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Barney S. Heath
Director

MEMORANDUM

DATE: Updated: November 5, 2021
Original: October 8, 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: November 8, 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 of the Mixed-Use Centers Amendment to the *Comprehensive Plan*. 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, 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 align with the intent of the *Comprehensive Plan* and not alter existing policy.

This item was presented and discussed at the September 13, 2021 ZAP meeting (report available at [this link](#)) followed by further discussion at ZAP on October 14, 2021 (report available at [this link](#)).

Issues with Existing Language

The existing zoning language references 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:

- Sec. 4.2.5.A.1 and Sec. 4.2.5.A.2 – “The City Council may grant a special permit to allow up to 4/5 stories and 48/60 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 blocked views, and advances the purposes of this district”
- Sec. 4.2.5.A.4 – “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...”

This language has caused recent confusion as an interpretation of Sections 4.2.5.A.1 and A.2 has been suggested that any creation of a shadow or blocked view is considered an adverse effect. As all buildings and structures create shadows, it is clear this was not the intent nor is it how the City Council previously interpreted or applied the language. The language in Section 4.2.5.A.4 has also caused confusion in interpreting what it means to “better protect the surrounding community.” The extent, time of year, and nature of ground level uses impacted must be considered in determining whether the shadows will adversely affect the surrounding community. This will depend upon the massing and orientation of the proposed building and the nature of the surrounding uses. For example, a significant increase in shadows on public open spaces will be more impactful than shadows that are cast on a parking lot or blank façade of a building.

Background Information

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.

Proposed Language

To address this, City staff have recommended a minor modification that reverses the order of the current language (Attachment A). Planning staff propose changing the order of the words in Sections 4.2.5.A.1 and A.2 to state that the City Council may grant up to 4 or 5 stories by finding "that the proposed structure is compatible in visual scale to its surroundings, *does not create shadows or blocked views that adversely affect its surroundings*, and advances the purposes of this district". This small change means that shadows and blocked views must be assessed to determine if they create an adverse impact and does not assume that any shadow or blocked view is an adverse impact. Staff view this amendment as a clean-up item, not a substantive change, because it brings the text into alignment with the intent of the district and how the City Council has applied the language to date.

Additionally, staff proposed changing Section 4.2.5.A.4 to state that the City Council may waive setback or stepback requirements by finding "the proposed plan does not create shadows or blocked views that adversely affect its surroundings, supports pedestrian vitality and advances the purposes of this district". The current language requires a finding that the proposed plan better protects the surrounding community. It is unclear what it means to better protect the surrounding community. Waiving a setback could improve shadows or blocked views for some adjacent uses and make them worse for others. By changing the language to consider adverse impacts it is consistent with the findings for height as well as the standard Special Permit criteria and allows the City Council to assess the effects of new shadows on surrounding uses while balancing those with the purposes of the district to promote walkable, mixed-use development in village centers.

Staff were asked to further research whether it is necessary to add specific standards or criteria within the zoning language to properly define adverse effects. Through further review of the *Comprehensive Plan*, other neighboring zoning texts, and speaking with City staff, we concluded that additional criteria is not needed. As it says in the *Comprehensive Plan*, "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". The vision of successful MU4 developments requires flexibility and discretion for the Special Permit Granting Authority on a project-by-project basis. In addition, shadows and blocked views are one consideration of many when determining whether to grant a Special Permit and adding criteria here would place an emphasis on shadows that is out of line with the *Comprehensive Plan*.

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 review 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.

Follow Up and Changes from October 14 ZAP Meeting

At the October 14 meeting, a member of ZAP expressed a desire to retain the language “than strict compliance with...” in Sec. 4.2.5.A.4, which was removed in the previous draft. Staff have revised the text to retain this language in a slightly updated format.

A committee member also asked that staff consider adding in language to convey the prioritization of residential uses when making findings to allow for a setback waiver. After review of the language with the Law Department, staff believe that the City Council has sufficiently broad discretion in the analysis and review of a proposed project making additional language unnecessary. In addition, any project seeking a Special Permit must still meet the general criteria listed in Sec. 7.3.3.

Lastly, the Planning and Development Board met on November 1, 2021 to discuss this item and voted 6 in favor of the proposed amendments, with Director Barney Heath abstaining. A summary of their meeting discussion is provided as an attached memo here (Attachment C).

Next Steps

Staff look forward to the Public Hearing scheduled for the November 8, 2021 ZAP meeting and a possible Committee vote.

Attachments

- Attachment A** Proposed Redlined Zoning Language, Sec. 4.2.5(A)
- Attachment B** Proposed Clean Zoning Language, Sec. 4.2.5(A)
- Attachment C** Planning and Development Board Memo on #180-21

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 create shadows or blocked views that adversely affect 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 create shadows or blocked views that adversely affect 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 strict compliance with the following setback requirements by finding the proposed plan does not create shadows or blocked views that adversely affect its surroundings, can better protect the surrounding community from shadows and blocked views, supports pedestrian vitality, and advances 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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Cat Kemmett, Planning
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Members

Peter Doeringer, Chair
Kelley Brown, Vice Chair
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Chris Steele, Member
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CITY OF NEWTON

Planning and Development Board

11/05/2021

The Honorable City Council President, Susan Albright
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

CC: Honorable Newton City Council

RE: #180-21 Requesting amendments to Section 4.2.5(A) COUNCILORS LAREDO, LUCAS, LIPOF AND MARKIEWICZ requesting amendments to the City of Newton Zoning Ordinance, Chapter 30, Section 4.2.5(A) Design Standards for the Mixed Use 4 District to clarify language concerning shadows and blocked views in the Mixed Use 4 district.

Dear Honorable Council President Albright:

The Planning and Development Board discussed Docket #180-21 requesting a review and possible amendments to Section 4.2.5(A) of the City of Newton's Zoning Ordinance at its regularly-scheduled meeting on November 1, 2021

The Board understands that the proposed amendments dealing with shadows and blocked views are in response to differing interpretations of Section 4.2.5(A) that have recently arisen during reviews of projects before the Land Use Committee. However, some Board members noted the similarities in the language of the proposed amendments and the original language of Section 4.2.5(A) and questioned whether the amendments would resolve the confusion. The Board's subsequent discussions focused on two questions: (1) whether the proposed amendments corrected the ambiguities in the existing Ordinance and (2) whether the Board wished to elaborate its understanding of the intent of the proposed amendment.

After examining various alternatives to the current language of the Ordinance, the Board concluded that the proposed amendments reduced the ambiguity in the Ordinance as well or better than the other alternatives. There was then further discussion about the Board's interpretation of the intent of the proposed amendments.

The Board recognizes that issues of shadows and blocked views will inevitably arise under the MU4 zoning ordinance. Nevertheless, because each project will have unique characteristics and unique surroundings, these issues are best resolved on a case-by-case basis through the flexible and discretionary procedures of the Special Permit process. The Board's view of the proposed MU4 amendments is that they confirm the principle established in Newton's Comprehensive Plan that "buildings and spaces should be respectful of and compatible with the context within which the development is located". While the Comprehensive Plan specifically identifies shadows and blocked views as an example of adverse impacts that need to be evaluated, it is also clear that the Comprehensive Plan envisions that these adverse consequences must be weighed along with other considerations as part of the larger packages of benefits and adverse consequences that are typically realized through the Special Permitting process. Because these considerations benefit from having detailed technical information on adverse impacts such as shadows, the Board also endorses the Planning Department's new policy of requesting that developers routinely provide detailed shadow studies as part of their MU4 proposals.

With these understandings in mind, the Board voted 6 in favor of the proposed amendments in Docket #180-21, with Director Heath abstaining.

Sincerely,

A handwritten signature in cursive script that reads "Peter B. Doeringer".

Peter B. Doeringer, Chair