APA

→ **ISSUE NUMBER 4**
PRACTICE **FORM-BASED ZONING**

(G) Protected District Upper Story Setback

(F) Protected District
Upper Story Setback

(D) Protected
District Setback

Protected District

PRIMARY STREET

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Living with Your Form-Based Code

By Nancy Stroud, AICP, and Elizabeth Garvin, AICP

Form-based codes (FBCs) have been available as a zoning approach in various incarnations for about 30 years. According to the Code Study, a collaborative effort to track the development and adoption of form-based codes, as of February 2017, there were 654 codes that met the criteria for form-based codes established by the Form-Based Codes Institute, 344 of which have been adopted. While the study lists codes from 48 states, more than one-third of all form-based codes in the U.S. are in just four states: Florida, California, Texas, and Virginia. So, depending on where you work as you read this, you may not have seen a form-based code in action in your part of the world yet. Like previous "new" approaches to zoning, such as planned unit development, performance zoning, and conditional zoning, this design-based method of regulation has moved along the zoning continuum from its outsider start to its current status as a fairly mainstream and well-recognized tool.

Many in the planning and design community recognize the value of form-based codes in providing improved regulatory specificity about the built environment. A great deal of time and effort on the part of planners, developers, architects, and the community goes into adopting a new form-based code. Waiting offstage and outside of the footlights, though, is the drama of implementing and using the new regulations. Most communities have the systems in place to implement an updated traditional code. Form-based codes, however, are more than a little different than traditional codes when it comes to project review. If a community's current application review process is not already heavily design oriented, the process and the people involved in the process may need to change to accommodate the new review requirements.

This article will focus on preparing for and living with the day-to-day administration of a form-based zoning code. After a brief description of the typical form-based code, we will discuss how to introduce the code to essential internal and external users, with a particular emphasis on training (for both staff and the development community), education of elected and appointed officials, and

vigorous public outreach and communication. Then we'll explore a variety of situations where conflicts often arise during the development review process, and what practical methods may address and resolve them. Finally, we'll discuss the process of adjusting the new code as necessary and appropriate.

IMPLEMENTATION STARTS WITH DRAFTING

The FBC implementation process starts with keeping track of the multiple changes from a traditional to a form-based regulatory approach that are made during the drafting process and that will be reflected in both how a site is designed and how it is reviewed. These changes can be generally categorized as changes that need to be highlighted and changes that need to be taught. For example, changing from a setback line to a build-to line may just need to be illustrated in the regulations and highlighted through the public outreach process. Changing from a setback line to a block-based contextual setback may need to be taught. Teaching should take place throughout the drafting process, should be the subject of focus in post-adoption training, and can best be supplemented with a user's manual that is produced in conjunction with the new regulations.

Components of Form-Based Codes

A typical form-based code has three key component parts; the careful drafting of each is critical to ensuring a (more) smooth implementation process.

The **Regulating Plan** is comparable to an area plan or specific plan that establishes a very specific future development map. A regulating plan has characteristics similar to a detailed development plan or preliminary plat. The only difference is that creation of the regulating plan usually precedes development, whereas the development or plat are part of the approval process. The regulating plan pulls together both the building form standards and the public space standards described below and applies them to the community, typically at the lot or block level.

Unlike many site-layout regulations in a traditional zoning code, particularly an older zoning code, which are either generally applicable or mix-and-match depending on the use, form-based regulations are place specific. A clear regulating plan helps both staff and the applicant apply the correct regulations to the parcel. Where a community chooses not to adopt regulating plans, it is critical to identify how the various parts of the form regulations work together so an applicant understands, for example, that an urban form frontage cannot be mixed with a suburban form parking lot design.

Building Form Standards are the regulatory requirements for the various individual building types recognized in the community. Many of the standards contained in the building envelope standards are also included in traditional regulations, but the physical design focus of form-based codes elevates the importance of these standards.

City and County of Denver Community Planning and Development

This illustration from Denver's zoning code highlights select building form standards for shopfront buildings in an Urban Neighborhood Context.

While traditional zoning identifies a regulatory black box on a lot for the applicant to fill, form-based codes fill that box with a structure that works in the community context.
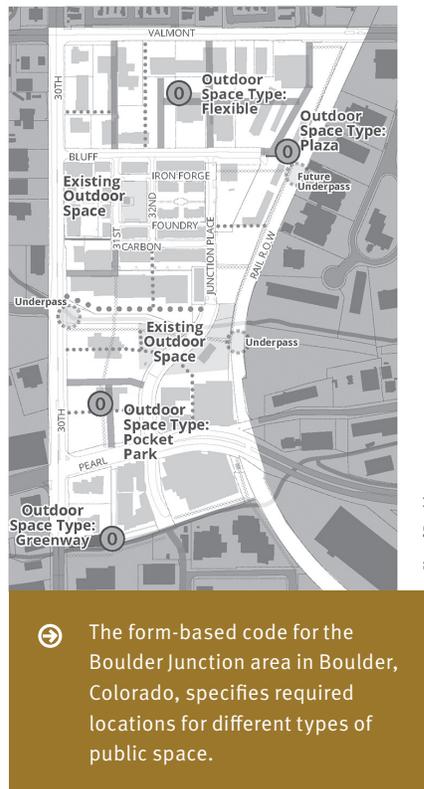
Changes to the way a community measures building form can result in all kinds of questions from applicants, along with some creative interpretations of the code. For example, while height restrictions are standard in traditional regulations and usually expressed in feet, in a form-based code building height is used to ensure that all structures in a specific area "fit" together, and may be expressed in stories rather than feet. Where the form-based code does not specify a measurement range for a story, an applicant may decide to extend the height of each story and ultimately the height of the structure, thus undermining the whole concept of "fit."

Finally, **Public Space Standards** regulate streets and public spaces. Creating walkable communities is a core tenet of form-based coding, so the street standards are both pedestrian- and automobile-oriented. These standards include: (1) the design of individual street types (also called thoroughfares, but that's always harder to spell) with travel lanes, bike lanes, parking areas, and sidewalks; (2) the design and connectivity of the overall street system; and (3) required streetscape standards. The active regulation of public spaces may be a new idea in communities with traditional zoning regulations; public space dedication is more typically a function of subdivision design. Explaining the function, size, and design requirements of the various types of public spaces will need to be part of the implementation process.

Drafting Tips for Form-Based Codes

The best way to head off the angst of change when moving from a conventional code to a form-based code is to take care in the initial drafting of the new code. Code ambiguities resulting from poor drafting are often the subjects of the first code amendments after the initial code adoption. Head off difficulties by addressing the following before adopting the code:

Statutorily Defined Terms. Some state and federal statutes use terms that attach specific meaning to land-use requirements. In these cases, it is very important to use those terms (accurately) and to not invent

City of Boulder

➡ The form-based code for the Boulder Junction area in Boulder, Colorado, specifies required locations for different types of public space.

new ones. For example, state statutes typically use the term "variance" to describe and enable a particular land-use approval that must meet specific statutory standards. In that case, the code should not create a new land-use approval process that does not adopt those same standards while referring to it as a "variance." The same can be true for statutory planning words such as "exceptions" or "consistent." Furthermore, be aware of circumstances where the code language may have been the subject of court interpretation, as that interpretation must be respected if the same language is used.

Plain English. While it is true that form-based codes have developed their own "terms of art," the more that the code uses plain English, the more readable, understandable, and usable the new code will be. The reader should not have to take a secondary language course to understand how the code works. Use short declaratory sentences, avoiding the passive voice. Write like Hemingway, not like Faulkner, when writing a code. Do not use two words when they have the same meaning; as one practitioner has stated: "To add is human, to delete is Divine." Words that are used repeatedly throughout code must retain the

same meaning in all contexts. Be very clear about when standards or procedures are mandatory (use the word "shall" or "must"), as opposed to when they are advisory ("are encouraged to" or in many jurisdictions "may"). We counsel clients that advisory language means that the regulation is optional and the applicant can choose to opt out.

Statements of Intent. Statements of Intent, particularly in the introductory provisions of the form-based code, can be very helpful to explain the purpose of the form-based code and what it seeks to achieve. Because the new code will often dramatically change the regulatory framework, form-based codes may usefully contain a fuller description of intent than a conventional code. Once the visioning and educational process of community involvement leading up to code adoption is ended, the statement of intent articulates and carries forward this community vision for the future users of the code. For example, the Miami21 code includes an extensive description of purpose and intent, including "guiding principles" that describe goals for the city, the community (including neighborhoods), and for blocks and building (see miami21.org). The Nashville Downtown Code (DTC) has an extensive introduction section that provides information about both why the code establishes specific regulations and how those regulations will be applied to meet community goals. For example, in support of the goal to "create and nurture urban neighborhoods," the introduction explains:

> To create these distinctive urban neighborhoods, the DTC aligns the regulations of each subdistrict with the intended character of the neighborhood. For instance, the South Gulch is envisioned to continue as a high-rise and midrise, mixed-use neighborhood. The DTC codifies mid-rise height in the general subdistrict and allows high-rise buildings on key intersections and along important streets. In contrast, the North Gulch is envisioned to be a low-rise neighborhood – to preserve Capitol views and transition into the Hope Gardens and John Henry Hale neighborhoods. The DTC codifies this vision by capping the overall height, allowing for less intense development such as two story houses and townhouses, and encouraging porch and stoop frontages.

Definitions. Accurate definitions are critical to the code's usability. All terms of art should be included in definitions. Definitions should not contain regulations or commentary. Regulations should appear in the relevant sections of the code; commentary should appear in statements of purpose or in supplementary, nonregulatory publications such as vision statements or guides.

Graphics. Form-based codes rely heavily, and with great effect, on graphics. Tables, charts, and illustrations often can efficiently communicate standards more understandably than words. The code should be very clear about when graphics are explanatory and illustrative rather than regulatory, and captions for the graphics are very helpful in providing this clarity.

TESTING YOUR FORM-BASED CODE

Prior to adopting the code, and throughout the process of drafting, the various provisions of the code should be put through testing scenarios. Testing will identify where the code is unclear or not effective. It will also highlight those types of reviews that may require additional staff training or community education. Test the code for the types of standard and high-profile development applications that the community expects, or hopes, to be reviewed.

Certainly, the administrative staff that will be responsible for implementing the code should be involved in applying the newly drafted code to various development application scenarios. Planners, zoning technicians, building permit officials, and code enforcement personnel are examples of people who need to understand the code before its adoption, so they can alert the drafters to potential administrative issues. Staff should be asked "what is the worst (and best) result that can be created with this process or standard?" as well as "how can we make it work better?" Testing by the end users of the code—the applicants and their professional consultants—will also alert the drafters of potential glitches in the code. We also suggest that laypersons should be involved in the testing, to learn how usable and understandable the code is to the general community, including residents and home owners who are likely to pay attention to potential future development.

ADMINISTRATIVE PREPARATION

The new regulations will need to be rolled out both internally and externally. There are several ways in which the rollout of the new code can be made more successful for both audiences through advance training of staff and advance preparation of guides and forms.

Internal Administration

The design-centric nature of the form-based code may require additional training for the existing staff, and additional expertise to supplement their skill sets. Administrators across departments may need to learn new concepts and must become familiar with new regulations and tools. Participation in the development and testing of the new code by existing staff—across departments—can identify where the gaps in expertise and experience lie. This early identification and planning for additional or different assistance will prepare the administration for budget impacts as well.

The new code certainly will require new or revised application forms and review and comment sheets. It will be useful to create a review sheet for each project type, identifying relevant code provisions, providing necessary interpretations (or changes to the draft), and flagging issues that may need special attention or items that need other departmental reviews. Charts that compare the old and new provisions can guide the transition for staff and other users. Implementation of the new code may also require new or updated computer software for intake, processing, and records retention. If a local government relies on its website to provide project submission and review information, this is the time they should update that information.

Communities can use the creation of an application form and checklist as an internal education tool to identify places where interpreting and applying the form-based regulations is straightforward and places where more education, better graphics, and perhaps code amendment will be helpful to staff. And where code changes are helpful to improve staff understanding, they are usually also helpful to the development community.
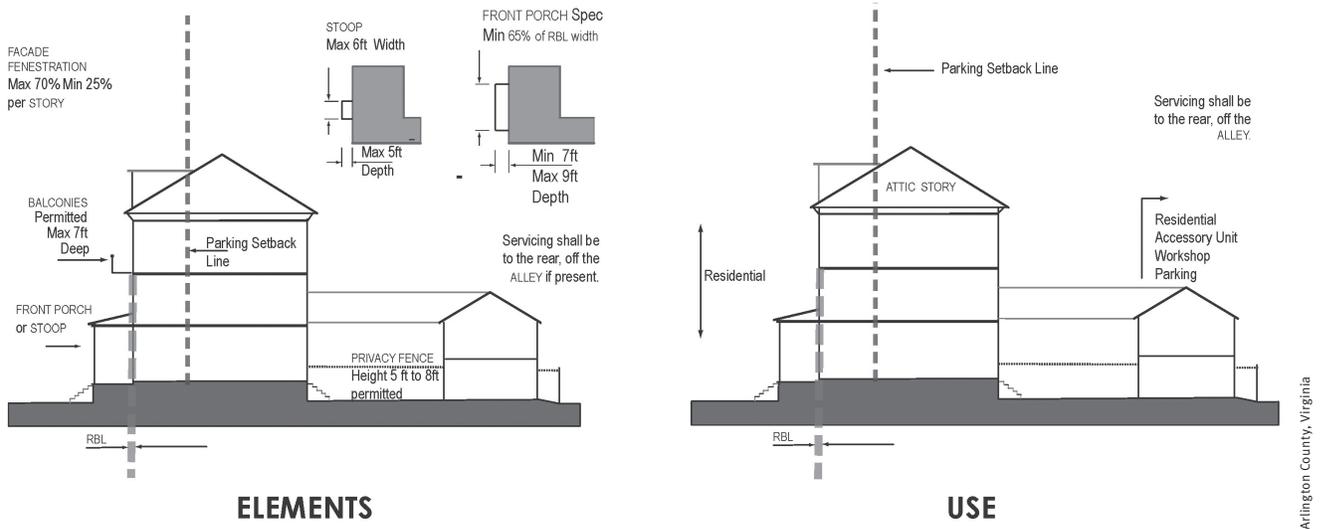
A good application form and checklist go beyond requiring a generic site plan and instead provide guidance about navigating the regulations. Creating a detailed checklist may seem like an unnecessary use of staff time when it is the applicant's responsibility to follow the code. We disagree. A good application checklist directs the applicant to self-help and reduces the number of times that an applicant will call or stop by with questions. This frees staff to help with complex design issues or to work on other projects. The checklist should: (1) identify all of the required contents of the plan, preferably with short descriptions and references to relevant code sections so the applicant can refer back to the code if necessary; (2) distinguish requirements that may not be applicable to all developments (e.g., FAR is not measured on residential sites, or supplemental landscape standards are applicable along specific streets); and (3) provide the applicant with a guide to relevant choices, such as identifying specifically applicable subarea regulations (while also asking the applicant to identify where they have made relevant choices; for example, identifying where the applicant has provided a sufficient amount of affordable housing to opt into a square-footage bonus for a commercial structure).

Some examples of detailed submission checklists include Arlington County, Virginia's Columbia Pike Form Based Code Development Application; Malta, New York's FBC Project Application Checklist; and Colorado Springs, Colorado's FBZ Development Plan Application Requirements.

At this point in the process, it is also prudent to analyze whether the new code would be better implemented with restructured review bodies, or whether board member qualifications need to be changed. Should new board members be appointed? Can those community members active in the development and adoption of the code become board members who help to ensure the success of the code? Putting these changes in place before or concurrent with the new code adoption helps to position the community for better outcomes.

For everyone involved in the implementation of the new code, including the staff, board members, and elected officials, a user's guide to the code will be very helpful. Some communities adopt the code with a narrative supplement to the effect of "how to use this code." This walks the reader, in layperson's language, through the basic process of determining which regulations

FACADE FENESTRATION
Max 70% Min 25% per STORY

STOOP
Max 6ft Width

FRONT PORCH Spec
Min 65% of RBL width

Max 5ft Depth

Min 7ft Max 9ft Depth

BALCONIES
Permitted Max 7ft Deep

Parking Setback Line

Servicing shall be to the rear, off the ALLEY if present.

FRONT PORCH or STOOP

PRIVACY FENCE
Height 5 ft to 8ft permitted

RBL

ELEMENTS

Parking Setback Line

Servicing shall be to the rear, off the ALLEY.

ATTIC STORY

Residential Accessory Unit Workshop Parking

Residential

RBL

USE

Arlington County, Virginia

➔ In 2013, Arlington County, Virginia, adopted the Columbia Pike Neighborhoods Form Based Code to facilitate the preservation of 6,200 affordable housing units.

apply to a project, including the applicable procedures and standards. A more extensive explanation, with illustrations and other helpful aids, can be provided in an administrative manual. In abbreviated form, the code and the changes it incorporates can be explained also in a "frequently asked questions" document available at the planning counter, the community website, or other public areas. Examples of a range of approaches to form-based code user guides are available online. Some approaches to providing users with a guide to the regulations:

- South Padre Island, Texas, Padre Boulevard and Entertainment District: The guide takes applicants on a step-by-step walk through the code to determine applicable regulations, along with illustrations and sample calculations.
- Chapel Hill, North Carolina, Form-Based Code Guide: This guide offers a detailed preadoption community guide to form-based code basics, regional use, anticipated outcomes, and how form-based regulations could work in a specific area.
- Miami, Miami21: The code preamble describes step-by-step instructions for how to navigate the various sections of the code, and the city's webpage provides an abbreviated description (miami21.org/zoning_usingthecode.asp).

- Nashville, Tennessee, Downtown Code: A "how-to" guide is included in the code introduction. It provides basic instructions for using the regulations as well as an overview of procedural options for modifications to standards.
- Boulder, Colorado, Form-Based Code: Instructions for the user are built in to the individual sections of the Boulder Junction Phase 1 Code Area, providing users with both graphics of design elements as well as maps of where specific element types should be included in the site design.

Finally, a critical area of discussion needs to be around the selection of administrative procedures. This will be most relevant for communities that stick to the basic review processes of rezoning and subdivision approval with the random conditional use approval thrown in for variety. Form-based regulations require site plan review and, at a minimum, a method to modify design standards to meet site conditions. This is a different procedure than a variance; and, as we noted above, a variance is a specific procedure with legal requirements that should not be "adjusted" to change the form-based regulations.

Many communities opt for at least two types of design modification: one that allows the administrative approval

of changes to measurable regulations up to a specific percent of modification and one that creates a higher level of review—typically discretionary—for either a greater percentage of change or change to a more subjective regulation. For example, an administrative modification may be permitted for a change of 10 percent or less to a parking lot setback where the topography of the lot makes it a better choice to locate a space in the setback rather than perched over a steep grade. In the same code, there may be a provision that allows planning commission or elected official review and approval of a landscape plan that reduces the required private open space on a lot and replaces it with a public art installation. Another subject for form-based-specific procedures is creation of, and amendment to, regulating plans. Old-school form-based codes came with the regulating plan built in, but these days we are also observing more options to create a regulating plan after the fact. As an example, see Cincinnati's Form-Based Code (http://bit.ly/2GpInoc), which includes instructions for creating a regulating plan as part of the code. We would be remiss in our duty as attorneys to not tell you here that much of what is permitted in administrative procedures is regulated by state law, and your jurisdiction's attorney should review proposed procedures prior to adoption.

Neighborhood Outreach

A mantra of form-based codes proponents is "make the good easy." In the form-based codes process, one way this is done is by front-loading the public involvement process. The regulating plan and conceptual design criteria are typically established through an on-site, open-invitation public charrette process. Members of the community are invited to provide feedback about preferred design options through visual preference surveys, design meetings, and workshops organized over a concentrated time frame, and then provide feedback on the draft regulating plan and form standards. Then the governing body adopts the regulating plan and standards. In many communities that adopt form-based codes, this is the end of the public input process. Unless a proposed project is not in compliance with the regulations, the project is approved administratively, without any further notice to the neighbors.

Neighbors, even though they may have participated in the charrettes and code-adoption process, understandably are the group most likely to react in unpleasant ways if they are not notified of new development. While the intention to limit additional input and comment for conforming projects is correct in terms of streamlining project approval, there is no legal requirement that the typically recommended, no-input form-based code procedures be adopted with the new form-based code. And indeed, as projects become more complicated and more code interpretation is required, there are more legal reasons to opt for a higher-level review process.

Fort Worth, Texas, provides an example of how to maintain community involvement in both the FBC creation and application-review process. Fort Worth encourages the hands-on creation of new form-based regulations at the neighborhood level. When an application is submitted that is noncompliant with the specific FBC, the applicant is referred to community partners in the relevant neighborhood to discuss options for revising the application to address both the neighborhood's and developer's design and function requirements.

Your community can decide to proceed in a variety of ways to allow public input in the development approval process. Maybe small or simple projects get administrative approval, but projects with community impact get a standard public hearing. Maybe general commercial development gets administrative approval, but downtown development gets a public hearing. Or maybe any project that includes significant changes to public infrastructure, such as street narrowing, requires a public hearing. The point of public involvement in any of these cases may not be to change the project design, but simply to inform the public of changes that will be taking place and gather input that may ultimately improve the process or the code—and possibly to also avoid a bitter referendum on the form-based code and the elected officials and staff who adopted it.

TALKING ABOUT THE ADOPTED CODE

Post-adoption is the time when the fun changes from "this new code is so exciting and will solve all of our problems" to "wait, this new code won't let me build my postmodern one-story, with a rusted-metal exterior indoor/outdoor building for a cat cafe and vintage roller rink downtown. I'm calling my council member." We need to talk up the code, talk about the code, and keep coming back to the code. At the outset we need to keep everybody moving forward with the code. At some point down the road, we can also start letting them know that the code is working. Dialogue is good; monologue may be necessary.

It can be useful to liken a newly adopted form-based code to a smartphone. Most of us have heard of smartphones; many of us somehow decided that we needed a smartphone. And some of us, upon getting our smartphones, had no idea how to make it do all the things it could do. This is a recurring theme in discussions about form-based codes—not everybody who will be using the code really understands the code. If your community is considering preparing a form-based code, the very first step should be to make sure that people who are not experienced planners, such as elected officials, development professionals, and residents, can get on board with this approach.

And one conversation is most likely not enough. The new code must also be the subject of continuing education for the community and its leaders and administrators.

The basic understanding of the code needs to be maintained. The leadership involved in initial adoption and implementation will likely change over time. The materials and programs that explain the code and its operation need to be kept up to date and in the community's awareness.

Raleigh, North Carolina, is an example of a community that has undertaken an ongoing conversation about form-based regulations. Raleigh adopted a new form-centric code in February 2013 with a six-month window for applicants to submit projects under the old code. During that six-month window, Raleigh's city planning staff provided external outreach about the new regulations through three to six in-person presentations per week to design professionals, civic groups, neighborhoods, and anybody else with an interest in how the code would work.

Internally, the city's development services staff did formal training on the new code that still continues, as needed, to the current date.

A structured approach, such as Raleigh's, is key to providing both staff and the design community with a similar understanding of how to use the new regulations.

The adoption of the form-based code ideally brings at least a brief "honeymoon" for the community as it celebrates the promise of better community development and placemaking. Of course, "life happens," and the challenges of implementing the code will continue.

Code implementers can maintain the momentum by looking for and helping to create success stories to share.

One of the reasons that form-based codes have gained popularity is the promise that development results will be better for the public, the process more predictable and less costly for the developer, and that projects will add sustainable economic value to the community. The development community can be an ally in delivering this promise if parties are willing to work together to create a success story. Those success stories need to be shared through various media, including both external and internal media sources. Arlington County, Virginia, keeps track of the projects built in the Columbia Pike form-based code area and shares on the project website details about the number of new residential units

(including affordable units), overall square footage of new commercial space, and a brief list of new public amenities.

AMENDING THE CODE

A zoning code, regardless of the approach, is a living document. Planners should anticipate that the code will need to be amended, to fix "glitches," to adapt to changes in the planning and development environment, or simply to resolve policy conflicts. Planners should embrace needed changes and address any difficulties head-on. What can the development community teach you about how the code is working or not working? What feedback is the public and the administrators of the code providing? The first several years of implementation may demonstrate that definitions or rules of measurement need adjusting, or the internal inconsistencies need to be resolved.

Later, more complex issues resulting from experience with development proposals may become apparent, or larger policy changes may point to the need for new zoning districts or standards.

Greater experience with the code may also lead to recognition of a need for administrative or staffing changes. If open communication between all the stakeholders can be nurtured, and an attitude of problem solving be maintained, the necessary changes can improve the effectiveness of the form-based code.

Denver's form-oriented code has been in place long enough for staff to have recognized at least two distinct trends in amendments. During the first four or five years, many of the amendments related to clarifications, rules of measurement and definitions, and internal inconsistencies. After working to clarify and revise those aspects of the regulations, the second era of amendments started to address issues that come with experience with the code. These amendments have included consideration of the creation of new districts, new approaches to existing form regulations, refinement to regulations to address unanticipated outcomes, and balancing flexibility and clarity.

To organize the amendment requests and determine what to consider and what to abandon, Denver holds a weekly technical team meeting to review change requests. The requests are grouped into four categories: clerical error, clarification, minor policy or rule changes, and major policy or rule changes. The first three categories are bundled into annual amendments. The fourth category of changes are considered individually, fully vetted by staff, and may need case studies in support of the requested change.

One recent area of change was in the regulation of slot homes or sideways-facing town homes. Residents felt that the layout of this housing form was detracting from neighborhood design, and city staff identified slot homes as noncompliant with neighborhood design objectives. The city undertook a detailed review process that resulted in zoning changes.

GOOD CHANGE REQUIRES WORK

The continuum of form-based code adoption and application can be both challenging and rewarding. Our goal with this article is to ensure that communities understand that the work doesn't end with adoption. Anecdotally, we have heard of communities where the new form-based code is abandoned as unworkable or amended so as to lose its design effectiveness.

We wonder whether those codes lost momentum after adoption because there was still more work to be done. As we see the continued success of form-based regulation where the codes have been in place long term, we want to encourage communities with new codes to take these important steps toward structured implementation and acceptance of the form-based code.

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ABOUT THE AUTHORS

Nancy Stroud, AICP, is a founding member of the law firm of Lewis, Stroud & Deutsch. Her practice focuses on land-use law for local governments. Prior to opening her own firm, she led the local government land-use department of a Fort Lauderdale firm that provided representation as municipal attorneys for 18 municipalities in the south Florida region. Stroud is a member and officer of the Form Based Codes Institute. She was the legal consultant for the Miami21 form based zoning code and associated comprehensive plan amendments, which received the 2011 APA National Planning Excellence Award for Best Practice and the 2010 Richard Driehaus Form-Based Code Award.

Elizabeth Garvin, AICP, is planning director of SAFEbuilt Studio, where she works in the Denver office. Garvin's practice focuses on planning and land-use law, regulatory drafting, sustainability, and planning processes for public-sector clients. She has prepared numerous "traditional" zoning codes and subdivision regulations for communities across the country and is currently an on-the-job student of form-based codes. Garvin writes the Rocky Mountain Land Use Institute legal column for *Western Planner* and is a frequent speaker on zoning topics.

IS YOUR COMMUNITY READY TO ADMINISTER A FORM-BASED CODE?

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