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Barney Heath  
Director

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**MEMORANDUM**

**DATE:** November 22, 2024

**TO:** R. Lisle Baker, Chair, Zoning & Planning Committee  
Members of the Zoning & Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director, Department of Planning and Development  
Zachery LeMel, Chief of Long Range Planning  
Nora Masler, Planning Associate

**RE:** **#267-24 Request for discussion and possible amendments to require disclosure of any anticipated change in grade as part of a land use special permit application**  
COUNCILORS BAKER, OLIVER, LEARY, KELLEY, GREENBERG, LAREDO, AND LUCAS  
requesting appropriate amendments to City ordinances, or the Rules of the Council, or both, to require disclosure of any change in grade anticipated from the original grade as part of a land use special permit application in addition to disclosure of such a grade change in any engineering drawings submitted with the special permit application.

**MEETING:** November 25, 2024

**CC:** City Council  
Planning Board  
Anthony Ciccariello, Commissioner of Inspectional Services  
Jonathan Yeo, Chief Operating Officer  
Alissa O. Giuliani, City Solicitor

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**Overview**

Docket item #267-24 is requesting the disclosure of grade changes in special permit applications. While information regarding existing and proposed grading has always been provided, Planning staff have been working with the City Council to highlight proposed changes in grade in new development while also amending the zoning to disincentivize these grade changes. Increasing the grade above what is existing is typical in new construction for a variety of reasons including, creating a basement that is exempt from floor area ratio calculations, accommodating stormwater runoff, the presence of high groundwater, and/or providing an underground stormwater detention system.

Below is a brief summary of the ways grade changes are illustrated and regulated:

- Civil site plans: Section 7.4.4.D of the zoning ordinance requires all special permit applications to submit plans with existing and proposed topography of the subject lot at 2-foot intervals (most smaller projects provide 1-foot intervals). Site plans also are required to include the calculation of the average grade and building height calculations for the proposed development. Site plans also typically include the grade of the first floor of the proposed building.
- Training: Planning staff recently conducted a training for City Councilors on reading plans, primarily focusing on site plans and understanding the grade changes and retaining walls. The training was recorded and can be seen [here](#) (passcode: \$#jX4r&L).
- Recent zoning amendments: The City Council recently passed amendments intended to further regulate the use of retaining walls and grade changes. Instead of only regulating retaining walls within the setback, all retaining walls over 4-feet in height anywhere on the site now require a special permit. Additionally, the zoning ordinance has historically measured height based upon proposed grade. Starting January 1, 2025, height will be measured based upon the existing pre-development grade, limiting the ability to raise the grade of the site and then still build to the maximum height.
- NewGov application changes: In response to concerns about grading changes, Planning staff have updated the special permit application in NewGov to ask if the existing grade will be changed by one foot or more. If the answer is yes, the applicant is required to submit site sections through the site that show the existing and proposed grades along with the existing and proposed buildings. Several of these have been submitted so far and Planning staff will continue to work with the Council and applicants to understand if these visuals are helpful and/or how they could better illustrate the grade changes on site.
- Planning memos: Planning staff have also been expanding upon the analysis of grade changes and retaining walls in the memos to the land use committee for special permits.

### **Recommendation**

Planning staff do not believe additional ordinance changes are necessary at this point. Once the retaining wall and height measurement changes have been in effect longer, applied to both by right and special permit projects, and more site sections have been submitted for special permits it would be helpful to revisit and see if additional modifications or materials are needed.