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Barney S. Heath
Director

MEMORANDUM

DATE: September 10, 2021

TO: Councilor Crossley, Chair of the Zoning and Planning Committee
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning & Development
Zachery LeMel, Chief of Long Range Planning
Cat Kemmett, Planning Associate

RE: **#180-21: Requesting a review and possible amendments to Section 4.2.5(A) COUNCILORS LAREDO, LUCAS, LIPOF AND MARKIEWICZ** requesting review of and possible amendments to Section 4.2.5(A) of the City of Newton Zoning Ordinance to clarify language concerning shadows and blocked views in the Mixed Use 4 district.

MEETING DATE: September 13, 2021

CC: City Council
Planning Board
John Lojek, Commissioner of Inspectional Services
Neil Cronin, Chief of Current Planning
Alissa O. Giuliani, City Solicitor
Jonathan Yeo, Chief Operating Officer

Introduction

The Mixed-Use 4 (MU4) zoning district was created in 2012 following the approval, by the then Board of Alderman, of the Mixed-Use Centers Amendment to the *Comprehensive Plan* (Attachment A). This addition to the *Comprehensive Plan* explained the need for a new district by stating, “resting on existing rules and the *Comprehensive Plan* alone for mixed-use developments would fall short of what can be accomplished using the process refinements suggested in this Element of the *Plan*” and that it would be unlikely for developers to undertake the types of project desired by the City within the existing regulatory framework.

Since adoption, the MU4 district has been applied throughout the City in limited circumstances. Recent projects moving through the Land Use Committee have shown that certain elements found within Sec.

4.2.5.A. Additional Standards in MU4 (Attachment B), particularly those dealing with shadows and blocked views, require clarification. City staff feel that a targeted zoning language amendment, like the “Zoning Clean-Up Items” recently approved by ZAP, can quickly and efficiently achieve this to achieve the intent of the *Comprehensive Plan* and not alter existing policy.

Background on Intent

Staff have reviewed the *Comprehensive Plan* and the 2012 ZAP reports documenting the adoption of MU4 to better understand the intent of Sec. 4.2.5.A. This analysis shows that the Special Permit allowance of additional height and mass, as well as the ability to waive setback requirements, supports the vision of successful MU4 developments. These documents emphasize the need for flexibility and discretion for the Special Permit Granting Authority to determine whether any proposal asking for additional height or mass met the intent of the district and achieved “harmony and integration with their context, rather than just consistency with complex tables and numerical rules.” Shadows and blocked views are one such element to review, weighed equally among other considerations, not as a standalone criterion. The *Comprehensive Plan* states,

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.
 - Buildings that are taller than the surrounding urban fabric might be acceptable after considering such things as whether that height would cause adverse impacts from shadows or the blocking of views.
 - More building bulk may be acceptable where skillful design of building forms, rooflines, and architectural features lower the visual impact of the bulk.
 - More density or bulk than might be more acceptable than otherwise where the mix and integration of uses within a site lowers the impacts (e.g. traffic) on the surrounding neighborhood.

This language takes into consideration not only the different circumstances found within Newton’s many village centers, but also those found on different sites within a given village center. It is clear the writers of the *Comprehensive Plan* understood that any MU4 development would create shadows and that each proposed design would need to be analyzed to determine if they adversely affect its surroundings given the individual site and its context.

Issues with the Existing Language

The existing zoning language mentioned shadows and blocked views in three places, two dealing with the Special Permit allowance of additional height and one dealing with allowing building within the setbacks.

Existing Excerpts

- Sec. 4.2.5.A.1 and Sec. 4.2.5.A.2 – “...does not adversely affect its surroundings by creating shadows or blocked views...”
- Sec. 4.2.6.A.4 – “...can better protect the surrounding community from shadows and blocked views...”

The existing language has caused some recent confusion and an interpretation has been suggested that the City Council may only grant a Special Permit for additional height or building within the setback if no shadows or blocked views are created. As stated above, staff feel that this was never the intent based

on the *Comprehensive Plan* and ZAP reports documenting the creation of MU4 and is not consistent with how the City Council has interpreted and applied the language in the past.

Proposed Language

To clarify this, staff propose minor modifications (Attachment C) to the zoning so that it is consistent and clear the City Council should evaluate a proposal specifically on whether it creates shadows and blocked views that adversely affect its surroundings. The process of drafting this included reviewing comparable zoning text from neighboring communities: Boston, Watertown, and Cambridge, as well as collaboration with the Law Department and Current Planning.

Proposed Excerpts

- Sec. 4.2.5.A.1, Sec. 4.2.5.A.2 and Sec. 4.2.5.A.4 – “...does not create shadows or blocked views that adversely affect its surroundings...”

Determining this would follow a similar process of collaboration between developer, City staff, and City Council to those of other standard Special Permit criteria found in Sec. 7.3.3.C of the Zoning Ordinance. Instead of a prescriptive list, to properly analyze the impacts of any shadows or blocked views, developers would submit a shadow study that City staff will judge according to several factors, including but not limited to, the shadow extent duration, seasonal reach, and the ground level uses it affects. This process would provide the City Council with all the required data points, along with the flexibility and discretion that the *Comprehensive Plan* explains is necessary to achieve the best possible results.

Next Steps

Staff will present the proposed amendments to ZAP at their upcoming meeting and look forward to a robust Committee discussion to ensure the revised language is clear and matches the original district intent. Staff request that ZAP consider setting a Public Hearing for the October 14 meeting.

Attachments

Attachment A	Chapter 3A. Mixed Use Centers, Newton Comprehensive Plan
Attachment B	Existing Zoning Language, Sec. 4.2.5(A)
Attachment C	Proposed Redlined Zoning Language, Sec. 4.2.5(A)

MIXED-USE CENTERS AMENDMENT

Approved by the Board of Aldermen on November 7, 2011
Formatted to be *Comprehensive Plan* Element 3A:

3A. MIXED-USE CENTERS

Mayor's Mixed Use Task Force

Members appointed by the Mayor:

Philip B. Herr, Chair	William McLaughlin
F. Gerard Adams (deceased)	Josephine McNeil
Ald. Victoria Danberg	Joyce Moss
Charles Eisenberg	Srdjan S. Nedeljkovic
Ald. Mitchell Fischman	Scott Oran
Adel Foz	Bill Renke
Steven Gans	Ald. Amy Sangiolo
Andrea Kelley	Ted Tye
Brooke Lipsitt	John Wilson
George Mansfield	

Newton Planning and Development Board

Joyce G. Moss, Chair	<u>Alternate members</u>
David M. Banash	Howard Haywood (resigned)
Leslie Burg	Eunice Kim
Tabetha McCartney	
Doug Sweet	
Scott Wolf	

Newton Board of Aldermen 2010-2011

	<i>Aldermen-at-Large</i>	<i>Aldermen-at-Large</i>	<i>Ward Aldermen</i>
Ward 1	Allan Ciccone, Jr.	Carleton P. Merrill	Scott F. Lennon President
Ward 2	Susan S. Albright	Marcia T. Johnson Chair, Zoning & Planning	Stephen M. Linsky
Ward 3	Ted Hess-Mahan	Greer Tan Swiston	Anthony J. Salvucci
Ward 4	Amy Mah Sangiolo	Leonard J. Gentile	John W. Harney
Ward 5	Deborah Crossley	Brian E. Yates	John B. Rice
Ward 6	Victoria Danberg	Charlie N. Shapiro	Richard B. Blazar
Ward 7	Sydra Schnipper	Ruthanne Fuller	R. Lisle Baker President Emeritus
Ward 8	Mitchell L. Fischman	John D. Freedman	Cheryl Lappin Vice President

City of Newton staff that provided support and assistance:

Candace Havens, Director of Planning & Development Planning Department
 Jennifer Molinsky, Chief Planner for Long Term Planning Planning Department
 Seth Zeren, Chief Zoning Code Official..... Planning Department
 Eve Tapper, Chief Planner of Current Planning Planning Department
 Ben Solomon-Schwartz, Senior Planner..... Planning Department
 Amy Yuhasz, Assoc. Director of Housing & Community Development.... Planning Department
 Marie Lawlor, Assistant City SolicitorLaw Department
 Rebecca Smith, Clerk of the Zoning & Planning Committee..... Board of Aldermen

#26-11(2)
(#351-06)

CITY OF NEWTON

IN BOARD OF ALDERMEN

November 7, 2011

BE IT RESOLVED:

WHEREAS the Board of Aldermen has received from His Honor the Mayor a proposal to *amend* the Comprehensive Plan by creating a new Mixed Use Centers;

WHEREAS the Board of Aldermen has received a report and recommendations concerning said *amendment* from the Planning and Development Board, and held a public hearing on the proposed amendment on September 26, 2011;

WHEREAS the purpose of the Comprehensive Plan is to set forth policies to govern the future physical development of the City;

WHEREAS the effect of the Comprehensive Plan's policies are to serve as a guide to all future action by the Board of Aldermen concerning land use and development regulations, urban renewal programs, and expenditures for capital improvements;

WHEREAS the Board of Aldermen recognizes that specific recommendations in the Plan for zoning change are guidelines or suggestions for improvement, not mandates;

WHEREAS the Board of Aldermen has considered said proposed amendment to create a new Mixed Use Centers Element thereto;

NOW, THEREFORE, BE IT RESOLVED that the creation of a Mixed Use Centers Element to the Newton Comprehensive Plan, as amended, is hereby adopted.

Under Suspension of Rules
Readings Waived and Approved
23yeas 0 nays 1 absent (Alderman Albright)

(SGD) DAVID A. OLSON, City Clerk

MIXED-USE CENTERS

“Plans are nothing – planning is everything.”

Dwight Eisenhower

VISION

The livability of Newton has been greatly enhanced by its traditional mixed-use village centers. The future livability of the City can be further enhanced through the creation of a number of well-located and well-designed new mixed-use centers. As used in this Element, “mixed use” refers to two or more distinctly different uses, such as a commercial and a residential use, on the same parcel or located on one or more adjacent parcels in a business or mixed-use zone. New mixed-use centers should be exemplars of excellence in place-making, being great places in which to work, live, shop, recreate, or just visit and be within. They can accommodate a share of the modest amount of commercial and residential growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. They can further benefit the City by adding both jobs and fiscal support. Because such mixed uses are, however, departures from the general model of Newton zoning that calls for a separation of uses to minimize their impacts on each other, careful guidance should ensure that the interests of the communities within which they are sited are given thoughtful consideration regarding the location, programming, and design of these new centers.

Applicability

“Mixed-use centers” are newly developed or redeveloped complexes of substantial size, perhaps a quarter-million square feet of floor area or more, preferably but not necessarily, incorporating both residential and commercial uses. Mixed-use centers could be built on single parcels or adjacent parcels, either under common ownership or under separate but coordinated ownership. These new mixed-use centers are intended to complement rather than replace existing residential neighborhoods. This Element provides broad guidance for new mixed-use centers on topics such as design, housing, and transportation, as well as guidance regarding how the City, community, and property owners might work together towards sound project decisions.

The processes outlined in this Element are designed with large mixed-use centers in mind. However, most of the principles and goals of mixed-use development discussed below could apply well to smaller mixed-use developments, and can be helpful in later crafting of guidance for those smaller areas.

In a city as fully developed as Newton, new mixed-use centers will be appropriate only when located where:

- The general category of nonresidential use proposed (such as retail, office, or research) is also present and/or permitted within the zone at which the mixed-use project is to be sited.
- Access by both auto and public transport can be accommodated without damage to the character and functioning of the vicinity.

STRATEGY

To achieve the vision of integrated, vibrant new mixed-use centers, the City needs an approach that makes their creation not only possible, but also attractive to developers and community members. For it to occur, development of mixed-use centers on appropriate sites needs to be more appealing to developers than the alternative of single-use proposals. Since no wholly vacant site for large-scale mixed use appears to exist anywhere in the City, for mixed-use projects to occur such redevelopment also has to be more attractive than continuing the existing use. The initiative for large-scale mixed-use centers commonly comes from a proposal prepared by a developer who controls the subject property. Where multiple properties and ownership are involved, an initial vision could be prepared through a joint effort of City, the community and those having interests in those properties.

In either case, that proposal eventually needs to be sufficiently detailed to allow evaluation of its nature and impacts relative to the City's *Plan* and regulations. While that can be done today, improvements in three areas could make the whole mixed-use center review process work better for both developer and community:

- Zoning provisions could be better tailored for developments of the scale and kind proposed;
- A developed set of impact models and complementary measures to aid in understanding and evaluating the kind and degree of future project impacts; and
- A process for assessing the fit between the proposal and its location, which might involve collaboration among the interested parties, e.g., redeveloper, neighbors, and the City.

Note that even with these modifications, these processes may still not produce outcomes as smoothly as hoped unless project siting is carefully chosen initially. Newton's experience shows that the farther from residential areas a mixed-use project is located the clearer it will be that the project's community benefits are not being gained at the expense of the neighborhood, and the easier it will be to successfully achieve a broadly supported outcome.

Together, in appropriate cases, those improvements should facilitate early understanding by developers if a proposed project is likely to gain approval before significant resources are committed to specific designs. For people in nearby neighborhoods, this approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing the impacts of new development, going beyond the minimum requirements that would otherwise occur. In other words, in return for having the chance to mix uses on a site, a developer should get early information about its likely success. For the affected neighbors, they should be able to have an early voice in shaping the proposal and be assured that their concerns will be seriously addressed.

DESIGNING MIXED-USE CENTERS

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change at the hands of many actors. Despite those and other differences between then and now, we would do well to learn from our existing village centers in the locating, programming, and designing of new mixed-use centers. One lesson learned is, while the full set of villages serves us well, those centers are highly individual. No tight template governing their development would have produced as good an outcome as has some invisible hand that has allowed broad variations. However, the set of village places does have some powerful consistencies, and those are critical to their success. In guiding development of new mixed use, we shouldn't be overly prescriptive about the details of how development should be shaped, but we should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

Lessons learned from village centers include:

- Each village center is made up of a mix of uses, not simply one dominant one.
- The uses are not separated from each other but, rather, are mixed at fine grain.
- Those uses are easy to move within and among on foot.
- To a greater or lesser extent, the uses are often interrelated, to some degree serving or depending on each other, so that the adjacencies and integration are not just symbolic; they are functional and complementary.
- It is usually hard to define where the village center ends; the zoning map came too late to dictate otherwise. To successfully replicate that kind of "soft" transition from center to surroundings is challenging, but critically important in the long term.

Vision

New mixed-use centers should create positive, integrated relationships with the surrounding neighborhoods. Sites should be visually and functionally integrated to increase their vitality. Shared spaces and streets are critical to that goal, which suggests new buildings should be oriented toward rather than turning their backs on them.

A mixture of dwellings, shops, offices, restaurants, and other uses can create activity at all hours of the day and on the weekends. This activity creates a vibrant pedestrian-scale place that is safe and desirable. By having some businesses, which provide nearby residents with jobs or services or other benefits the mixed-use area is integrated with the community. Connections by both street and pedestrian pathways are critical to accomplishing that. There should be both precedent and flexibility regarding the categories of use that are part of the mix, and there should be flexibility for the location of those uses within the center in order to achieve the overall design intent.

Truly vibrant mixed-use centers typically involve not only a mix of commercial and residential uses, but also include a significant public amenity that helps in the creation of a sense of place. Those uses are typically co-located at an accessible public transportation node. It is valuable both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

While it is possible to develop new mixed-use centers that lack one or more of the above qualities, such development is less likely to achieve the vision that Newton seeks. Such developments should only be supported if they offer some alternative benefit through programming, design, or location.

The design of buildings and sites should place priority on achieving harmony and integration with their context, rather than just consistency with complex tables and numerical rules; ideally, zoning should enable that. The following goals should be primary in the shaping of building form and density:

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.
 - Buildings that are taller than the surrounding urban fabric might be acceptable after considering such things as whether that height would cause adverse impacts from shadows or the blocking of views.
 - More building bulk may be acceptable where skillful design of building forms, rooflines, and architectural features lower the visual impact of the bulk.
 - More density or bulk than might be more acceptable than otherwise where the mix and integration of uses within a site lowers the impacts (e.g. traffic) on the surrounding neighborhood.
- The configuration of buildings and landscaping should create positive outdoor spaces, contributing to the quality of the experience of visiting the place, and not just be vegetated (open space) leftovers between buildings.
- Respect for the environment that goes beyond minimally satisfying land use and environmental requirements should be expected as a part of achieving contextual integration.
- Roofscapes should be made into positive assets through their design and forms of usage, providing functional benefits (e.g. solar energy conversion, recreation) as well as visual interest and attractiveness as seen from buildings within and neighboring the development.
- Creative use should be made of the potential of vertically-mixed uses in considering the distribution of uses within and beyond the development.

- Good-faith efforts should be made both during and subsequent to development to enhance the extent to which the entire center benefits Newton residents through targeted employee recruitment efforts, training or apprenticeship opportunities, or similar initiatives.

Actions

- Make efforts to develop guidance that is more concrete about the design of mixed-use centers. Guidance should be relevant to Newton’s existing character and acknowledge that a cherished quality of the City is that “appropriateness” varies sharply among the villages and other sub-areas of the City. The outcome might be not just one, but rather, a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include models that use measures for determining early if a proposal, after considering its location, site size, building size, and mix of uses and design is likely to be appropriate. Having such measurements can reduce arbitrariness and increase predictability, much as is done with great complexity by LEED, which dares to be prescriptive and measurable about this topic for the whole of the United States.^{1,2}

ACCESS AND TRANSPORTATION

Background

The Transportation and Mobility Element of the *Comprehensive Plan* makes clear a planning intention that is important to planning for mixed-use development centers since they are inherently well suited to help in meeting the cited objective.

“We want to assure that the design of new development is well-related to the transportation system that the City intends, rather than development dictating what that system must be, just as fully as we want the design of the transportation system to be well-related to the development that the City intends, rather than serving only the City as it exists or as predicted rather than intended.”

In other words, transportation infrastructure and adjacent land uses should be complementary and conjunctive such that new development need not dictate changes in the desired road infrastructure.

¹ Much the same was done with great simplicity by the point system in the *Santa Fe Architectural Design Review Handbook* (1988) prepared by Santa Fe architects and planners for a community thought to be visually homogenous only by those who don’t know it well. Less exceptional descendants of such work also exist (e.g. “Workbook for Successful Redevelopment,” Naperville, IL, 2002.).

² Where the above guidance also appears useful for development other than large-scale mixed-use centers, that guidance might be considered for incorporation into the Newton Zoning Ordinance through adoption of appropriate amendments by the Board of Aldermen.

Vision

By locating a mix of uses within a compact area, some trips that otherwise would be made in autos can be made on foot. By concentrating a substantial amount of development, mixed-use centers also concentrate potential trip ends, improving the feasibility of alternatives to single-occupant auto trips, ranging anywhere from carpooling to rail transit, and enhancing the feasibility of shuttle bus connections. Bicycle access and pedestrian access both between uses within the development and between those uses and ones in the off-site areas around them can substantially reduce the share of trips made by auto if alternative means of access are made easy, safe and pleasant. No mixed-use center should fail to make those efforts.

Within limits, the mix of uses within the development can be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential on the low end to retail on the high end. Including more housing and less retailing means fewer trips from the same amount of floor area. Further efforts at trip and parking demand management become feasible where mixed-use centers have an over-arching management structure. Carpooling, company parking protocols and vans, and incentives for employees and others to use public transportation can all contribute to auto trip reduction.

Finally, mixed-use center developments can create enough value to enable mitigation of the traffic impacts that it causes. Neighbors will welcome that mitigation when it helps provide and enhance public transportation, removal of existing safety concerns or traffic flow impediments. Skillful traffic engineering at intersections can often greatly improve traffic movement with little physical change. However, choices get harder when given the proposed scale and mix of uses, no feasible alternative mode and demand management efforts are adequate to offset trip volumes projected from the development unless supplemented with undesirable roadway change.

The way the City addresses those hard choices should be no different for mixed-use development than for single-use development. The location, programming, design, and management of all major developments should not negatively impact the ease of travel by all persons, regardless of mode. The design and placement of access points and transportation mitigations related to the development should essentially “cause no harm” to community or environmental values. Quiet residential streets should not have to be turned into major arteries, even if doing so allows traffic to flow more easily than before. Accessibility for pedestrians or bicyclists should not be damaged in order to facilitate auto travel. New concrete sound barriers should not be needed to block traffic noise in order to accommodate a major new development.

In order to identify when the impacts of a potential project would be unacceptable, the City, community, and developer should collaborate on modeling potential impacts early in the development process, prior to too much expensive design work. These models should be developed in advance and might include “yellow flag” thresholds indicating levels of impacts that deserve special attention. For example, an increase in traffic volume above some percentage might justify a “yellow flag alert” since accommodating that increase *might* require street alterations or traffic engineering changes that could be damaging to the nearby quality of life.

Special attention is warranted when the impact models cross “yellow-flag” thresholds of concern. At that point, the community, developer and City should collaborate, possibly requiring

revisions to the project’s programming, scale, transportation management efforts, street design so that, on balance, they are acceptable. “Yellow flags” should be seen as an opportunity for creative design, rather than hard barriers to development. Testing for such flags can be done simply and inexpensively early in the design process, saving missteps.

Certain access efforts are particularly critical for large-scale mixed-use developments because of their potential traffic impacts, mix of uses, and the need for integration with their surroundings:

- Mixed-use centers should have excellent pedestrian and bicycle connections both among different uses within the site and between those uses and the surrounding environs. The new developments should be permeable through interconnections to adjacent developments wherever possible, both by foot and by auto. Visible and adequate bicycle storage areas and appropriate changing locations with showers for office users will help support the use of bicycles for commuting.
- The visual and environmental impacts of surface parking should be mitigated and pedestrian accessibility enhanced through locating and designing parking facilities with that in mind, not obliging pedestrians to cross open parking lots in order to reach their destinations.
- Where feasible, parking should be accommodated in structures, but surface parking should be allowed where it serves to protect pedestrians, improve the commercial experience, and not impede the flow of traffic.
- Wherever possible, the visual impact of parking facilities should be mitigated with intervening retail or other uses, unless those facilities are of rare design quality themselves.

Actions

- Adopt a street design classification system and adopt guidelines for both that system and the street functional classification system, as called for in the Transportation and Mobility Element of this *Plan*. These classification systems should include design guidelines such as measurements of road width and configuration, lane placement, and pedestrian and bicycle features, making them responsive to changes in the urban fabric (e.g. village center or residential neighborhood) adjacent to the road. A more concrete, better developed street classification system will make the City’s intentions for roadway design clear and provide guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale mixed-use center development.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back-of-the-envelope, but quicker and less demanding than the sophisticated studies that would continue to be the basis for final design and approval actions. That capacity would enable an important aspect of the collaborative input and review approach described in the Vision above, engaging City officials and staff, the applicants, and community residents.
- Develop an initial version of the “yellow flag” system suggested above to provide guidance to both those designing developments and those reviewing them regarding when traffic

impacts threaten to result in unacceptable impacts as a consequence of either excessive congestion and disturbance or community and environmental damage. This would draw upon the above impact estimation. After some experience that system might be further refined and made an integral part of the City's decision-making system.

- Explore the creation of a transportation mitigation fund, which could allow traffic mitigation resources to be used for a broad range of mitigating actions, not just specific traffic engineering alterations, to the extent allowed by law.³

HOUSING IN MIXED-USE CENTERS

Background

The inclusion of residences in mixed-use developments has at least three important benefits for Newton. First, if well located, programmed, and designed, such a mix of uses can enable new development to enhance our existing community, rather than needing to be buffered from it. Such real mixed use can provide wonderfully vital places in which to shop, work, live, or all three, and can help make the development a welcome asset for the neighborhood.

Second, the increasing success of the mixed-use model makes it a valuable means of serving part of the housing needs of the City and the region. The housing in mixed-use centers is intended to chiefly serve young households and senior citizens, neither of which is well served by Newton's existing dominantly large-dwelling housing stock. Incentives can be used to encourage affordable housing in new mixed-use centers, potentially going beyond the inclusion mandated by Newton's zoning to support Newton's socio-economic diversity.

Third, incorporation of dwellings in a mixed-use center can make the spatial transitions between the development and any nearby residential uses a less disruptive one than otherwise, enabling the new uses at those edges to be as compatible as possible with the existing neighborhood.

The benefits of including housing in large-scale centers is widely understood, but so too are the challenges to achieving that. Among them is the complex volatility of real estate markets, with housing, shopping, workplace, and entertainment markets seldom moving in smooth unison. As a result, market forces may at times make it nearly impossible to simultaneously develop both residential and commercial uses at the same time, presenting a challenge to achieving the sought-after vibrancy.

Vision

Housing, either within or adjacent to and integrated with mixed-use centers, can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that centers without such housing may not be able to achieve. The presence of housing within the development affects considerations for location and design. The collaborative process

³ Currently Massachusetts General Laws do not allow local municipalities to create general development impact fees.

and zoning revisions suggested by this Element should support the inclusion of housing and, where appropriate, integration with the surrounding neighborhood.

By incorporating housing, a mixed-use center can enhance the quality of life of our existing neighborhoods. To achieve vitality in the public space, the residential component of a mixed-use center must be of an adequate scale. Housing in mixed-use centers should be an important and integrated element, not an after-thought or rule-satisfier. Likewise, housing should not be located in an isolated residential fragment in an unsupportive, non-residential context. The developer should work together with City staff and the community to determine what would be an appropriate housing component. Where appropriate, explicit guidance on the desired residential component could be created through an area planning process or within zoning regulations, so long as it is recognized that the evolving real estate market may favor specific uses (i.e., retail, office, housing, and hotel) in different market cycles.

Housing that already exists nearby can importantly contribute to the vitality and exchange that is sought, but achieving that would require skillful design of how the new buildings and uses relate to the existing ones as well as program efforts. Those might include enabling nearby residents to have easy access to the services being provided on-site, assuring that those services are appropriate to the neighbors, as well as to others, and if programmatically provided for, enabling neighbors to gain benefits from both open space and parking. Given such measures, neighboring off-site units might be considered to be part of the development in determining the allowable scale of nonresidential presence as discussed above.

It is important that housing commitments be firmly guided regarding type, location, design and timing of construction in order to produce the kind of vitality and great places being sought. Housing provisions should reflect both the populations appropriately served at that place and time and the amenities in that environment, chosen following discussion with related City officials and housing-related organizations.

Residential parking demand created by mixed-use centers will reflect the mix of activities, proximity to public transportation, and project-wide demand management efforts. Those considerations may substantially change parking demand, thereby justifying departure from the usual rules of Newton's parking standards when substantiated by, among other things, recent experience in this and surrounding communities with similar developments.

Welcoming and publicly accessible open space is essential as is some amount of reasonably located open space for use exclusively by residents and their guests. Innovative ways of providing open space such as green terraces and roofs should be encouraged in meeting this need.

It is important that the type of housing included in mixed-use centers helps to address needs not being well-served by the existing stock of housing. A current example is the need for housing suitable for seniors at most income levels who are seeking to downsize or, sometimes, upsize their accommodations.

Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the impacts of the housing upon the adequacy of each of the affected school facilities that are likely to accommodate its enrollment impacts.
- Shape mixed-use center zoning to serve the City's housing needs regarding such considerations as dwelling types, size, accessibility and affordability, as appropriate in that context. Zoning should also encourage integration between mixed-use centers and residential areas, and be sensitively designed to protect those areas.

FINANCE AND MIXED-USE CENTERS

Background

New mixed-use centers clearly can bring substantial amounts of new revenue and new jobs to the City, but too commonly what is claimed and discussed are gross impacts on revenue and jobs, not the net impact after taking into consideration second-order impacts. Those second-order impacts are more difficult to estimate than the gross impacts, but they deserve attention, since they are often very large, and considering them may substantially change perceptions about development proposal benefits, for better or worse.

Taxes perhaps best illustrate the point. New development brings new tax revenues, but it also brings new service demands. Those costs in some cases can turn what seemed to be a fiscal asset into a fiscal liability. If a new retail development chiefly serves Newton, then it may compete with existing businesses so that its net impact on revenue may be substantially lower than its gross impact. On the other hand, more business development could strengthen existing businesses. For example, some businesses attract other related businesses or support existing ones with their purchases, creating a larger than expected increase in revenues. Similar second order impacts deserve attention when considering jobs, traffic, and other impacts.

The benefits of fiscal gain are readily understood, in part because they are so clearly local. Property taxes generated in Newton go to the City of Newton and benefit its residents. The benefits of gaining jobs are less self-evident, in part because in a metropolitan area they are seen as regional. Nonresidents will generally hold new jobs located in Newton, and a large percentage of workers residing in Newton hold jobs not in Newton, but elsewhere within the metropolitan area. However, there are a number of good reasons for caring about bringing jobs to Newton, aside from the tax support they bring with them.

First, bringing jobs to Newton to some extent means more jobs for the region and for Massachusetts, and that is good for everyone. Second, the City is expected to grow somewhat in population over the years, and there will be benefits if the current balance of the number of jobs held by Newton residents and the number of Newton residents who hold jobs can be maintained. Such "balance" is a widely sought goal. Newton has it, and has had it, more or less, for decades. Losing that balance would mean more commuter traffic and more dependence on other places.

Vision

Business development plays an important role in supporting services for Newton residents. Commercial property taxes and fees help offset the costs of education, public safety, and infrastructure.

The types of residential uses that this *Plan* suggests for mixed-use centers will have a lower impact on City services per dwelling unit than Newton's average single-family residence. The market for housing in mixed-use centers will be largely at opposite ends of the adult life cycle: young couples and empty nesters. Data from the Newton School Department make clear that the ratio of enrolled pupils to dwelling units is far lower in multi-family dwellings than in single-family ones. In most cases this may mean that the tax revenue from smaller dwelling units balances out the costs of the school children they would house. Site-specific enrollment and fiscal impact studies should be made for any substantial mixed-use development proposal. In most cases, such studies are likely to document that the housing in mixed-use developments provides a modest net revenue contribution to the City.⁴

Creating new housing in mixed-use centers serves important City goals including creating vibrant places and increasing the availability of housing for households of all types and incomes. Fiscal benefits or impacts must be balanced with these and other City goals. Housing must be considered in balance with the potential revenue benefits of commercial development. The fiscal impact of housing should be considered on a site-by-site basis, taking into account the types of units proposed, the capacity of area schools, and expected taxable value.

Actions

- By paying taxes, new development supports City costs, including those associated with the facilities and services for which it creates need. When that need is quite location-specific, it is common to have the development causing the cost bear at least part of it through absorbing public improvement costs, monetary contribution, or some other form of participation. Newton's current practices in that regard result in quite substantial efforts by developers to, in effect, restore net capacity of certain infrastructure to what it was without that development.

Quite apart from what the City does or does not do about mixed-use development, the City, if possible, should set out clear and reasonable expectations about the type of fiscal mitigation it expects *before* it considers large developments. What share of the costs of mitigating various off-site impacts will developers be expected to carry, and what share will they not?

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the fiscal impacts of the proposed development upon the City. This step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

⁴ Page 10-9 of this *Comprehensive Plan* contains a one-page summary of the basis for that expectation, which also is supported by evidence from impact assessments done for past proposals and in some cases the careful monitoring of the accuracy of those analyses.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed-use or not. It is standard practice to model fiscal impacts for large developments. However, such projections typically lack credibility among those who oppose the project unless community members are themselves involved in creating the projections. Newton should create a system that gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City should specify the scoping requirements, prepare the mathematical/metric models to be used and assist, but not dominate, the execution. The developers and interested community members would help in utilization of the modeling by gathering information and critiquing its use.

- The scale and diversity of uses within large mixed-use developments make their developers singularly likely to be interested in connecting their development and its interests with potentially beneficial community interests. For that reason, a mixed-use project could be viewed not only as a business opportunity for the developer, but as a correlative societal opportunity, broadly defined, for the City.
- Developers could be asked not only to mitigate expected harm; but also to provide service and skills which, for example, might improve the opportunities for Newton's low- to moderate-income population. One means where that might occur could involve "community benefit agreements," which should be explored in the mixed-use context. Community benefit agreements are a means through which a developer, the City, and community organizations or others can join efforts to satisfy any of a number of interests, such as potential worker job training and placement, arrangement for facilities such as child care centers, matching housing needs and housing produced, and improving access to recreation facilities.

MIXED-USE GUIDANCE PROCESS

Background

Mixed-use centers can already be created under the City's existing zoning, and there is every reason to expect that upon their completion, such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* is intended to make the City's intentions about such developments clearer, to encourage the creation of such developments, and to guide both applicants and those responding to their proposals.

However, resting on existing rules and the *Comprehensive Plan* alone for mixed-use developments would fall short of what can be accomplished using the process refinements suggested in this Element of the *Plan*. The likelihood of developers choosing mixed-use development and the City gaining its benefits will be greatly enhanced by the City taking actions to improve both the regulatory framework for such development and the context for how City agencies and staff, those doing development, affected neighborhoods and other affected interests relate to each other in the consideration and approval of such proposals.

Vision

Future mixed-use development should have specific guidance either from a participatory planning process organized by the City and a neighborhood group or from a collaboration among the City, the community, and the developer in response to a specific initial proposal by the developer.

Newton City government is rich in data, both historic and current. The City is rich among its population as well as among its (busy) staff in expertise on how to utilize those data resources to produce helpful estimates and projections. So, too, are the developers of major projects and their consultants. It would be helpful to organize a way of using all of those resources in a well-structured way early in the evolution of development proposals. That could support informed understanding of what can be agreed upon regarding the range within which impacts of development are likely to lie, not only for traffic but also for a range of equally important topics in other areas of concern, such as design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

In the past, well-informed dialog about impacts has largely focused on traffic impacts and involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. The results of these discussions have often not been persuasive for many of the parties that have been concerned about such developments. As a result, for example, there may be no public agreement on the likely scale of traffic impacts or even a range of impacts, let alone agreement on appropriate mitigations.

The need for project-specific relief is no surprise, given the large scale of the developments proposed and the history of the City's regulatory processes in which zoning rules and action on special permits relying on such change are often taken in tandem. It is perfectly reasonable for Aldermen to want to have a specific example of what a regulatory change would entail before adopting it. That is how the B-4 district and many other provisions have been created or revised.

Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community efforts to create objective projections of the likely impacts of large-scale development upon the vicinity and the City at large. The preceding sections describe several areas for the creation of impact measurements and "yellow-flag" thresholds.
- Develop a way to organize the data that the City carefully collects, and employ this data to reduce conflict in the shaping of new development, ultimately reducing costs for all parties and reducing the time needed to reach decisions.
- Adopt amendments to the existing zoning that will improve the process for approval of such developments so that they can work better for applicants, for the affected vicinities and interests, and for the City. In crafting this zoning, recognize that different zoning strategies may be necessary for different sites. Revisions to our Planned Mixed Business Development (PMBD) provisions would build on what already exists, enabling relatively prompt adoption

of change. Other alternatives would include a wholly new “planned development” approach or revisions to existing Business and Mixed-Use district zoning.

It is critically important that the chosen approach separates the provisions that are intended to apply to all mixed use center proposals from those provisions that quite reasonably should differ from location to location, thus assuring uniformity in the process of review and approval and in certain substantive rules, such as basic locational ones, while allowing there to be differences in the other substantive requirements in response to differences in location and project nature. Site-specific rules regarding an approved concept plan and a set of unique use, dimensional, and parking requirements would be recorded in the aldermen’s approval documents, not in the text of the Ordinance.

That approach reflects the reality of how these decisions really get made, and it facilitates shaping unique solutions for these rare but widely consequential proposals to the context of unique sites, and not limiting solutions to zoning rules created for a different location.

- Consider the potential applicability of much of the guidance of this Element for developments that are smaller in scale than the very large ones for which this material has been developed, and for our existing village centers in which the mix of uses is on separate lots developed not at once, but rather, over many decades. Good regulation for large-scale mixed-residential/commercial developments will contain a number of provisions that would be inappropriate in those other contexts, most obviously the insistence upon integration of a residential presence, as well as a number of other provisions that flow from that.

4.2.5. Additional Standards in MU4

A. Design Standards for the Mixed Use 4 District.

Notwithstanding any provisions of this Article to the contrary, buildings and structures in the Mixed Use 4 district shall conform to the following standards:

1. **Height.** Buildings in the Mixed Use 4 district shall be a minimum of 2 stories and shall conform to the limits for building height and stories established in Sec. 4.2.3. The City Council may grant a special permit to allow up to 4 stories and 48 feet of building height by finding that the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocked views, and advances the purposes of this district.
2. **Mixed-Use Residential Incentive.** Buildings that meet the definition of mixed-use residential buildings shall conform to the specific limits for building height and stories established in Sec. 4.2.3. The City Council may grant a special permit to allow up to 5 stories and 60 feet of building height by finding that the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views, and advances the purposes of this district.
3. **Residential Density.** The City Council may grant a special permit to waive the lot area per dwelling unit requirement of Sec. 4.2.3. by finding that the proposed density creates a beneficial living environment for the residents, does not adversely affect the traffic on roads in Sec. 4.2. Mixed Use Districts | Article 4. Business, Mixed Use & Manufacturing Districts 4-14 Chapter 30: Zoning Ordinance | Newton, Massachusetts the vicinity, and better achieves the purposes of this district than strict compliance with these standards.
4. **Setbacks.** The City Council may grant a special permit to waive the following setback requirements by finding the proposed plan can better protect the surrounding community from shadows and blocked views, support pedestrian vitality, and encourage the purposes of this district than strict compliance with the following standards:
 - a. A minimum of 75 percent of the frontage of the lot facing a public way shall contain a building or buildings, the first floor facade of which is setback between 0 and 10 feet from lot line.
 - b. No side or rear setbacks are required, except, where abutting a residential district, the required side and rear setbacks shall be no less than 20 feet.
 - c. Any portion of a building greater than 40 feet in height must be setback 1 foot from the adjacent lot line for each additional foot of height.
5. **Accessibility.** The design of the buildings and the site plan shall comply with the Americans with Disabilities Act and the rules and regulations of the Massachusetts Architectural Access Board.
6. **Transparency and Entrances.** Commercial uses in a Mixed Use 4 district must meet the following requirement. The City Council may grant a special permit to waive these requirements by finding the proposed design better enables appropriate use of the site, supports pedestrian vitality, and achieves the purposes of this district than strict compliance with the following standards:
 - a. There shall be at least one entrance every 50 feet of building frontage facing a public way
 - b. A minimum of 60 percent of the street-facing building facade between 2 feet and 8 feet in height above the street-level floor must consist of clear windows that allow views of indoor space or display areas.

- c. Display windows used to satisfy these requirements shall be changed and maintained to create an active window Article 4. Business, Mixed Use & Manufacturing Districts | Sec. 4.2. Mixed Use Districts Chapter 30: Zoning Ordinance | Newton, Massachusetts 4-15 display; any illumination of the display shall be internal to the facade of the building.
 - 7. **Lobbies for Low-Activity Uses.** This district permits office uses at street level by special permit only. Entryways and lobbies at street level are allowed for office uses occurring above or below street level subject to the following requirements:
 - a. Any dedicated entranceway and lobby space for such uses may not exceed a total of 15 linear feet of an exterior building wall and 400 square feet of gross floor area.
 - 8. **Open Space.** Parcels greater than 1 acre in area shall provide beneficial open space totaling no less than 5 percent of the total lot area. Parcels smaller than 1 acre in area are encouraged to provide and maintain attractive landscaping where it enhances the public realm, environmental sustainability, and/or the appearance of the site.
- B. **Special Permit.** In granting a special permit for a use allowed in this district, the City Council shall make a finding that the proposed use will encourage an active, pedestrian-oriented streetscape throughout the day and week, that the proposed use fills a demonstrated need for the use within the vicinity, and that the proposed use is not inconsistent with the purposes of the Mixed Use 4 district or the City's Comprehensive Plan.

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 - a. A minimum of 75 percent of the frontage of the lot facing a public way shall contain a building or buildings, the first floor facade of which is setback between 0 and 10 feet from lot line.
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