

From: Tom Stulberg <tomstulberg@hotmail.com>
Sent: Sunday, January 03, 2021 9:44 AM
To: Planning <Planning@a2gov.org>; Hayner, Jeff <JHayner@a2gov.org>; Disch, Lisa <LDisch@a2gov.org>
Subject: C1A and C1A/R - CPC Update Response to City Council Resolution R-20-267

Planning Commissioners:

I have previously sent you information regarding the misuse of C1A and C1A/R and substantiated reasoning from Planning Department documents and expert analysis that there was an intended area for their use defined both geographically and by the characteristics of those zoning categories. They are OK to leave on the books if they are kept to where they were intended, but we have seen abuse of that which necessitates action. Extending the use of them by mere assertion rather than any actual substantiated analysis defies zoning law, good public policy, and common sense. It exposes the city to poor planning results that will work against the city's master plans and goals and irresponsibly exposes the city to costly legal challenges.

I remind you that you can read the analysis by one of the top experts in the field at <https://lowertownlife.org/read-the-filing> and we also have a FAQ page. We paid an expert to do the homework for the city. We did this not with the intent to sue the city, but with the intent to educate city council prior to their vote. We later filed our lawsuit, which is why this matter is before you Tuesday night. If you have not yet read "The Complaint" and "1140 Broadway Zoning Comments SKF", please do so now. Both documents contain copious factual content as well as actual analysis of planning and zoning documents.

C1A was applied for at The Garnet. 325 E. Summit. It was correctly voted down by city council because it was wrong in three significant legal zoning ways, one of them being the improper use of C1A.

C1A/R was applied for and IMPROPERLY approved 7-4 at LowerTown (formerly 1140 Broadway, now three lots including the new building at 1200 Broadway). This resulted in the undeniable fact that the exact same plan could have been approved as a PUD, with the only difference being nearly \$9 Million Dollars of developer-paid funds not being going into the affordable housing fund. This also resulted in two out of three lots at LowerTown being approved for 100% residential, though the only justification for stretching C1A/R to that location was for MIXED-USE which we recognize as a desirable way to help achieve sustainability goals. There are many other things wrong with the LowerTown approval (as documented), but these two clearly demonstrate that abuse of Campus BUSINESS DISTRICT zoning went in the opposite direction than YOU, the current City Planning Commission, and WE citizens have clearly stated we all want to head.

We have done the homework for you. We have done the expert analysis that is based on City of Ann Arbor Planning and Zoning Documents, not mere assertion. We had hoped the City would acknowledge the geographic and characteristic limits to where Campus Business District Zoning is appropriate, or alternatively remove C1A (which I believe hadn't been used in 20 years) and C1A/R (which I believe hadn't been used in 50 years).

Our lawsuit and negotiations provide the City with a very inexpensive path to remedying some serious problems that it had created for itself. You are already dealing with replacing the highly problematic Planned Project Modification ordinance, which was in our lawsuit and which I have followed closely and applaud you for doing. The improper use of Campus Business District Zoning is fraught with potential future planning and legal problems. Please accept our assistance now in cleaning up a future mess.

Thank you,
Tom Stulberg
Spokesperson for Ann Arbor Neighbors for Responsible Development

Below is another way to describe one reason why this matter - <http://a2gov.legistar.com/LegislationDetail.aspx?ID=4740073&GUID=92BCE53F-D1E1-4CB0-9C6D-4649CE666C2B> - is before you Tuesday:

The LowerTown Scandal - a story with videos

LowerTown is not only the biggest private development in Ann Arbor since Briarwood, it is also our biggest scandal.

The site was Master Planned for a mixed-use urban village. A dense development with both commercial and residential, including affordable housing, was expected and supported by the neighborhood, something that current proponents of Transit Oriented Development would support too. What we got was an over-sized luxury residential development, with less than 1% token retail.

The mayor and his allies cooperated with the developer to approve a plan that did not conform to the master plan nor to good public policy. And they did it in such a way as to let the developer off the hook for almost \$9 million dollars that should have gone to the affordable housing fund.

The site was master planned for PUD, zoned for PUD, and the exact plan that was approved could have been approved as a PUD. But it wasn't. Why? Let's ask the developer: <https://www.youtube.com/watch?v=PmHoX59ah0I&feature=youtu.be>

Council Member Jack Eaton explains the complex zoning issue well: <https://www.youtube.com/watch?v=6-y-uEbTyb4&feature=youtu.be>

I explain it too, with a little demonstration of how this approval was just a PUD in disguise: <https://www.youtube.com/watch?v=41SDUZVWLbY&feature=youtu.be>

Some people have tried to claim that the developer would not have built anything there if we didn't break the rules for him. One, you can't break zoning law for that reason. Two, the developer is currently leasing units there starting at over \$2,000 per month for the smallest, a 453 square foot studio apartment (that includes utilities and parking). That is twice as much as he said it would be: <https://www.youtube.com/watch?v=92fkSg9F-rU&feature=youtu.be>

The mayor and his allies had to bend over backwards to help this developer. Because of a certain percentage of immediate neighbors opposed it, eight votes were required. They only had seven. The developer had already said he was not going to change anything at all, but then asked for a two-week postponement to change the zoning (not the site plan, but the zoning). Council Member Jack Eaton got the developer to admit the real reason for the postponement: <https://www.youtube.com/watch?v=iz3Ex1hLJgc&feature=youtu.be>

So, an adjacent house was purchased, and the percentage dropped, and only six votes were needed. The vote was 7-4 to defy the master plan, create a PUD in disguise, and eliminate the requirement to build 93 units of affordable housing or contribute \$8,676,900 to the affordable housing fund.

So, the next time the mayor or his allies talk about affordable housing, mixed use, or the master plan, remember what they DO not just what they SAY.

From: Scott Trudeau <scott.trudeau@gmail.com>
Sent: Sunday, January 03, 2021 12:48 PM
To: Planning <Planning@a2gov.org>; Disch, Lisa <LDisch@a2gov.org>
Subject: T1 draft thoughts

Hi Planning staff & Planning Commission,

I got my hands on the memo Jonathan Levine & Will Leaf shared with you all (attached for reference) which got me thinking about the T1 draft again. I wrote a long blog post here (also attached in PDF form): <https://sstrudeau.com/posts/levine-leaf-t1-transit-zoning/>

... but the short version is I think Levine & Leaf made some good points but my suggestions and concerns are more moderate

- I love their proposal to simplify all the mixed-use zones and I would support it, however, the argument that that big a change should wait for a Master Plan overhaul recommendation is pretty strong
- I think the minimum 2 story requirement is fine; second story square footage is cheap. This one seems worth the trade-off since the cost is low & it helps dissuade the cheapest box store/strip mall/drive-thru plans
- The open space requirement is fine though I'd rather see something that focuses on usable exterior space that includes terraces and balconies than strictly open space, which is often useless
- I'm not too worried about the residential parking maximum on larger mixed-use redevelopments (where non-residential parking would do double duty) but I think it could limit desirable redevelopment of smaller parcels pretty severely; I'd recommend either removing the maximum or overhauling the way the maximums are calculated to make the effective maximum higher for projects that are more residential-heavy, especially for smaller projects
- I agree with Levine & Leaf that the mixed-use requirement probably does more harm than good; I'm especially worried about how this makes sites much less adaptable to change over time and that it will limit smaller parcel incremental development that would fit nicely into a mixed-use zone which means we're stuck waiting for large developers to do large projects on large parcels only and cutting off a whole lot of potentially nice incremental infill

And while I am not at all concerned about the lack of explicit height or density limits, if you all determine we need to add something *please* pick either density (FAR) *or* height. The mix of both downtown is a great example of how having both makes it very hard to understand & communicate what the real limits are and encourages boring & boxy design.

Thanks for all your work!

Scott Trudeau, Ward 1

On Ann Arbor's "T1 Zoning" Draft

The City's planning staff & Planning Commission have been working on a new "T1" zoning category off and on for at least two years. The overarching goal is to rezone areas along major bus routes to encourage higher-density housing where there are currently large parking lots and strictly commercial uses. T1 is often referred to as the "transit-oriented development" ("TOD") ordinance. Staff has been careful to label it "transit-supportive" zoning. "TOD" is often used to refer to larger-scale upzoning around rail nodes, which isn't exactly what this ordinance is trying to do. This work began when I was still on the Planning Commission and stalled last year when Council blocked a resolution asking for continued work on the ordinance. The new Council revived the effort and provided a green light for the work to continue.

Last month, UM Professor of Urban Planning Jonathan Levine and former Council candidate, fellow zoning nerd Will Leaf drafted a short memo for Planning & Council with some suggestions for a more expansive, and simplified approach. I'm using this memo as a prompt to (finally) organize some information and thoughts around this effort.

References:

- [Draft of Potential T1 Ordinance](#) from September 2019
- [Leaf/Levine memo](#)
- [Council Resolution to create district](#)

Why Transit Supportive Zoning and Why Now?

As staff has pointed out in reports in the links above (as do Levine & Leaf), we have many recommendations in various components of the City Master Plan that advocate zoning for (and otherwise encouraging) denser uses along our existing transit corridors. One concern troll tactic for arguing against this change is that we should first update our Master Plan (which I agree is overdue for a major overhaul!) before considering a change like this. Given the repeated recommendation for approaches like this in our current plans, moving this forward even as we begin a multi-year Master Plan overhaul is well justified. This zoning update completes the work from years of community input; it directly addresses our current housing crisis and helps meet our future sustainability goals.

What is in the T1 draft & Why?

The latest draft I am aware of is from late 2019. Highlights of the draft:

- Minimum building height of 24' & 2 stories
- Mixed-use is required -- (at least half the built floor area must be used as residential space)
- No mandatory parking minimums AND parking maximums for both non-residential & residential uses
- No firm density or height limits (though there are practical limits on these things via setbacks rules and other regulations)
- Design requirements including a 15' minimum height first story and at least 60% windows on the first story walls.
- 25% open space requirement

Staff & Planning Commission are trying to balance several concerns with this set of rules. Our current mixed-use zones already allow mixed-use residential & commercial redevelopment, but it is rare for a developer to consider

building dense mixed-use projects. These rules are trying to get a real mix through a mix of carrots and sticks.

For the "carrots," the ordinance attempts to clear away some practical barriers, including parking minimums. When we require more parking than the builder thinks their tenants or buyers will need, it increases costs or makes denser projects non-viable. Eliminating specific density and height limits allows for design creativity & efficiency while keeping potential encroachments of large buildings adjacent to other areas at bay with setback rules that discourage or effectively prohibit taller structures where parcels are small and close.

The "sticks" include parking maximums, height minimums, and the mandate for mixed-use. Parking maximums limits developers' ability to build very dense, over-parked (and therefore expensive) residential developments. The height minimums (and some of the site-arrangement requirements) constrain the viability of low-density strip mall and drive-thru developments. And the mixed-use requirement is to ensure we get some housing built, which again limits strip-mall-style developments.

The "sticks" are designed to discourage the kind of development we still see on our major transport corridors: one and two-story buildings for primarily commercial uses (retail, office, warehouse) surrounded by large parking lots and drive-thrus. The ordinance includes these sticks out of fear. If we don't prohibit what is easy to finance and cheap to build (one-story, low-density buildings with large parking lots), that is all that developers will build. This fear is rational. We have nearly a century of experience financing and constructing auto-centric strip malls. Financing and management expertise for developing an actual mix of uses is much harder to come by. The hope is

that these "sticks" will create some space for developers who want to take the more challenging path.

So What do Levine & Leaf Think?

In their memo, Levine & Leaf support the goals but have a few specific recommendations. They highlight well-loved buildings in walkable, mixed-use areas that would be prohibited by this ordinance. Instead of adding a new zoning category to our long list of mixed-use zoning categories, their primary suggestion is to consolidate our existing mixed-use zones into two new zones (of two different intensities depending on proximity to lower density residential uses). They recommend removing the mixed-use requirement, the open space requirement, the two-story height minimum, the windows/transparency requirements (conditionally), and the parking maximums.

Their recommendations note that many of these restrictions would prohibit "good" approaches to dense, mixed-use buildings. They are also concerned they might make any project financially non-viable. These factors could stifle any new development rather than encourage redevelopment of genuinely mixed-use neighborhood nodes.

The differences between Levine & Leaf's recommendations and the current draft emerges, I think, from viewing the goals and problems from two different lenses. The Draft ordinance starts with the assumption that this zoning will apply to relatively large sites. Examples include 777 South State owned by Oxford or a typical 1-acre fast food restaurant parcel. Leaf & Levine look at existing walkable areas and what kinds of buildings work and do not work. They recognize a walkable neighborhood is rarely self-contained to a single one-off site plan and no single site shoehorns in All the Things in one place. They are also more focused on clearing barriers to

better buildings & mixed uses than crafting rules to avoid potentially undesired outcomes.

What do I think?

Levine & Leaf highlight concerns I had when the Planning Commission began work on this process. Existing walkable neighborhoods are usually made up of lots of small parcels and individual developments with diverse uses and scales. Importantly, those uses *change over time*. Those incremental changes allow a neighborhood to adapt over to the needs of the residents in them. Rigidly encoding things like a percentage of residential use make that kind of adaptation impossible. Trying to shoehorn every use into individual site plans flies in the face of the reality of how these kinds of neighborhoods have traditionally emerged.

I also think Levine & Leaf are right that we have too many, too complicated mixed-use zones, and their simplification plan is a good one. Doing what they propose would also do away with mostly silly arguments around things like the [C1A/R & C1A controversy and moratorium](#). I would support taking this approach with this rezoning effort, though the argument that this kind of change should wait for the Master Plan overhaul is a little stronger.

I'm less worried about some of the specific things Leaf & Levine call out. I'm ok with the height minimum; second story square footage is cheap if you've already built the foundation. It does limit some single-story dense uses (like their Washtenaw Dairy example). Still, it dissuades the worst kind of auto-sprawl strip mall development at a relatively low cost. The open space requirement is probably quite workable. However, I might instead recast "open space" as usable exterior space that would also include terraces and balconies rather than focus on a land-area-based regulation. I also am not as

concerned about the parking maximum for larger, mixed-use sites as some of the included non-residential parking will be able to serve double-duty.

While I understand staff & Planning Commission's fear that if we do not *require* residential use, we will not see residential uses constructed, I also see many ways that kind of requirement could go sideways. Too-rigid rules might limit any new development at all unless/until developers have the time to assemble larger parcels and make big gambles on all-at-once redevelopments. Our crisis is big, so we shouldn't dissuade large developments, but planning for the long term should ensure sites remain adaptable and can accommodate that change incrementally. It is at this smaller scale where the "sticks" like parking maximums and the mixed-use requirement really could be a barrier to nice, incremental infill.

What Do I Recommend?

This kind of rulemaking is hard, especially for private land. I believe it is better to focus first on making good things (e.g., the examples we can point to that we all mostly agree are pleasant, walkable, dense parts of our City) *possible*. In that spirit, I generally agree with Leaf & Levine that dropping some of the more rigid rules like the mixed-use requirement and parking maximums, especially for smaller-scale projects from the draft ordinance. I am less concerned about the height minimum or open space requirements. I'd explore relabeling open space with a definition that instead looks at things like usable private, semi-private and public exterior space, including balconies and terraces.

My other caution is I expect some members of the community will highlight the lack of height and density limits to conjure images of Hong Kong-style tower blocks and Manhattan supertalls. A combination of regulatory and practical constraints make this an irrational fear. The setback rule does a lot

of work to dissuade very tall buildings on smaller parcels. And for large parcels, even regulations like FAA limits on building heights near the airport come into play. In practice, it is far cheaper to build <10 story concrete podium + timber buildings than 10+ stories that require steel frames or experimental mass timber. If a compromise on this becomes necessary, I hope we settle on a density limit (FAR) *or* a height limit. We've relied on both downtown, which overcomplicates the design process, makes it harder to understand what the real limits are, and has lead to very blocky and uninspiring building forms.

[← Home](#)

Summary

The planning commission has proposed a new T1 district that would partially replace the city's commercial and industrial districts. We support the intent of the T1 district, but we think its rules are too restrictive to be useful in all but a few parts of the city, and a more versatile solution is needed. We recommend that City Council ask the planning commission to develop one or more flexible mixed-use districts to fully replace the city's commercial and light industrial districts.

The Need for Change

Currently, the city's commercial corridors are governed by a patchwork of suburban-style zoning districts in which developers are required to provide free parking but are forbidden from building high-density housing. As a result, our commercial areas consist mainly of strip malls, rather than walkable mixed-use neighborhoods.



M1 zoning on the S. State corridor.



Mixed-use buildings, forbidden in M1 zones.

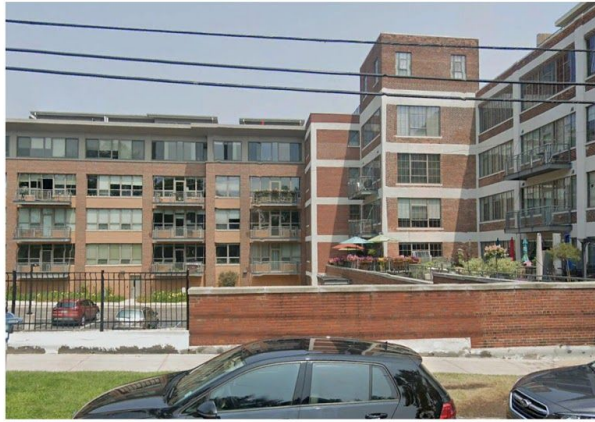
City Council has already committed itself to changing this state of affairs. It has [pledged to promote mixed-use neighborhoods](#) and has endorsed a [plan calling for high-density housing in commercial areas](#). We hope the city will now follow through on its commitments with specific zoning reforms.

The T1 Proposal

Recently, the planning commission proposed a [new T1 district](#) designed to promote mixed-use development outside of downtown. The T1 district has several positive features, like its flexible density controls and lack of parking minimums, but it also has restrictions that could act as barriers to housing construction and development generally.

The T1 district bans all light industry, all single story buildings, and all developments that are not exactly 50-66% residential. If T1 zoning were applied widely to our commercial corridors, many

common and benign developments like apartment buildings or stores without housing would be forbidden.



None of these developments would be permitted in the T1 district. All of them violate the 50-66% residential rule, and Washtenaw Dairy (lower left) violates the two story height minimum and transparency requirement.

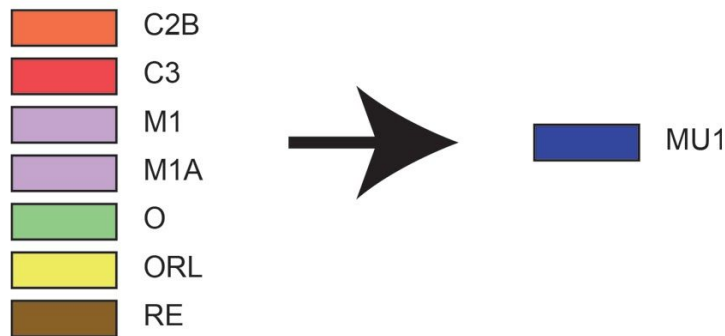
Since the city is committed to large-scale reform, but widely applying the T1 district is impractical, we suggest that city council fully replace our commercial and light industrial districts with flexible mixed use districts. Our recommendation below shows one possible way to implement this change.

Our Recommendation

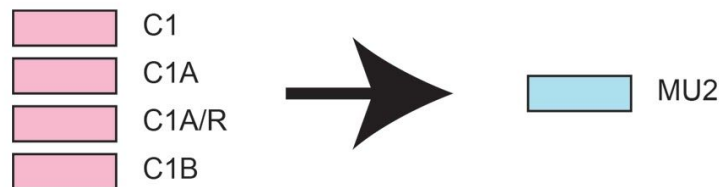
City Council should ask the planning commission to develop two new zoning districts:

1. An MU1 district designed to replace our C2, C3, O, ORL, M1, and RE districts, which would have the same rules as the proposed T1 zone, with the following changes:
 - a. Permit all of the uses allowed in the districts being replaced, including light industrial uses, which are permitted within mixed-use districts [in many cities](#).

- b. Remove the minimum and maximum housing percentages. We believe that along the broad stretch of commercial corridors, mixed use can be achieved through diversity in nearby buildings and does not need to be mandated within each individual development.
- c. Remove the 25% open space requirement. Currently, the city's commercial districts have no such requirement, and adding one contradicts the city's goals of allowing more density in its commercial corridors.
- d. Remove the two story height minimum. We worry that this requirement could end up discouraging medium-density single-story developments.
- e. Remove the parking maximums. If only 0.5 parking spaces are allowed per dwelling unit, developers might not build any residential units at all.
- f. Remove the transparency requirement for housing, and provide flexibility for commercial and industrial uses whose functioning might be impaired by transparent walls.
- g. The T1 district could be used as a character overlay for certain sections of the MU1 district, much like the city's existing overlays in the downtown.



- 2. An MU2 district designed to replace our C1 districts, which often border residential zones. The MU2 district would be the same as the MU1 district, but with stricter rules concerning noisy and potentially disruptive uses.



Will Leaf has written about zoning for Real Estate Law Journal and can be reached at willeaf@umich.edu.

Jonathan Levine is a Professor of Urban and Regional Planning at the University of Michigan and can be reached at jnthnlvn@umich.edu.