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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)