make sure these standards are consistent with those proposed for attached houses in the Residential Infill Project.
71	149	33.120.283.D.5	On sites less than 7,500 square feet, if parking is provided it must be from alley, where available. This requirement should apply to lots of all sizes. The alley is a valuable asset that should be utilized in all situations if feasible. This would help maintain on street parking (fewer curb cuts).
72	151	33.120.283.E.	It seems like this section also needs reference to structured parking unless the definition of garage is changed to include triplexes.

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73	157	33.120.284	This code only applies to flag lots created before 7-1-02. Can this section be removed at this point? Unclear why this would apply to lots before 2002 (Title 34) and not to newly created lots under Title 33 after this amount of time.
74	157	33.120.284C.1	Table information needs to be added to Table 120-3, or a footnote should be added to Table 120-3 referencing this section.
75	159	33.120.285.C.3	Why not allow fences over 3' in height along a street lot for multi-dwelling development in situations where the main entrance of the building faces another street? This would allow fencing to maintain the privacy of required outdoor areas along street facades that don't contain a main entrance.
76	161	33.120.310	This states that requirements for streets, pedestrian and bicycle connections are regulated by Title 17. Consider adding language stating the typical public connections should be at least 200-500 ft. apart, similar to 33.654.110.B.1.a. Proposals that don't meet this standard should be required to include a letter from PBOT stating why this criterion cannot be met.
77	163	Map 120-1	Please label the major streets that serve as boundaries for the area, otherwise these maps are so difficult to decipher.
78	186-188	33.612 commentary	It is recommended that the commentary reflect or note that fact that for a land division, that while there are no longer any maximum density limits, conditions will be imposed to limit maximum allowed density on lots identified by the applicant as attached houses, attached duplexes, detached houses and duplexes, because multi-dwelling development has a much larger minimum lot area requirement.
79	189	Table 612-1	Why is the minimum lot size for multi-dwelling development so much larger in the RM1 zone than

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			in the RM2 zone? It seems counter-intuitive to have a larger minimum lot size in the higher-density zones than in the lower-density zone. This seems to encourage more smaller-scale development in the higher-density zones.
80	192	33.930.025 commentary	The commentary should be more clear that this discussion doesn't apply to sites that go through a land division, as 33.930.025 indicates that this is based on the site area at the time of building permit application.