



Zoning & Planning Committee

Report

Part 2

City of Newton In City Council

Monday, November 8, 2021

Present: Councilors Crossley (Chair), Danberg, Albright, Leary, Ryan, Wright, Krintzman and Baker

Also Present: Councilors Bowman, Lipof, Downs, Kelley, Malakie, Humphrey, Oliver, Lucas, Kalis and Greenberg

City Staff: Deputy Director of Planning and Development Jen Caira, Director of Planning and Development Barney Heath, Assistant City Solicitor Andrew Lee, Director of Housing and Community Development Amanda Berman, Chief of Long Range Planning Zachery LeMel, Community Planner Engagement Specialist Nevena Pilipovic-Wengler, Chief Operating Officer Jonathan Yeo, Commissioner of Public Buildings Joshua Morse, CPA Program Manager Lara Kritzer and Housing Development Planner Eamon Bencivengo

Newton Housing Partnership, Lizbeth Heyer and Charles Eisenberg

Planning and Development Board: Chair Peter Doeringer, Barney Heath, Kelley Brown, Chris Steele, Kevin McCormick, Lee Breckenridge and Jennifer Molinsky

Others Present: NewTV

#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.

Zoning & Planning Held 8-0 on 09/13/21

Zoning & Planning Held 8-0 on 10/14/21; Public Hearing Scheduled for November 8, 2021

Action: **Zoning & Planning Held 8-0; Public Hearing Closed**

Note: Chief of Long Range Planning Zachery LeMel joined the Committee for discussion on this item.

Mr. LeMel presented a summary of Section 4.2.5(A) (PowerPoint attached) on intent, background information, issues with existing language, proposed revisions, and expected outcomes.

Mr. LeMel stated that the proposed amendment to the language is not a substantive change. Rather, the amendment would bring the text into alignment with how the City Council has applied the criteria in an MU4 zone when assessing projects seeking a special permit for building height and/or setback waivers to clarify how shadows and blocked views will be assessed relative to other criteria.

The existing language has recently been interpreted by some councilors to mean that any creation of a shadow or blocked view could be considered an adverse effect, as recently suggested during a special permit review. If this were the case, a special permit could only be approved if no shadows or blocked views would be created at all by a proposed building. However, such an interpretation is not consistent with the expressed intent of MU4, past application of standards, or reason, since all buildings cast shadows.

At the October 14, 2021, meeting, Committee members requested that staff add back into the proposed revision on setbacks “strict compliance with”.

Setbacks

Proposed amendment language to Sec. 4.2.5.A.4 Setbacks of the City of Newton Zoning Ordinance.

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:~~

Height

Proposed amendment language to Section 4.2.5(A).1 Height, 4.2.5A.2 Mixed-Use Residential Incentive and 4.2.5.A.4 Setbacks of the City of Newton Zoning Ordinance

“Does not create shadows or blocked views that adversely affect its surroundings”.

Staff believe the expected outcomes from this change to be minimal. Rather, this update is a clarifying change to better align with current practice and with the intent put forward in the mixed use element of the Comprehensive Plan. The impact of any shadows or blocked views will be analyzed through a shadow study (shadow extent, duration, seasonal reach, and the ground level uses it affects, among others). Standard Special Permit criteria remain, and Planning can bring in a peer-reviewer as needed. Determination of adverse impact of shadows and blocked views should be reviewed on a specific site and project basis.

As the Special Permit Granting Authority, Council will continue to review whether and to what extent a new building may impact shadows and blocked views, including by using shadow studies, to assess

shadow extent, duration, seasonal reach, ground level uses it affects, etc., in evaluating a petition in an MU4 zone. The updated language provides the City Council with the flexibility and discretion they need to approve or deny a Special permit request.

Chair Crossley opened the public hearing.

Attorney Peter Harrington, 157 Lowell Avenue, stated that part of my (law) practice is involved in the litigation of zoning laws. I have also been involved in writing various zoning laws over the years. I sent you a memo this afternoon. My concern with respect to this is that in Massachusetts, (I don't know about shadows), but there are several cases that deal with views. In Massachusetts generally doesn't allow landowners to have a protected view right. So, the creation of your ordinance here by protecting views is something new, a new right that we've established in Newton, I think under the Home Rule amendment, you have the authority to do it. But if you're going to do it, I would suggest that you either do it outside this section or come up with some sort of legislative intent that would give the court some guidance on what the purpose of this is and how broad or extensive it may or may not be. For homeowners arguing about a building, I don't know that it would get very far because it's too expensive to litigate. But if you get commercial projects involved and you get protection cases you can have some serious litigation. I suggest that you review this with an eye towards looking at the potential consequences of what you're doing and how it might be interpreted. If I understand the presentation correctly, it appears that the Planning Department would do some review and come up with some decision as to whether there was an impact or not an impact. Without some statutory guidance, I don't know how much latitude they would have in that decision. The difference between a parking lot and a playground may be significant from your point of view, but from the courts point of view, they may decide that if they have the right, whether it's a parking lot or playground isn't a significant thing to make that difference.

Attorney Lee answered that we're not discussing creating any new kind of property rights. We need to keep in mind that this is in the context of a special permit, and this is a consideration like the other discretionary items that the special permit granting authority looks at. The Law Department did review the draft ordinance and we have no concerns.

Attorney Alan Schlesinger, 117 Westchester Road, stated that I'm inclined to think that the shadows and views are maybe different sides, maybe related but not the same issue. I agree with all the premises in the planning departments analysis. I'm not sure I agree with the conclusion. I understand the problem of the way the ordinance is currently written, but the wording does need to be addressed. Take the word "block" in: *does not create shadows or blocked views that adversely affect its surroundings*. I would think that it would be possible and not irrational for someone to say that any shadow is an adverse effect. Someone could say that they could believe it, and it might be true, but when we live in village centers there are shadows from buildings. I'm wondering if it would add clarity, to say that it **would not either unreasonably or materially adversely affect the surrounding**. There will be understanding that there could be shadows, but the Council must make a judgement as to whether it's material or unreasonable.

Jay Walter, 83 Pembroke Street, stated that I just want to say it seems that this change makes the zoning simpler and more direct. I think that the determination of adverse effect should be on a case by case basis and the language in the ordinance shouldn't present the option of making every shadow and every blocked view, a reason not to accept a project. Because this is criteria for a special permit, the Council always has the authority to judge this. I support the changes.

Randall Block, 45 Lafayette Road, stated: I am a member of the "Right Size Newton" Board. However, but tonight speak only for myself. As I understand the proposed changes to the zoning language, the purpose is to give the Council more latitude to assess the impact of shadows and blocked views. The memo gives an example that I quote, "shadows on public open spaces will be more impactful than shadows cast on a parking lot". But the memo fails to do is to provide the criteria that the Council must use in its quasi-judicial capacity to make the assessment of the shadows or blocked view without criteria the Council would likely make a subjective judgment and include shadows and blocked views in the cost benefit calculation that they make when considering a special permit application. This would undermine one of the essential purposes of zoning which is to inform the public, especially abutting property owners, regarding what can legally be built on adjacent parcels. In my opinion, the proposed change in zoning as it's proposed is a poor idea. Shadows or blocked views of any significance do indeed adversely affect neighboring properties, those property owners have an expectation that they will be treated fairly. Either the language should be left as it is or criteria need to be developed by the Council. That the Council would apply when it assesses the impact of shadows and blocked views. If they would be inconsequential, such as affecting only a parking lot, then the criteria would allow the Council to approve the special permit if they would be consequential, such as affecting public open space, then the criteria would require that the special permit be rejected. The proposed simple language turns out to be not so simple. I suggest the Committee and the Planning Department still have some work to do.

Lisa Monahan, 1105 Walnut Street #1, stated that she agrees with the spirit of the intent that you're going for. I worry that the language that's proposed is not tight enough. As Mr. Block suggests, to decide in some cases I think having recently sat through many of the meetings for the apartment project in Newton Highlands and listened to the neighbor to the apartment building talk about the adverse effects of the shadows. I can imagine many people going on and on about, any amount of shadow being an adverse effect. I agree that it must be specific enough to really lean on. I don't know to what extent the Law Department has looked at case studies for this sort of thing from cities in Massachusetts or around the country. This just seems like there's no need to reinvent the wheel.

Matt Bell, 1111 Beacon Street #3, stated that he just wanted to echo what Mr. Block said, which is that more clarity would be helpful here. As Mr. Harrington pointed out earlier, he was concerned about legal fights between commercial entities and sort of it feels insane that homeowners are not going to be able to sue amongst any of these things because they don't have the resources to do so which is which is true. As a homeowner, I would appreciate having a bit more clarity in the language, so I have some clarity as to what kinds of impacts are going to be considered adverse. I'm not going to have the resources to sue over somebody trying to put a building next to me. I'd like to be able to point to things more clearly in language to say yes, this is good or no, this is bad. I'd appreciate if it were possible to put that clarity into the code in some form.

Dennis Rieseke, 40 Harrison Street, stated that as an architect, I have been involved in four zoning cases as an expert witness that had this (blocked views) as the primary reason for being brought before the courts. Two in Newton, one in Boston and one in Nantucket. This is part of state law. I do not recommend that you change it. If that opens a can of worms then I don't think we need it. All of Newton's zoning ordinance must follow state law. As I understand the law being an architect (and I am not a lawyer) wouldn't change this. Because I think that would be a can of worms you don't want to get into.

Chair Crossley stated that several people have discussed how this refers to state law and asked why should we change it? We are not changing the substance of the ordinance. This was meant to be a clarification in wording. Folks may be correct that we shouldn't be dealing with shadows and blocked views, or at least not with blocked views perhaps to this degree, but the intent of this is to make clear that these are factors that we should consider in determining whether a commercial mixed use property at the edge of one zone where the next zone is residential should be considered. But the fact that a building creates a shadow, which of course, every building does, is not by itself necessarily adverse. All we were trying to do is make that distinction.

Diane Prunte, 305 C Winchester Street, a volunteer with Right Size Newton. Tonight, I'm speaking on my own. I feel like this could be or is a substantial change to the current language because it will give a lot more freedom to the Council to accept or deny a special permit. I feel like if a building is casting a shadow on someone's property, or is it creating, blocking their view that can be quite substantial. If it's like in the yard or a parking lot, that's no big deal, but if you're blocking windows or blocking sunlight from coming into the house, that's a big deal to me. I feel like we need to keep the language as it is so that we don't keep giving developers special permits to allow this to happen. If we do change the language, I feel like we need to make it very clear as to what changes we can and cannot make.

Councilor Danberg made a motion to close the public hearing. Committee members agreed 8-0.

The Planning & Development Board voted 6-0 to close the public hearing.

Committee members comments, questions and answers:

The current language says 'better protect' which implies that if someone is not going to abide by the setbacks, they're going to move a building closer to the lot line, but whatever the outcome of that will better protect the abutters than if the setback were complied with. That seems to me a reasonable ground for waiving a setback. Setbacks are relatively an important part of our zoning, and we don't waive them casually. You normally can't do it except by a variance.

The impact of shadows and blocked views would be one of several factors that the Council could weigh in deciding to grant a special permit. If there might be an offset by some other positive things that the project had to offer in that context. We have generally in the special permit process not done a cost benefit analysis.

Can we be more specific about what the adverse impact would be? Please provide more guidance on the issue of adversely affect. Would it be for example, three hours a day of shadow on a building or all the time?

Every special permit request is unique. It would be impossible to create criteria that would apply to every special permit. Shadows differ in seasons and time of the day. It would be impossible to set criteria that would apply across the board. Special permits are a judgment call. The Land Use Committee should have the ability to determine if the shadow has an adverse effect.

To add clarity, perhaps we should add 'would not either unreasonably or materially adversely affect...' and add 'intent', which would provide the court some guidance on what the purpose of this is and how broad or extensive it may or may not be.

Council members comments, questions and answers:

As Chair of the Land Use Committee, it is necessary to have tools from the zoning code to make our decisions. In Land Use, we can consider and weigh everything, but not necessarily let one issue be the breaking factor and that's what happened with the shadow studies recently. We need to (be able to) consider shadow studies and accept the results. It is necessary (for the committee) to decide whether the impact is great enough to say no to a petition. Shadow studies provide context. There have been times where projects have been tweaked. Every building is going to cast a shadow and it can't be the deciding factor of whether a project is accepted because there's other criteria and benefits that are weighed when we look at a project (in the context of) the neighborhood. We want to consider shadows and shadow studies in the context of the entire project but can't be a definitive factor in how we ultimately vote.

If this item passes, would it be necessary to have a two-thirds vote or a simple majority vote from the Council? Attorney Lee answered: a two-thirds vote is required.

If passed, when does the zone change go into effect? Is it immediate or is there a waiting period?

Chair Crossley answered there is an appeal period of twenty days before any zone change can go into effect.

One reason we might want to put a qualifier like 'materially' before 'adversely affect' is to make it clear to residents who read the ordinances. A resident may think that a permit should be denied because it produces an adverse effect on a property.. The ordinance should be made very clear to all.

Planning Board members comment:

Chair Doeringer stated that the Planning Board spent time discussing these very issues at their November 1 meeting. The Board went through the language carefully and were troubled by some lack of clarity and wondered whether the existing proposed changes were a move in the right direction. The Board endorsed the current language and probably wouldn't object to the word 'unreasonable' being included but weren't persuaded that may reduce the ambiguity. The Comprehensive Plan is very good about saying that the zoning must respect the context of what buildings and space exist, and identifies shadows and blocked views as an example of potential adverse effect that must be weighed.

Even though an effect may be small, the Planning Board was persuaded very much of the need for these effects (of shadows) to be evaluated as part of a package, including all the good and bad effects of a particular project. The Board didn't see this as a cost benefit analysis but rather as the exercise of considered judgment within the Land Use Committee and Council. The Board wanted to underscore the fact that in approving the proposed amendments, it was the package that was important, and that meant that nothing should be an absolute barrier but there had to be this balancing activity to reach a final judgment. Tonight, we can be prepared to revote this if necessary.

Without further discussion, Councilor Baker made a motion to hold this item. Committee members agreed 8-0.

The Planning & Development Board first voted to amend the language to add “unreasonably or materially” to “adversely affect the surrounding, then approved the item. Committee members agreed 6-0-1, Planning Director Heath abstaining.

#438-20 **Request for creation of Trust in Newton to support affordable housing development**
COUNCILORS ALBRIGHT, CROSSLEY, HUMPHREY, DANBERG, MALAKIE, KELLEY, BOWMAN, KALIS, GREENBERG, DOWNS, WRIGHT, RYAN, NOEL, LEARY, LIPOF AND NORTON requesting the Planning Department analyze mechanisms already in use in other cities and towns, identify funding sources, and create a Housing Trust in Newton to facilitate and foster the development of affordable housing in Newton.

Zoning & Planning Held 11/09/20, 03/22/21, 07/26/21, 09/27/21

Action: **Zoning & Planning Held 8-0**

Note: CPA Program Manager Lara Kritzer, Assistant City Solicitor Andrew Lee and Director of Planning and Development Barney Heath joined the Committee for discussion on this item.

Chair Crossley stated that the draft ordinance was first reviewed and discussed in Committee on September 27, raising some questions that are answered in this week's memo. She noted the Council must first accept the state legislation enabling Newton to create a Housing Trust, and then adopt the proposed ordinance.

Attorney Lee answered that he would defer this question to the Clerk's office, but when reviewing the docket item, he does not believe a new item would be necessary. The docket language tasks the Planning Department to analyze and create a Housing Trust in Newton. Council can accept the statute and then enact the ordinance under this item.

Ms. Kritzer presented a summary of Section 4.2.5(A) (PowerPoint attached) on the Municipal Affordable Housing Trust (MAHT) draft ordinance review process to date, next steps and the potential time line to establish an MAHT.

Ms. Kritzer stated that if the potential timeline runs as anticipated, a new MAHT could be fully established and ready to accept new funding applications by Fall 2022. While the Trust is being formed, the Community Preservation Committee (CPC) could continue to review and approve community housing projects until the Housing Trust is up and running.

Committee members comments, questions and answers:

Is it specified if trustees can serve more than one term, or if their terms are limited? Are they appointed annually? Mr. Heath answered that the Ordinance states that trustee terms are stated as two years in the draft, and terms are proposed to be staggered.

CPC often has consultants assisting them on housing projects. Do we want to specify a funding limit for this on the MHAT?

Since the City has not had a Housing Trust, it makes sense to start this process by approving CPC recommended funding on an annual basis. Would a CPC funding recommendation be decided annually?

The MAHT would allow for a much more efficient process which included an annual request for CPA funding, after which those funds could be dispersed by the MAHT through their review process. The MAHT would include members with expertise that would aide in the review process and assist them in moving ahead with getting projects built. The MAHT would also have the ability to hire housing consultants to assist with specific projects as needed.

I have concerns on how the CPA money is allocated because the City has many needs. I want to be ensured it's a fair process as well.

It is concerning if the Housing Trust will oversee financing and be the developer. (This gives) broad authority to the Housing Trust. The Housing Trust as purchaser and owner becomes a developing agency of the City, that is different from the Housing Trust having access to funds and the ability to move faster than the CPC process currently allows because the CPC process requires a pre-proposal.

Housing Trusts need the flexibility to be able to take advantage of a situation that arises quickly. Please clarify if there is a Trust in the business of owning and operating housing? Mr. Heath answered that one of the principal advantages of a Housing Trust is to act quickly. The City has been advised and has taken the position that the Housing Trust is not going to be a developer of a property. The City may acquire land and work with the Housing Trust to use an RFP process to find a developer to complete construction of affordable housing there. The developer may also acquire the land and work with the Housing Trust for funding to assist with affordable housing development there. Mr. Heath stated that the City does not anticipate that the Housing Trust would develop or manage the property long term.

Can ARPA money be allocated to the Housing Trust? Mr. Heath answered that he discussed this with Chief Operating Officer Yeo. The ARPA funds need to be expended on a specific project within a specific time frame; funds couldn't be put into a Housing Trust without identifying a specific project. Hypothetically, you could set up a Housing Trust, and make them aware of the availability of ARPA

funds if the MHAP can act in time to spend the funds on a particular project. You cannot have the funds in an account unspent.

Ms. Heyer added that expediting a project and acting quickly on land purchasing opportunities are important elements of the Housing Trust. This would increase the capacity of other affordable developers to pick up on opportunities initiated by the Housing Trust and act as the developer throughout the design and construction process.

Could the grant agreement specify that the Housing Trust wouldn't be the role to manage property for any length of time, but rather to appropriate the funding and work with a nonprofit developer to get the housing developed? Ms. Kritzer answered that the City does require grant agreements for any CPA funded projects. The grant agreements regularly include recommendations and conditions for the funding, either through the CPC review process or the Councils review. If there were concerns about specific uses of the funds, we could work with the Housing Trust to tailor it to eliminate that use. Attorney Lee stated that the City would require a grant agreement or an MOU with the Housing Trust even though it is a quasi-city entity. There will be requirements for the use of the CPC funds.

The City uses money from the CPC fund, which are public taxpayer funds. The idea here is that putting some housing funds into the Trust doesn't require the same process by the CPC or the Council, because of the desire to move quickly. We owe it to the public and ourselves to be clear on how the disposition process works and who is eligible to be a purchaser.

Please clarify how does an acquisition turn into a disposition on the part of the Housing Trust to a nonprofit? Please explain the process of disposition of property once acquired. Mr. Heath answered that the Housing Trust is a municipal entity and must follow the same requirements on purchasing and disposition that the state requires. Attorney Lee stated that the Law Department is going review exactly what the disposition process is. It is not the same process as is used for other City property. The Housing Trust may not be subject to the same requirements as the City for disposition.

It would be beneficial to provide a flowchart on what we can anticipate as the advantages of having a Housing Trust as opposed to having gone through a CPC process.

Please provide a description of how the process works from the point of purchase through to achieving affordable housing.

Please provide some narrative about how other communities that have operated a Housing Trust.

We have discussed what funding sources can go in the Housing Trust and how much of the CPC budget might be added. We know that the CPC has unanimously approved our establishing the Housing Trust and that they would vote their annual community housing target, or 35% of their next year's allocation to seed the Trust. Once established, it would be helpful if the annual CPC recommendation for the Trust would be shown in the CPC proposed budget each year. Then Council could discuss and adopt these funds as part of the budget process.

Would it be necessary to amend the ordinance to require CPC a recommend funding in their annual budget or could we set it up as a protocol? Ms. Kritzer answered that funding the Housing Trust is no different than funding any other project. It's still an application that must be submitted. The CPC could submit it at any time. Attorney Lee answered that ordinance requires that CPA or CPC provide this information annually. If the Council does desire the request to be submitted in a particular timeframe, then you can certainly amend the ordinance to make clear that the application needs to be submitted by a certain date.

Should we require the CPC budget to include this allocation? Ms. Kritzer stated that we generally find out what our state matches long after the budget is set. Right now, we are expecting 29% and we are budgeted for 20%. A better match than expected.

Can CPC funds once allocated to the Trust, be spent on administrative costs in addition to the project? Ms. Kritzer answered that she anticipates the funding would be a request for affordable housing funds so the Trust could use the money to support, create, acquire, restore, and/or rehabilitate affordable housing, and could hire a consultant to assist them in these processes if needed. This is a reasonable request to use CPA funds. The administrative funds used to support the CPC are limited by the CPA legislation and may not exceed 5%.

Who will be staffing the Housing Trust, will that individual be from the Planning Department? Mr. Heath answered that there are different options. He will be prepared to answer this question at a future meeting.

Newton Housing Partnership comments, questions and answers:

Charles Eisenberg stated that he has completed affordable housing projects with a few Housing Trusts in other MA communities. In these towns the Trusts acquired the property and held it in the Trust. The Housing Trust then puts out an extensive request for a proposal consistent with State law. There is precedent for how the process of disposition works.

Chair Crossley asked if there were a process that would apply to any project or are there different processes depending on the mix of funding and associated rules?

Mr. Eisenberg answered that he did not know.

Council members comments, questions and answers:

I am hopeful that that by acting in concert with other communities around the state that we can make a Housing Trust option available to us. We could tailor it to our specific needs and circumstances.

Without further discussion, Councilor Krintzman made a motion to hold this item. Committee members agreed 8-0.

#88-20 Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Zoning & Planning Held on 01/27/20, 02/10/20, 02/24/20, 03/09/20, 03/23/20, 04/13/20, 04/27/20, 05/19/20, 06/01/20, 06/15/20, 06/29/20, 07/09/20, 07/16/20, 08/13/20, 09/14/20, 10/01/20, 10/15/20, 11/05/20, 11/09/20, 12/14/20, 02/22/21, 03/08/21, 05/24/21, 07/08/21, 09/13/21, 10/25/21

Action: **Zoning & Planning Held 8-0**

Note: Community Planner Engagement Specialist Nevena Pilipovic-Wengler and Planning and Development Deputy Director Jen Caira joined the Committee.

Chair Crossley stated that the intention is that tonight, the Committee can have an open discussion of the common themes that emerged from the community engagement process presented at its October 25, 2021, meeting.

Committee member's comments, questions and answers:

It is desirable to help smaller business that can't compete with regional shopping areas who provide free parking. Seniors want to have access via driving in the community. Perhaps we could eliminate the Newton Centre triangle parking lot. Parking must be a balancing act and is necessary in village centers. People desire to park in village centers. Do you want parking to be the central feature of your village center? if the answer is no, where would we put the parking? Could it be underground, behind other buildings?

When looking at many different types of village centers with different degrees of public transportation, different sizes, boundaries, mixes, is there any kind of a formula that we could apply to try to achieve the maximum opportunity from each one of these places and keep them healthy and thriving? What type of analysis would benefit us? Please provide more quantitative information.

The community engagement process really exceeded my expectations. I was very impressed with the level of thought and the resources applied. Residents thought about and explored their village centers and relayed what they liked and what they wanted to change. Each village center needs to be looked at on its own merits as they have their own unique features. We cannot consider changes to them all in the same way.

Parking is important but it should not be the prominent feature of village centers, it's a matter of balance. We have built villages, cities and towns around vehicles too much to the detriment of many.

Chair Crossley remembered from the engagement report that 100% of people want certain things in village centers and at the top of the list was community gathering spaces where people can connect with other people in generous spaces like wide sidewalks and plazas with trees, benches, etc., and that 78% of participants indicated a desire for change in order to accommodate this.

This doesn't mean that you must make a choice to have cars or not, it just means we must decide where we can put them.

Councilor comments, questions and answers:

Is there a way to establish if 1720+ responses are statistically significant number? Ms. Pilipovic-Wengler answered that this was a way to secure more diverse representation of the voices in consultation with several who professionally worked on qualitative data. Having more diverse representation of voices is more relevant in the context of community engagement. Ms. Pilipovic-Wengler then stated that she kept track of that 78% - 22% proportion, starting with the first 100 respondents, and the proportion remained consistent throughout. She then said that she does not know if it is statistically significant but in the context of community engagement, it did feel relevant in terms of hearing from more diverse voices, in a more accurate proportion to the Newton demographic.

Although parking remains important in village centers, research proves that people who walk and bike to shops and restaurants do so more frequently than people who drive making them good customers. Village centers must be made more walkable and bike friendly with safety measures.

The City has eliminated many parking spaces and people have adapted. Is data available from cities where the (required) parking ratio has changed over time, people have adapted and what is the correct amount of parking necessary per square mile?

Utile, our consultant, discussed the relative amount of public transportation and/or multiple modes of transportation that are available in village centers and how transportation impacts the relative success of business. Formulas that we can apply depend upon what are the basic elements of a village center, and if that can assist us on what we should allow. 100% of people want wonderful things, but 78% of people are willing to accommodate a certain degree of change or understand that change is necessary to enable things to happen. To what degree do we need data to make these decisions about the community of the future?

We should be concentrating on projects such as the Austin Street and Trio projects in Newtonville, where today the streets and public plazas are booming with activity. We should be building new housing while maintaining some parking. Businesses and people will be inconvenienced (during construction) but the outcome would be a vast improvement. The connectivity between the restaurants, open space, people biking, walking or driving works great.

We don't have to look to the past or try to project the future. We should look to other cities that have put people in their centers and prioritize people over vehicles. New York has measured sales tax returns on streets with protected bike lanes and very similar streets without and have noticed a vast difference in how well small businesses thrive along with protected bike lanes versus without. We always talk about feet on the street and how important they are to keep shops alive.

Is anecdotal information about feet on the street supporting local businesses available? Is marketing literature available to help shops survive?

Is data available on traffic patterns and how they affect a village center? When we're village by village can we look at how traffic patterns might be better to make it safer and enable traffic flow better? It is important to perhaps changing the flow of traffic on streets to be arranged to go different ways, or even closing some of the streets.

Planning Board members comments, questions and answers:

Mr. Doeringer stated that in the memo, you asked us to respond to the Polis survey village by village. The Polis survey is quite interesting because while not every village had a lot of comments there are a substantial number where you could do some analysis. Will you be providing individual village differences? Ms. Pilipovic-Wengler answered that for clarification there is a column where you can filter responses by village center. I do believe that it's going to be a combined effort of assessing what's relevant, for the whole city as well as categories of village centers while also looking at the unique elements of village centers. There were feedback, concerns and hopes expressed that are quite unique to village centers. I do believe that what we heard from the community along with quantitative data can be translated into updates to the Zoning Ordinance.

On Monday, November 15, 2021, at 6:00 p.m., the Planning Department will be hosting a public information session. They will present the information ZAP received on October 25, 2021, followed by a question and answer session to hear from community members on the community engagement results.


Without further discussion, Councilor Ryan made a motion to hold this item. Council members agreed 8-0.

The Committee adjourned at 9:41 p.m.

Respectfully submitted,

Deborah J. Crossley, Chair

Review and Possible Amendments to Section 4.2.5.A



Docket #180-21

Zoning & Planning Committee

November 8, 2021 – Public Hearing

Agenda

- Summary
- Current Language and Proposed Revisions
- Expected Outcomes
- Next steps

Summary

Docket Item Background Information

- Amendments proposed to Section 4.2.5.A, additional standards in the MU-4 district
 - Revise criteria for projects seeking Special Permit for building height and setback requirements in MU-4
 - Clarify how shadows and blocked views will be assessed
- Not a substantive change – bring zoning text into alignment with City Council application

Summary

Issues with the Existing Language

- Recent confusion from an interpretation that any creation of a shadow or blocked view is considered an adverse effect
- This recent interpretation is not consistent with intent of MU4, or past application of standards

Sec. 4.2.5.A.1 Height

#180-21

Existing Language

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 blocking views**, and advances the purposes of this district.

Proposed Revision

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 blocking views~~, and advances the purposes of this district.

Sec. 4.2.5.A.2 Mixed-Use Residential Incentive

#180-21

Existing Language

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.

Proposed Revision

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.

Sec. 4.2.5.A.4 Setbacks

Existing Language

#180-21

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:

Proposed Revision

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:

Expected Outcomes

- Clarifying update / align with existing practice
- Impact of any shadows or blocked views will be analyzed through a shadow study (shadow extent, duration, seasonal reach, and the ground level uses it affects, among others)
- Standard Special Permit criteria remain, and Planning can bring in a peer-reviewer as needed
- Determination of adverse impact of shadows and blocked views can be specific to each site and project

Next Steps

- Hold the Public Hearing



Draft Municipal Affordable Housing Trust Ordinance Continued Discussion

Zoning and Planning Committee
November 8, 2021

Municipal Affordable Housing Trust (MAHT) Draft Ordinance Review Process to Date

- Creation of MAHT docketed for review by 17 City Councilors in November 2020
- City Councilors, staff, and committee members have attended two Newton presentations by Shelly Goehring, Mass. Housing Partnership, and three statewide program discussions
- Staff consulted seven MAHT communities (Amherst, Brookline, Brewster, Beverly, Cambridge, Salem, and Somerville), MHP and Community Preservation Coalition
- Both Newton Housing Partnership and Community Preservation Committee have written in support of the creation of a MAHT
- Discussed by ZAP and reviewed on March 22, July 26, and September 27



Next Steps

If the Committee supports moving the Trust forward, the next steps are:

Pursuant to MGL Chapter 44, Sec. 55C, the City Council needs to

- Accept the Enabling Statute
- Vote to establish the Trust by majority vote approving the ordinance

Potential Timeline to initiate Approved MAHT

November – December 2021: City Council completes review of draft ordinance and votes to adopt legislation

January – April 2022: Work to identify, interview and appoint highly qualified affordable housing experts to be Trustees, set up new financial accounts and confirm staffing (3-4 months)

April/May – July 2022: Trustees hold initial meetings to develop Trust bylaws, regular meeting processes, and review and approval format for future funding requests (3 months)

June/July – October 2022: Trust submits funding proposal for initial CPA Community Housing funding and completes regular CPA funding review process (4-5 months)

November 2022 – CPA funding in place and Trust ready to begin accepting applications for project funding



Questions?