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Barney S. Heath
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MEMORANDUM

DATE: November 12, 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 18, 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

In response to issues raised at the Zoning and Planning (ZAP) Committee public hearing held on November 8, 2021, Planning staff is providing the following information for the upcoming continued discussion and potential Committee vote on zoning amendments to Additional Standards in MU4 (Sec. 4.2.5.A).

Committee Comments

Qualifying Language for Further Clarification

Local land use attorney and architects commented at the public hearing, to which many Committee members voiced support for, inserting additional language to further qualify and clarify what is meant

by “adversely affect”. Language proposed during the public hearing, and subsequent Committee conversation, was inserting the phrase “materially” or “unreasonably”. In addition, the Planning and Development Board voted in support of incorporating this language. Planning staff and the Law Department have revised the proposed language to include this for the Committee’s consideration (Attachment A & B).

Inserting Specific Criteria to Assess Shadows and Blocked Views

Some Committee members expressed concern that the City Council would not be able to determine whether shadows and blocked views are adversely affecting its surroundings without adding specific criteria. An example given was a table or chart that shows a shadow cast for between “x-y” hours or days is not considered adverse, but anything above “y” is adverse.

Staff remain in agreement that specific criteria is not appropriate and not necessary for the City Council to make a determination. First, the *Comprehensive Plan* and the Council reports documenting the creation of the MU4 zoning district clearly emphasize the need for flexibility and discretion. As the *Comprehensive Plan* states, “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.” Second, there are many other items required of a Special Permit that do not have specific criteria, like those focused on traffic. In these instances, the City Council has been able to make a determination through the review of various materials provided by the developer in close collaboration with City staff and the broader community. Every Special Permit requires the City Council make a finding that “the use as developed and operated will not adversely affect the neighborhood” (Sec. 7.3.3.C.2). The consideration of adverse effects must take into consideration the surrounding context and will vary project by project. Similarly, prescriptive shadow criteria limiting shadows to certain lengths of time during certain times of year are best when there is a specific sensitive use or property being protected (such as Boston Common) and criteria allowing for the consideration of adverse effects allows the City Council to consider the particular context for each request.

There Should Be a Section Stating the Legislative Intent

The purposes of the MU4 district are included in Section 4.2.1 C. The five purposes stated include allowing development appropriate to village centers and in alignment with the *Comprehensive Plan*, encouraging compact, pedestrian-oriented villages with a mix of uses, allowing sufficient density to promote a lively environment, public transit, and businesses, expanding diversity of housing, and promoting the health and well-being of residents by encouraging use of alternate modes of transportation and a sense of place. The existing and proposed criteria, in addition to considering adverse effects from shadows and blocked views, also require that the project advances these purposes.

The Updates to Sec. 4.2.5.A.4

One Committee member suggested that the change from the current language “can better protect the surrounding community from shadows and blocked views” to “does not create shadows or blocked views that have material and adverse effects on its surroundings” is a substantive change. The Law and Planning Departments view this update as consistent with both the original intent of the MU4 additional standard and how it has been applied by the City Council to date. The recommendation is made with the goal of clarifying the existing criterion and with the understanding that the project outcomes will not be affected.

This criterion applies to the 20-foot minimum setback adjacent to residentially zoned districts as well as the maximum 10-foot front setback and the upper story stepback requirements. There may be compelling reasons to waive all or a portion of one of these setbacks or stepbacks that does not result in any shadow impacts to adjacent residential or other sensitive uses. Considering whether a waiver would result in adverse effects allows the City Council the flexibility to determine the best orientation of a

proposed building while still retaining the ability to deny any waivers that would adversely affect the surrounding community. For example, a request for a greater front setback to accommodate outdoor dining may not technically “better project the surrounding community from shadows or blocked views” but also would not result in adverse effects on the surrounding community. And waiving a portion of the 20-foot setback from a residentially zoned property that does not contain a residential or other sensitive use may not better project the community from shadows but also may not result in an adverse effect.

Next Steps

Staff look forward to the continued discussion at the upcoming November 18 meeting and 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)

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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 have material and adverse effects on 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 have material and adverse effects on 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 have material and adverse effects on its surroundings, can better protect the surrounding community from shadows and blocked views,~~ support 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

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- 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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