



Requested Interpretation		Case Number
<p>The request by the applicant is to rescind the August 15, 2017 interpretation UI-12-2017, where the interpretation states that a build-to requirement due to a frontage on the property would not be applicable for preliminary subdivisions when a building is not proposed with the request, thus requiring tree conservation and placing higher priority on tree conservation instead of the build-to.</p>		<p><b>UI-1-2018</b>  <b>Application of TCA when the zoning of the property has a frontage with a build-to for preliminary subdivisions</b></p>
<p><b>Site Address/PIN:</b>                      The decision would apply to all preliminary subdivisions; however, the request originated with a pending preliminary subdivision located at 3315 Atlantic Ave. The zoning is IX-3-PL</p>		
<p><b>Date Submitted: Applicant requested that UI-12-2017 to be reconsidered on December 14, 2017.</b></p>	<p><b>Date Issued: 1-1-2018</b></p>	<p><b>Code Sections Affected: 9.1.2 and 9.1.3</b></p>

## STAFF ANALYSIS

The applicant requests that for preliminary subdivisions, properties zoned with a frontage that contains a build-to, that the build-to take priority over tree conservation in the absence of a proposed building.

For preliminary subdivisions, in the absence of a proposed building, a build-to is typically applicable through a frontage, which is a component of the zoning district placed on a property. Frontage is not always present on a property because the components of a frontage, such as a build-to is applied where a specific urban form is desired. This may occur through the rezoning process where policies and guidance of the comprehensive plan are used to determine the suitability of a frontage. There are several sections of the UDO that contain language that addresses the prioritization of a build-to.

1. 1.5.6.B. Build-to Intent focuses on establishing a range for building placement that strengthens the street edge and creates spatial definition adjacent to the street. These objectives are achieved by either subdivisions and site plans or in some cases, both on a property. If it was permitted to place less priority for the build-to than tree conservation at the time of subdivision, established tree conservation along the street edge would later prevent the ability to meet the build-to.
2. 1.5.6.C.4. This provision acknowledges pre-existing conditions on a site, such as pre-established and recorded tree conservation, which can prevent the ability to meet the build-to, thus removing the conflict; however, this would be the exception and not the norm. Regardless of a subdivision or a site plan, the build-to should always be met or preserved to allow the build-to to be met upon development.
3. 3.4.1 Frontage purpose and intent is noted and in the event of a conflict of the frontage requirements and base dimensional standards, the frontage requirements shall control. Language is reiterated in this section that frontages link a desired development pattern and form for a desired development along the street edge. Frontages and build-to again are prioritized when all code provisions cannot be met.
4. 9.1.2. Applicability of the Tree conservation regulations applies to both subdivisions and site plans 2 acres or greater. The Applicability sections are contained in the UDO for the purpose of determining what is subjected to the regulations. In this case, all subdivisions and site plans are included equally.
5. 9.1.3.A.1 and 2. Tree conservation requirements apply to all zoning districts. Any eligible tree conservation priority in conflict with a build-to requirement is not required to be protected. Again, the priority is placed on the build-to in this section. In addition, the noted conflict would only occur when tree conservation has not been pre-recorded, as covered in item 2. above; therefore, this language would apply to both subdivisions and site plans noted in the Applicability section of Section 9, noted in item 4. above.

Although the UDO contains specific regulations that apply to preliminary site plans and subdivisions, the language in the UDO is consistent that the build-to takes higher priority when a property is developed as either. Since the logical progression of development often necessitates a subdivision of property before a site plan is proposed, it would be contradictory to change the priority of the build-to at the time of subdivision, thus removing the ability to meet the build-to when a site plan is proposed. The submittal order of a subdivision or a site plan should not change the outcome when a build-to is involved. To provide a framework where the build-to can be met in various areas of the city, the build-to needs to be applied with equal priority regardless if a building is proposed on a property. Otherwise, the objective of a desired urban form along certain street edges will not be accomplished.



## STAFF INTERPRETATION

The build-to must be consistently applied to property regardless of the presence of a proposed building. Subdivisions are typically not the final development of a property; therefore, changing the priority of the build-to at the time of subdivision would be changing the priority of the build-to at the time of site plan by allowing a condition to be established which would later prevent compliance with the build-to. In the case where no pre-existing condition creates a "conflict" with the build-to, the build-to and frontage requirements should always be applied as the highest priority. This application upholds the intent and applicability of the build-to and preserves the ability to meet the build to when applied to both subdivisions and site plans.

## SIGNATORY

