

M E M O R A N D U M

**TO: MEMBERS OF THE NEWTON CITY COUNCIL
DAVID OLSON, CLERK**

**FROM: THE LOWER FALLS IMPROVEMENT ASSOCIATION RIVERSIDE
COMMITTEE**

**RE: DOCKET # 187-19: PETITION TO AMEND SECTIONS 4.2 AND 7.3.5 OF
THE NEWTON ZONING ORDINANCE**

DATE: MAY 31, 2019

Docket # 187-19 is a petition to amend various portions of the MU3 zoning district provisions in Sections 4.2 and 7.3.5 of the Newton Zoning Ordinance (the “Zoning Ordinance” or the “Ordinance”) filed by the members of the Lower Falls Improvement Association Riverside Committee (the “Riverside Committee”). The Riverside Committee submits the below memorandum in support of the petition.

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Exhibits

- Exhibit A: Proposed Amendments to the Zoning Ordinance (with proposed deletions and additions to the existing MU3 District provisions shown in red)
- Exhibit B: 2013 Special Permit: Board Order # 258-12(2)
- Exhibit C: March 16, 2012 Memorandum from the Planning and Development Department to the Zoning and Planning Committee
- Exhibit D: September 9, 2016 Memorandum from the Planning and Development Department to the Land Use Committee

INTRODUCTION

All of the requested amendments are to provisions of the Zoning Ordinance applicable to the “Mixed Use 3/Transit Oriented Development” district (the “MU3 District”) which, by its terms, is a zoning district applicable to the property known as the MBTA Riverside Station, which fronts on Grove Street in Newton (“Riverside”). This is an appropriate time to reconsider the provisions of the Ordinance applicable to the MU3 District, created in connection with the development approved in October 2013 (See Special Permits Nos. 258-12(2); 272-12 & 272-12(3)), given the renewed proposal for a mixed-use development at Riverside.

SUMMARY OF THE MOST SIGNIFICANT PROPOSED AMENDMENTS

The principal purposes of the proposed amendments are to: (1) protect the surrounding neighborhoods (Newton Lower Falls and Auburndale) and Grove Street itself from potential adverse effects, which include traffic and noise impacts, as well as potential significant alteration of the existing character of these areas; and (2) achieve a development that will be a safe, comfortable and healthy environment for its residents and one that will be a community, rather than a mere collection of buildings, by, among other things, the inclusion of indoor and outdoor spaces that encourage civic engagement and interaction. Given the size of a potential development in the district, these are vital objectives. Accordingly, the first proposed amendments are to the description of the district purposes and are intended to highlight that these are important purposes of the MU3 District. *See further discussion on pages 8-11 below and proposed amendments to Zoning Ordinance (Exhibit A hereto), § 4.2.1.B.*

To achieve these objectives, specific amendments to district requirements, special permit application requirements, and special permit criteria are also proposed. Each of these proposed amendments and the reasons for them are discussed beginning on page 8 below in the section

entitled “The Proposed Amendments in Detail.” However, the most significant proposed amendments are summarized below.

Removal of the “Transit Oriented Development” and “TOD” Labels from the MU3 District Name

Development at Riverside should be assessed based on objective facts, including that transit available at Riverside is not robust. Located at the terminus of the Green Line D Branch, with long travel times to most major centers of employment, and with only one MBTA bus line stopping a Riverside only a handful of times per day, transit at Riverside is weak. Indeed, what distinguishes Riverside from other Green Line stations in Newton (none of which are in districts named “TOD”) is its proximity to highways and its parking lot, making it a highly car-centric location. The current labeling of the District as “TOD” is both misleading and encourages reliance on labels. The label should be removed and the facts should be allowed to speak for themselves. *See further discussion on pages 10-11 below.*

Traffic

To ensure that potential traffic impacts are fully analyzed, the Riverside Committee proposes a number of enhancements to the traffic study required to be submitted by special permit applicants. These changes strengthen the analysis of traffic impacts on the surrounding neighborhoods and add a requirement to examine traffic functioning *within* a proposed development. *See further discussion on pages 22-24 below and proposed amendments to Zoning Ordinance §§ 7.3.5.A.6-8.*

In addition, the Riverside Committee seeks to address a critical omission in the Zoning Ordinance concerning traffic. The current Ordinance requires MU3 special permit applicants to identify post-construction traffic mitigation measures that can be implemented if post-construction traffic monitoring shows that traffic volumes generated by the development are

more than 10% higher than predicted. What is missing is any special permit criterion requiring that the adequacy these mitigation measures be evaluated. Because of this omission, a special permit could be approved even if the applicant's proposed post-construction mitigation measures would be entirely ineffective. Accordingly, the Riverside Committee proposes the addition of a special permit criterion that will require the City Council to examine and make findings concerning the anticipated effectiveness of the post-construction traffic mitigation measures identified by the applicant. *See further discussion on pages 24-25 below and proposed amendment adding § 7.3.5.B.3 to the Zoning Ordinance.*

Project Size

Leading up to the 2013 special permit, there were years of discussions and many public hearings concerning, among other things, what size development could be built at the Riverside site without causing significant adverse impacts on the surrounding neighborhoods. Through that process, the project size was reduced from the developer's initial proposal of approximately 860,000 square feet to 580,000 square feet (not including the MBTA parking garage, the community center that was part of that project, or the Hotel Indigo (176,027 sq. ft.)). Further, in 2012, the City's Planning and Development Department (the "Planning Department") and engineering staff considered the additional square footage that would be feasible *if* there were direct access to and from the site and both Rt. 128/I-95 northbound *and southbound*. It was concluded that an additional 100,000-125,000 square feet of development (not including increased parking) would be feasible with this two-way direct access.

Nevertheless, to provide additional site design flexibility, the Riverside Committee proposes a 10% increase in the overall project size that may be allowed by special permit (650,000 square feet, excluding parking) even without direct northbound and southbound

Rt. 128/I-95 access and, further, that an additional 100,000 square feet of development (excluding parking) may be allowed if direct access to and from both northbound and southbound Rt. 128/I-95 is provided. The proposed amendments also allow for an additional 175,000 square feet¹ of development if the Hotel Indigo lot is incorporated into the development parcel. *See further discussion on pages 17-20 below and proposed amendments to Zoning Ordinance § 4.2.4.G.1, 2.*

In addition, the Riverside Committee proposes that the allowed square footage be distributed differently among residential, retail and offices uses than called for in the existing Ordinance, with a relative reduction in office space and increase in residential space. This will permit a greater contribution to the creation of housing, including affordable housing, than if the distribution among uses remains as under the current ordinance. In addition, reducing the amount of office space will help to protect commuters from the traffic and parking conflicts inherent in the fact that they will travel to and from the site at the same times of day as office occupants (as contrasted with residents who will travel in the opposite direction from commuters). *See further discussion on pages 18-19 below and proposed amendments to Zoning Ordinance § 4.2.4.G.1.*

Civic Open Space and Community Center

Riverside should be a community, not just a collection of buildings. Creating a community requires on-site indoor and outdoor community spaces. The existing MU3 provisions include “beneficial open space” and “community use space” requirements, but neither is sufficient.

¹ The text of the proposed amendment states, in error, that the additional square footage permitted is 176,000 square feet. This should have been 175,000 square feet.

The “beneficial open space” requirement can be met by narrow strips of grass that run alongside streets or buildings or are adjacent to highway ramps. Such spaces neither foster community nor help to ensure that the development will not feel cramped and closed in. The Riverside Committee thus proposes the addition of a “civic open space” provision that requires high-quality, community engagement open spaces. *See further discussion on pages 15-17 below and proposed amendments to Zoning Ordinance §§ 4.2.3 and 4.2.4.B.*

The Riverside Committee also proposes amendments to address indoor civic space. The existing requirement in § 4.2.4.F.1 to include “community use space” was undoubtedly meant to refer to the 11,000 square foot community center space that was part of the plan approved in 2013, but the Ordinance fails to define “community use space” or to provide any size requirement for this space. The proposed amendments address these issues by expressly requiring a community center of 1.5% of the overall approved development size. *See discussion on page 17 below and proposed amendments to Zoning Ordinance § 4.2.4.F.1.*

Grove Street Building Heights and Setbacks

Grove Street at Riverside is a narrow, tree-lined, designated scenic road. The existing ordinance does not adequately protect its visual character. Accordingly, while proposing an increase to the existing limits on the overall square footage of development permitted at Riverside, the Riverside Committee also proposes revisions to the height and setback requirements to promote a streetscape that does not overwhelm Grove Street and which mitigates the extent to which its existing tree-lined character is altered.

The current MU3 Zoning Ordinance provisions allow, by special permit, building heights of up to 135 feet, regardless of their location on the site. Tall building heights are inappropriate on Grove Street. Accordingly, the Riverside Committee proposes a 4-story building height limit

on Grove Street. *See further discussion on pages 11-14 below and proposed amendments to Zoning Ordinance § 4.2.4.A.*

In addition, the existing Grove Street setback requirements need to be amended to provide clarity lacking in the existing Ordinance, to ensure a streetscape consistent with the small, scenic roadway, and to allow for a separate sidewalk and bike path. In addition, the setback must be sufficient to offer protection for the abutting buildings from truck, bus, and car traffic noise and pollution which will surely accompany any sizeable development. It should also allow for a significant landscaping barrier that will protect the visual appearance of Grove Street and be more in keeping with the setback of the Riverside Center, which is next door. Further, any development on Grove Street should not appear as an unbroken wall of buildings. The Riverside Committee thus proposes a 30-foot setback on Grove Street, with an additional 15-foot setback for portions of buildings with a Grove Street-facing length of over 115 feet. *See further discussion on pages 11-14 below and proposed amendments to Zoning Ordinance §§ 4.2.4.A.*

Visual Impact/Change of Character

Grove Street in front of Riverside is not the only area in need of protection from the potentially dramatic changes in character that may result from development at Riverside. Lower Falls and Auburndale are predominantly residential, low-rise, and quiet neighborhoods. Particularly along Grove Street, these neighborhoods are graced with a number of historic homes. In addition, tall buildings at Riverside may adversely impact the surprisingly natural-looking abutting stretch of the Charles River or the view from Riverside Park, which is on the opposite riverbank. The Riverside Committee believes that the existing Ordinance does not include provisions adequately specific to protect these areas from an ill-fitting, highly-urbanized

development. Thus, the Riverside Committee proposes amendments requiring thorough analysis of the visual impacts of tall buildings and criteria promoting a development that is not offensive to the small-scale, residential character of the surrounding neighborhoods or to users of the Charles River and Riverside Park. *See further discussion on pages 26-29 below and proposed amendments adding §§ 7.3.5.A.12, 7.3.5.B.4 and 7.3.5.B.5 to the Zoning Ordinance.*

Noise

It is well-documented that excessive noise is not just annoying and distracting, but also has adverse health impacts. Remarkably, the existing MU3 Ordinance provisions require neither that a noise analysis be conducted by the applicant nor that the City Council assess and make findings concerning noise. The Riverside Committee's proposed amendments seek to remedy these omissions with respect to both the potential noise impacts of a proposed development on the surrounding neighborhoods as well as noise levels within a proposed development. *See further discussion on pages 29-31 below and proposed amendments adding §§ 7.3.5.A.13 and 7.3.5.B.6 to the Zoning Ordinance.*

Wind

Tall buildings can create uncomfortable and even dangerous pedestrian-level winds. Thus, wind analyses are commonly required in connection with proposals for tall buildings. Because the MU3 provisions allow for such buildings at Riverside, the Riverside Committee proposes the addition of a wind study requirement and wind criteria modeled on Boston's zoning ordinance and design review guidelines. *See further discussion on page 31 below and proposed amendments adding §§ 7.3.5.A.14 and 7.3.5.B.7 to the Zoning Ordinance.*

Construction Impacts

Given the potential scale of the development, construction will likely extend over many years. A project that cannot be built without traffic disruption, noise, vibration and other adverse effects on the surrounding neighborhoods extending over many years is unacceptable. The existing MU3 provisions fail to address construction impacts. Accordingly, the Riverside Committee proposes amendments to require the filing of a construction management plan as part of a special permit application and to require that the City Council assess and make findings concerning construction impacts. *See further discussion on pages 25-26 below and proposed amendments adding §§ 7.3.5.A.10 and 7.3.7.3.5.B.19 to the Zoning Ordinance.*

THE PROPOSED AMENDMENTS IN DETAIL

Each of the proposed amendments and the reasons they are proposed are discussed in detail below. Generally, the proposed amendments are discussed in the same order as the provisions to be amended appear in the existing Zoning Ordinance.

I. PROPOSED AMENDMENTS TO THE MU3 DISTRICT PROVISIONS OF SECTION 4.2

A. Section 4.2.1.B – MU3 District Intent

Section 4.2.1.B of the Ordinance sets forth the “district intent.” The proposed amendments to this section are intended to emphasize that the avoidance of adverse impacts of development at Riverside on the surrounding neighborhoods of Lower Falls and Auburndale as well as the quality of project design (including the quality of its open spaces) are central purposes of the MU3 District provisions. In addition, the name of the district is proposed to be amended to emphasize that the transit features of the site must be assessed objectively and without reliance on the “transit oriented development” label. Each of these objectives is discussed more fully below.

Potential Adverse Effects on Lower Falls and Auburndale

With respect to the surrounding neighborhoods, the current version of § 4.2.1.B includes the phrase “protect neighborhoods from impacts of development” among a laundry list of the purposes of the MU3 District. Particularly because the MU3 District provisions allow, by special permit, a highly-intensive development on a parcel that fronts on a small two-lane road (not a commercial corridor or major artery) and is surrounded by predominantly quiet residential areas comprised of small structures, the adverse effects of any proposed development on Lower Falls and Auburndale should not be a footnote. Instead, it should be stated prominently that one of the purposes of the MU3 District is to protect these neighborhoods from the full range of potential adverse effects.

As the Riverside Committee and other area residents have expressed to a number of the City Councilors, we often feel that Lower Falls and Auburndale, being on the border of the City, relatively small, and viewed by some as somehow already blighted by their proximity to Rt. 128/I-95 and the Mass. Pike, are considered to be of marginal importance and thus a good place on which to place the burdens of a development that is tax-beneficial to the rest of the City. We heard from every Councilor with whom this issue was raised that these feelings are unwarranted. If that is true, there should be no objection to a clear and fulsome statement in the Ordinance that protecting Lower Falls and Auburndale from potential adverse effects of development at Riverside is a core purpose of the MU3 District provisions.

Civic Spaces; Healthy, Safe and Comfortable Environment

By special permit, the MU3 District allows for a large residential development together with a large office project. Undoubtedly, most of the residential units will be smaller rental units likely to experience significant turnover. These features pose challenges to the creation of a

place that feels like and functions as a community, rather than a place where relatively-short term occupants are disconnected from one another and the surrounding neighborhoods. Non-commercial, outdoor and indoor spaces that promote on-site activity and interaction among residents and visitors are vital if Riverside is to be a community. The Riverside Committee thus proposes the addition of language to § 4.2.1.B to indicate that the creation of high-quality open space that promotes civic engagement (not just “beneficial open space” as defined in the Zoning Ordinance) as well as an indoor community space are central objectives of the District provisions.

It is also important that Riverside be healthy, safe and comfortable for its residents. The Riverside Committee’s proposed amendments to § 4.2.1.B identify this objective as a purpose of the MU3 District.

The TOD Label

The current Zoning Ordinance identifies the MU3 District as “transit oriented development.” It is entirely unnecessary to include this moniker (the District is already described as located at the MBTA Riverside Station). More importantly, the name promotes reliance on a fashionable catch-phrase rather than a reasoned analysis of the available public transit, or lack thereof. It also suggests, inappropriately, that there is more or better transit at Riverside than other Green Line stops in Newton, none of which are in districts labeled TOD in the Zoning Ordinance. Riverside is different from these other Green Line stops, but what makes it different is its proximity to highways and extent of available parking for commuters. In short, the TOD label reflects wishful thinking about potential reduction of automobile use when the reality is that public transit at Riverside is limited and the far more notable feature of the site is its highway orientation.

Riverside is the terminus of one spur of the Green Line. As the terminus, the transit opportunities it offers are already limited. Further, it is a very remote terminus. Connections to other major transit lines are distant and the time to travel to them are long, as are travel times to most major centers of employment, *e.g.*, the Financial District, the Seaport District and Kendall Square. It is significantly faster to drive to these locations.

Bus service at Riverside is virtually non-existent. One bus line (the # 558) makes only three trips from Riverside to the Financial District in Boston in the morning (7:35 am, 8:00 am, and 9:05 am) and three trips to Riverside in the afternoon/evening (4:50 pm, 5:15 pm and 6:00 pm). The route between downtown Boston and Riverside is through Waltham, resulting in a travel time of 1 hour, 10 minutes in typical traffic.

In contrast, Riverside is readily accessible by car via Rt. 128/I-95 which also provides access to and from Riverside and the Mass. Pike and has a large parking lot. Without these car-friendly attributes, Riverside would be no different from the other Green Line stops in Newton. Indeed, all of the other stops provide better transit services than Riverside since they are closer to Boston and offer the opportunity to travel two directions.

Thus, development at Riverside would be more appropriately identified as highway oriented development than transit oriented development. But, rather than call the District TOD or HOD, the name of the District should simply be MU3, encouraging reliance on facts, not labels.

B. Section 4.2.4.A – Height and Setback Requirements

Section 4.2.3 provides the maximum building heights permitted as of right and by special permit in the MU3 District and the corresponding maximum floor area ratios. All other

traditional building dimensional criteria (front, rear and side lot setbacks, including additional setbacks for higher portions of buildings) for the MU3 District are addressed in Section 4.2.4.

Section 4.2.4.A of the current Ordinance is entitled “Setbacks.” In rather convoluted language, it provides: (1) that there are no required setbacks for non-residential structures from any lot line except the Grove Street lot line; and (2) a setback of ½ of the building height is required for the Grove Street lot line, regardless of building type and for other lot lines if the building is residential. The section goes on to provide that for “taller structures” each “portion of a building” shall be treated as a separate building for purposes of calculating required “building heights and setbacks.” Neither “taller structure” nor “portion of a building” are defined, nor is there clarity about how treating each the undefined “portion of a building” as a separate building is used to calculate required setbacks.

The Riverside Committee proposes amendments to Section 4.2.4.A to accomplish the following objectives: (1) to bring clarity to an otherwise confusing and vague provision; (2) to provide standards to ensure a streetscape along Grove Street that is appropriate for its narrow width and mitigates, at least to some extent, the impact of a dense development on the current tree-lined appearance of Grove Street and the character of mostly small-scale nearby residential neighborhoods; and (3) to protect light, air and views within the development.

To help mitigate the negative effects of a large development at Riverside on Grove Street and the surrounding neighborhoods, one vital step is to ensure that the buildings on Grove Street are appropriately scaled and set back. Grove Street at Riverside is no more than 30-feet wide and, to the passerby, presents as a green and tree-lined road, not an eyesore blighted by the current MBTA facility. Any development at Riverside must be respectful of the character of Grove Street and the surrounding neighborhoods. The Riverside Center office development next

door exemplifies such a respectful approach. While the Riverside Center certainly brought increased traffic, it is nicely designed to have minimal visual impact on Grove Street with its relatively low height (4 stories) and a setback which is both generous (in some places up to 90 feet from the curb) and varied. Buildings along Grove Street at Riverside should also present a low-rise street scape. A healthy setback is also vital. If bicycle and pedestrian access to Riverside is to be encouraged, there must be a sufficient set back to allow for both a sidewalk and separate bike path. The setback must also accommodate a significant landscape buffer and preservation and/or replacement of existing trees. Accordingly, the Riverside Committee proposes amendments that would limit building heights along Grove Street to four stories or 44 feet above Grove Street, whichever is lower,² with a minimum setback of 30 feet from the Grove Street lot line. *See proposed amendments at 4.2.4.A.1.a and b.*

The proposed Grove Street building height is not particularly restrictive. In fact, although intended to be applied with reference to Grove Street, the City Council may well want to consider a height limitation on these buildings as they would appear from the interior of the site. Because there is a steep slope from Grove Street down to the existing parking lot near the Hotel Indigo parcel, a building could be built into the hillside so that it appears to be four stories from Grove Street, but is seven stories on the inside of the site. As the Planning Department stated in a Memorandum to the Land Use Committee, buildings higher than the street width are generally considered to be undesirably high and, for residential buildings, 5 or 6 stories is considered to be the “upper limit of human scale.” See September 9, 2016 Memorandum from the Planning Department to the Land Use Committee (Exhibit D hereto), p. 9. Because Grove Street is no more than 30 feet wide, four stories exceeds the street width. If the buildings on

² The 44-foot height limitation would allow for a 14-foot high 1st floor with three 10-foot high floors above. The requirement for the lower of four stories or 44 feet is to avoid the possibility of four-story buildings with above-average floor heights, which would undermine the purpose of the four-story limitation.

Grove Street are residential and are seven stories when viewed from the site interior, they will be not only be in excess of human scale, but are likely to be much taller than the width of the adjacent interior street.

The proposed Grove Street setback is also not particularly restrictive. As noted above, the setback of the Riverside Center is significantly greater. This is also true of the existing Hotel Indigo.

In addition, the appearance of an unbroken wall of buildings along Grove Street should be avoided. One way to accomplish this is to require that longer buildings have a varied setback. Thus, the Riverside Committee proposes the inclusion of a requirement that for any building exceeding 115 feet in length along Grove Street, the building length over 100 feet must be setback an additional 15 feet.³ This will help promote a streetscape on which no more than 100 feet of building length runs, unbroken, along the 30-foot setback line. *See proposed amendments at § 4.2.4.A.1.c.*

On the other lot lines, the proposed amendment requires no ground-floor setback. However, for buildings over 50 feet high, it requires that the floors above 50 feet be set back from the lower floors to ensure adequate light, air and sky exposure⁴ in the development, and to avoid shadows on civic open spaces. *See proposed amendments at § 4.2.4.A.2.*

³ The proposal also includes a requirement that buildings along Grove Street be separated by at least 15 feet. *See proposed amendments at § 4.2.4.A.1.d.* This is to ensure that the setback requirement for buildings over 115 feet in length cannot be circumvented by placing “separate” buildings together or in very close proximity to one another.

⁴ Many cities have defined in their zoning or design codes, one or more “sky exposure planes” -- a virtual sloping plane that begins at a specified height above the street line and rises inward at a ratio of vertical distance to horizontal distance set forth in the code and based on street width or permitted density in the zoning district. These codes then further prohibit buildings that penetrate the sky exposure plane. The purpose is to ensure adequate light, air and views of the sky. The Riverside Committee has not attempted to specify a sky exposure plane for the MU3 district – leaving this proposed amendment somewhat vague. The Zoning and Planning Committee may well want to request that the Planning Department develop a precise sky exposure plane formula for the MU3 district. Alternatively, the City Council could adopt a provision similar to that contained in Newton’s proposed zoning redesign: that buildings above certain heights have mandatory setbacks that result in upper stories having a footprint that is 20% smaller than the stories below.

C. Sections 4.1.2 and 4.2.4.B – Civic Open Space

The proposed amendments to §§ 4.1.2 and 4.2.4.B add the concept of “civic open space” to the MU3 District open space requirements. The current MU3 provisions contemplate a small village at Riverside that includes significant residential and office developments in close proximity to one another. The presence of such large office structures will themselves undermine the sense that Riverside is a residential community, a problem further exacerbated by the fact that the office component of the development will bring significant numbers of non-residents into and out of the site each day.⁵ Furthermore, given the number of residential units permitted in a small area, most of the units will be small and it is contemplated that they will be predominantly rental units. As a result, residents are likely to remain for relatively short periods of time, making it even more challenging for Riverside to become a community. Given this challenge and the potential overall size and density contemplated, open space is required for two vital purposes: (1) to create a feeling of openness, rather than congestion; and (2) to foster a community, rather than just a cluster of buildings.

The current MU3 provisions rely entirely on “beneficial open space,” 50% of which must be open to the public. See §§ 4.2.3 and 4.2.4.B of the current Ordinance. “Beneficial open space” is defined in § 8.3 of the Zoning Ordinance as follows:

Open Space, Beneficial: Areas not covered by buildings or structures that are available for active or passive recreation, which shall include, but are not limited to: landscaped areas, including space located on top of a structure, gardens, playgrounds, walkways, plazas, patios, terraces and other hardscaped areas, and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture

⁵ Although the trend of reducing the number of square feet per employee is slowing, it is predicted to remain relatively low in coming years—averaging around 190 square feet per employee. Cushman & Wakefield, *Why Space Matters* (June 2018), found at: <http://blog.cushwake.com/americas/why-space-matters-density.html>. Under the current ordinance provisions, which permit up to 225,000 square feet of office space, there could be over 1000 office employees working at Riverside. The Proponents seek to have that number reduced in order to allow more housing to be built at Riverside, but large numbers of non-residents would still be at the site daily.

or artwork, public benches, bicycle racks, kiosks or other public amenities, (ii) surface parking facilities or associated pedestrian circulation, (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public.

While “beneficial open space” is certainly better than mere open space (defined only as space not covered by a building), many spaces that are not truly beneficial fall within the definition. The beneficial open space definition allows for narrow strips of land alongside buildings and what are essentially no more than sidewalks to be claimed as beneficial open space by placing a tree, bush, or bike rack, etc., alongside or on them. It also includes space on rooftops. Such “open spaces” contribute neither to a feeling of openness nor to the creation of a community. Quality civic spaces, preferably centrally located within the development, are necessary if the new village contemplated by the MU3 District provisions is to be a community. While a path to and improvements along the Charles River are a nice amenity (and would certainly be offered by any developer as a carrot in the special permit process, as it was in BH Normandy’s proposal⁶), access to such open space at least a quarter-mile walk from the center of “town” will neither create a feeling of openness nor foster civic interaction.

Accordingly, the Riverside Committee proposes the addition of a requirement that a minimum of 15% of the development parcel be “civic open space.” *See proposed amendments at §§ 4.2.3, 4.2.4.B.2⁷*. Civic open space is what most people would consider *truly* beneficial, quality open space such as parks, plazas, playgrounds, and community gardens—in short, spaces that are designed to create openness as well as community interaction. Sidewalks, narrow strips

⁶ See condition 17 on page 18 of Board Order # 258-12(2) granting a special permit to BH Normandy (attached hereto as Exhibit B).

⁷ Amendments adding references to the civic open space requirement are proposed in a number of other sections for conformity.

of grass, traffic islands, areas alongside highway ramps and the like are excluded from the definition of civic open space, even if they include a bush, bench, planter or bike rack.

D. Sections 4.2.4.F.1 and G.1 – Community Center

Indoor space for community functions, classes, after-school programs, and athletic activities is also important to the creation of a community at Riverside and will help to foster connections with the surrounding neighborhoods. This was recognized in the discussions and hearings leading up to the 2013 special permit granted to BH Normandy. Section 4.2.F.1 of the current Zoning Ordinance requires a “community space,” but neither its size nor characteristics are specified. The 2013 special permit was conditioned on the creation of an 11,000 square foot community center. The proposed amendments to § 4.2.4.F.1 and § 4.2.4.G (in what would be subsection 1 thereof) similarly require and define a community center, to be operated by a non-profit entity (as was the chosen means operating the community center in the 2013 special permit⁸) or by other means to be determined by the City Council. The proposed amendment requires that the size of the community center be at least 1.5% of the total square footage of the retail, residential and office uses (not including parking garages).⁹ Applied to the 580,000 square foot project approved in 2013, this would result in a smaller community center than the 11,000 square foot community center that was part of that approved plan.

E. Section 4.2.4.G.1 – Maximum Total Square Footage and Distribution Among Uses

The current Ordinance allows a maximum of 580,000 square feet of development (exclusive of parking and the community center). As noted above, that number was decided upon after many years of discussion between the developers and stakeholders followed by

⁸ See condition 11 on page 17 of Board Order # 258-12(2) (Exhibit B hereto).

⁹ See discussion in footnote 14 regarding an error in the proposed provision concerning the size of the community center.

numerous public hearings concerning, among other things, impacts on Newton Lower Falls and Auburndale. The 580,000 square foot number assumed that there would be direct access to Rt. 128/I-95 north for vehicles exiting Riverside (*i.e.*, an exit from the site directly to Rt. 128/I-95 north was part of the approved plan). As discussed further at pages 20-21 below, as part of this process, the City's Planning Department considered the additional square footage that would be feasible *if* there were direct access to and from the site and both Rt. 128/I-95 northbound *and southbound*. It was concluded that an additional 100,000-125,000 square feet of development (not including associated increased parking) would be feasible with this northbound *and southbound* direct access.

The concerns that existed about the impacts of development at Riverside on the surrounding neighborhoods are as important and valid today as they were when the current MU3 provisions were adopted. Nevertheless, the Riverside Committee proposes a 10% increase in the total square footage that may be permitted by special permit (assuming all special permit criteria are met). This increases the maximum square footage to 650,000 square feet (if the Hotel Indigo lot is not included in the development parcel), including the community center but excluding parking structures.¹⁰

In addition to setting the maximum total square footage allowed by special permit, the current § 4.2.4.G sets maximums for the three required categories of uses: office (Category A), retail (Category B), and residential (Category C). The Riverside Committee proposes that the square footage available for these uses under their proposal be allocated more heavily toward

¹⁰ The existing 580,000 square foot maximum excludes parking structures and the community center space. The community center space required under the 2013 special permit was 11,000 square feet, bringing the total, without parking, to 591,000 square feet. The proposed new 650,000 square foot maximum is just over 10% above 591,000 square feet and, thus, the 650,000 square foot maximum includes the approximately 10,000 square foot community center which would be required for a project of this size if the Riverside Committee's proposed amendments are adopted.

residential use than under the current Ordinance. Specifically, a residential maximum of 480,000 square feet is proposed. This allows for sufficient retail space to service the residents (40,000 square feet, as proposed) and sufficient office space to help offset costs to the City of the residential space (120,000 square feet, as proposed). *See proposed amendments, §§ 4.2.4.G.1.*

Allocation of more of the available square footage for residential use is appropriate in light of the stated interest of many in increasing housing, including affordable housing, in Newton. In addition, one of the challenges of the Riverside site is its function as an important “park and ride” site for commuters. Employees of businesses in the office space at Riverside and the park and ride commuters will arrive at the site at the same time in the morning and will leave at the same time in the afternoon—likely creating internal site traffic and parking garage conflicts. Commuters should not be discouraged from using the Green Line because of these issues. In contrast, residents at Riverside will be leaving when park and ride commuters are arriving, and vice versa. Limiting office use in favor of expanded residential use is sensible for these reasons, as well as for the creation of more housing.

F. Sections 4.2.4.F.1 and 4.2.4.G.2 – Potential Inclusion of the Hotel Indigo Lot in the Development Parcel

Recognizing that the Hotel Indigo parcel was, in 2013, and apparently continues to be under the control of the same individuals or entities who also control BH Normandy Riverside, LLC, which is the lessee under the MBTA ground lease for Riverside, the Riverside Committee proposes amendments to § 4.2.4.G.1 to increase the total square footage limitation from 650,000 to 825,000 should a developer seek to include the Hotel Indigo lot in the development parcel, as the current special permit applicants have done. This 175,000 square foot increase is approximately equal to the square footage of the Hotel Indigo, which is 176,000 square feet. If

the Hotel Indigo lot is included in the development parcel, then a hotel category of use is permitted (Category E¹¹) with a maximum square footage of 175,000 square feet.¹²

G. Section 4.2.4.G.2 - Bonus Square Footage for Direct Access from Rt. 129/I-95 Northbound and Southbound

There has been much discussion about the desire to have direct connections between Rt. 128/I-95 and the Riverside site, both in connection with the 2013 special permit and in connection with the current Mark Development/BH Normandy proposal. Although not all site-generated traffic will use Rt. 128/I-95, a significant proportion will. The project ultimately approved in 2013 included direct access from the site to Rt. 128/I-95 northbound, and the total square footage allowed (580,000 square feet) was based thereon. Earlier in the process, the possibility of direct access both into and out of the site, to and from both Rt. 128/I-95 northbound and southbound was discussed. The Planning Department outlined a two-tiered approach under which Tier II would have permitted an additional 250,000 square feet of development “provided direct access to and from Route 128 northbound *and southbound* are secured.” See March 16, 2012 Planning Department Memorandum to the Zoning and Planning Committee (Exhibit C hereto), p. 5 (emphasis added).

As the Planning Department explained, Planning and Engineering staff looked at the question of “whether the site could then handle an extra 250,000 square feet of development,”

¹¹ Under the existing § 4.2.4.F, the retail category (Category B) includes “lodging, hotel and motel.” Under the proposed amendment, this language is removed. If the Hotel Indigo lot is not incorporated into the development parcel, there is no need for more hotel space within the development parcel. If the Hotel Indigo parcel is included in the development parcel, the proposed amendments provide for “lodging, hotel and motel” as “Category E.” The Category B square footage should be used for other types of retail.

¹² The proposed amendment states that the maximum square footage for Category E (lodging, hotel and motel) is 176,000 square feet. This is an error. It should state 175,000 square feet.

Another error in the proposed § 4.2.4.G.1 is in the provision concerning the size of the community center. As submitted, it states that the community center must be at least 1.5% of the total square footage of all of the other use categories and it specifies categories A, B, C and E. Category E should have been excluded. Thus, the provision should state: “Category D shall be no less than 1.5% of the total square footage of Categories A, B and C.”

including parking, if “direct access to Route 128 both northbound and southbound” were provided, and concluded as follows:

The short answer is that direct access may alleviate enough traffic on the stretch of Grove Street between the site entrance and the existing ramps to Route 128 to permit over 100,000 square feet of additional office development. This figure is in line with the density bonus offered in Tier II because approximately half of the bonus (125,000 square feet) will be available for additional office and/or commercial uses, with the other half likely used to provide required parking for the new uses.

Id., pp. 5-6.

The Planning Department also noted that not all of the traffic generated by the increased square footage would use Rt. 128, *id.*, p. 6, but nevertheless, the Riverside Committee proposes that, if northbound and southbound direct access to and from Rt. 128 is provided, the permitted square footage of the allowed residential, office and retail uses be increased by a total of 100,000 square feet.¹³ *See proposed amendments, § 4.2.4.G.2.*

II. PROPOSED AMENDMENTS TO SECTION 7.3.5

A. Ministerial Amendments to Sections 7.3.5.A

Amendments to §§ 7.3.5.A.1, 7.3.5.A.1.b, 7.3.5.A.3, 7.3.5.A.4, and 7.3.5.A.6.c.iii are proposed in order to conform these sections with the amendments proposed to section 4.2 and also to correct the references to section 7.3.6, which does not exist.¹⁴ In addition, pursuant to § 7.3.5.B of the current Ordinance, a special permit may be granted only if the criteria of both §§ 7.3.3 and 7.3.5 are met. Section 7.3.5.A.3 requires the applicant to provide a narrative

¹³ Note that, although the Planning Department discussed the addition of 250,000 square feet, as it indicated, it expected 125,000 of that additional square footage would be for additional parking. Thus, the Planning Department’s conclusion was that the provision of direct access to and from north and southbound Rt. 128 would allow 100,000-125,000 square feet of additional traffic-generating use in the development.

¹⁴ Based on the table of contents to § 7 of the Zoning Ordinance, it appears that the plan was for § 7.3.5 to be a section called “Special Requirements for Recombinant DNA Research and Technology” and for § 7.3.6 to be “Special Requirements in MU3/TOD.” However, there is no Recombinant DNA section in Article 7, “Special Requirements in MU3/TOD” became § 7.3.5 instead of § 7.3.6, and there is no § 7.3.6.

explaining how the criteria in § 7.3.5 are met, but it neglects to require such an explanation for the criteria in § 7.3.3. Accordingly, the Riverside Committee proposes that § 7.3.5.A.3 be amended to include a reference to § 7.3.3 which appears to have been omitted in error.

B. Traffic: Sections 7.3.5.A.6-8 (Traffic Filing Requirements); Section 7.3.5.B.3 (Post-Construction Traffic Mitigation Special Permit Criterion).

Traffic is, of course, a major issue. There is no denying that what makes Riverside desirable for development is its proximity to Rt. 128/I-95 and the Mass. Pike. In other words, Riverside is about access by car. Yet, one of the challenges of the site is that Grove Street is the connection between the site and the highway. It cannot be overlooked that, to date, there is no proposal that avoids the use of Grove Street as the route of access both to and from Rt. 128/I-95 southbound. Even if there were a direct connection between the site and Rt. 128/I-95 northbound, every vehicle that arrives via Rt. 128 northbound would leave by using Grove Street to get to Rt. 128 southbound, and vice versa. In addition, project-generated traffic that does not utilize Rt. 128 (e.g., traffic from many other parts of Newton) will utilize Grove Street.

Newton Lower Falls, in particular, is at risk from being cut-off from Auburndale and the rest of Newton by traffic on Grove Street. Some portions of the neighborhood can get to Washington Street without using Grove Street, but Washington Street in Lower Falls and Auburndale is already virtually impassible during peak hours. Grove Street should not be the new Washington Street or the new Needham Street or anything close to either of these. Indeed, it should be an objective, Citywide, to ensure that no more streets become notorious for their traffic woes. Errors of past poor planning should not be repeated.

Given its importance, the Zoning Ordinance should ensure that a comprehensive traffic analysis is performed. Although § 7.3.5.A.6 requires submission of a traffic study by the applicant, it fails to identify the streets and intersections to be studied. It also fails to require an

analysis of traffic flows within the development site, which may create backups onto Grove Street or Rt. 128, impair emergency vehicle and MBTA bus access, frustrate residents of the development trying to come and go, or frustrate commuters attempting to travel by Green Line. The impact of high-traffic generating special events, such as Red Sox games, on surrounding streets and on the internal functioning of the development site also are not addressed in the Ordinance.

In addition, while many hope that residents of a development at Riverside will opt not to own cars, the use of ride-hailing or transportation networks, such as Uber and Lyft, make easy and much more affordable the use of cars by people who do not own cars. Millennials in particular may be drawn to the idea of not owning a car, but they are heavy users of transportation networks. As a result, if a high percentage of Riverside residents do not own cars, there is the potential for more traffic than if they all owned cars. This is because a car owner traveling to a destination makes two trips: one away from home and one returning home. If a ride-hailing service is used, each leg of the journey becomes two vehicle trips: the driver makes one trip to the passenger's home, a second trip to take the passenger to his or her destination, a third trip to bring the passenger home, and a fourth trip for the driver to depart from the passenger's home. The Ordinance should thus require a complete analysis of the impact of transportation networks.

The impact of the ever-growing use of online shopping and the resulting explosion in the number of delivery vehicles we have all seen in our neighborhoods must also be considered. This is another area where a concentration of Millennials, in particular, may have a significant impact. The current Ordinance does not require consideration of this impact on traffic.

In addition, the existing Ordinance fails to require the applicant to provide the data and data analytics underlying its traffic conclusions. This information should be available to permit a full examination of the applicant's traffic claims by the City's peer reviewer and by the public.

Finally, the Riverside Committee proposes the addition of a requirement that the traffic study submitted by a special permit applicant be review by the Director of Transportation Planning,¹⁵ who is not mentioned in the current ordinance. Given the potential size of a development at Riverside and concomitant impacts on Newton's roadways, as well as the paucity of transit connections between Riverside and other areas of Newton, the Director of Transportation Planning should be involved in the review of any special permit application for Riverside.

The Riverside Committee proposes amendments to address the above shortcomings of the traffic-related special permit application requirements. *See proposed amendments, §§ 7.3.5.A.6., 6.c.1, 6.d, and 6.e.*

Also included in the proposed amendments are requirements that the applicant submit: (1) all transportation-related materials concerning the proposed project that are required to be submitted to state and federal agencies; and (2) traffic data collected and analysis files created concerning the proposed project. *See proposed amendments, §§ 7.3.5.A.7 and 8.* These materials should be readily available to the City and the public to fully understand and properly vet an applicant's proposals and contentions concerning traffic impacts and mitigation.

The Riverside Committee also proposes the addition of a special permit criterion concerning post-construction mitigation measures to remedy an omission in the current MU3 Ordinance Provisions. Under § 7.3.5.A.6.c.iii of the current Ordinance, a special permit

¹⁵ The Riverside Committee's proposed amendments reference the "Director of Transportation." For clarity, this should be the "Director of Transportation Planning."

applicant must include in its application “[t]he means of making mitigations if it is found pursuant to [post-construction traffic monitoring] that the trips counted exceed the projected adjusted volume by 10 percent or more.” Yet, there is no provision of the Ordinance that requires the City Council to assess or make any findings with respect to the adequacy or anticipated efficacy of the post-construction mitigation measures identified by the applicant. Without such a provision, the applicant could propose meaningless and ineffective post-construction mitigation measures and still be granted a special permit. Accordingly, the Riverside Committee proposes the addition of a special permit criterion providing that the City Council must find that the proposed post-construction mitigation measures will be effective. *See proposed amendments, § 7.3.5.B.3.*

In addition, the Riverside Committee proposes that the duration of post-construction traffic monitoring, as well as post-construction monitoring of water, sewer and stormwater impacts, be extended from two years following final build-out to five years. Particularly because future economic conditions cannot be predicted, two-years is too short a period of time. The project may be well below its ultimate occupancy two years after final build-out. Monitoring done when the project is at less than its ultimate occupancy will not accurately reflect its long-term impacts. *See proposed amendments, § 7.3.5.D.2 and E.1.a.*

C. Construction Impacts – Section 7.3.5.A.10 (Construction Impact Filing Requirement; Section 7.3.5.B.19 (Construction Impact Special Permit Criteria))

For a project of the size contemplated by the MU3 District provisions, construction could take many years. The nearby residential neighborhoods should not be subject to excessive noise, traffic disruptions, vibration, dirt, dust and the like from construction for such an extended period of time. It is vital to the well-being of the nearby residents that the City Council determine, in

advance of granting a special permit, if the applicants have a construction plan that will be effective in preventing such adverse consequences. Leaving these issues to be addressed by the Inspectional Services Department is too little and too late as the special permit cannot be withdrawn if it is determined after it is granted that the project cannot be built without unacceptable harm to the nearby residents.

The current MU3 provisions require the submission of *no* information from the special permit applicant about how construction will be undertaken and what its effects will be on the surrounding neighborhoods and roadways, other than the requirement in § 7.3.5.A.10 to submit a phasing schedule. In addition, there is no provision requiring the City Council to assess and make finding concerning construction impacts.

The Riverside Committee thus proposes a requirement that the applicant submit a detailed analysis of construction impacts on the surrounding roadways and neighborhoods and a plan detailing how these impacts will be managed. The Riverside Committee further proposes the addition of a special permit criterion requiring the City Council to assess construction impacts and make findings that there will be no excessive noise and more than minimal traffic disruptions or exposure to noise, dust and vibration. *See proposed amendments, §§ 7.3.5.A.10; 7.3.5.B.19.*

D. Visual Impact and Character – Section 7.3.5.A.12 (Visual Impact Filing Requirements); Section 7.3.5.B.4 (Visual Impact Special Permit Criteria); Section 7.3.5.B.5 (Preservation of Neighborhood Character Special Permit Criteria)

As is recognized throughout the Comprehensive Plan, in growing the City and creating areas of greater density, care must be taken to protect the character of existing residential neighborhoods. By way of example only, the Comprehensive Plan states that “[d]evelopment is to be guided to reflect the character held or sought by existing residential neighborhoods,

protecting the qualities of that which exists,” Comprehensive Plan, pp. 3-6, and “[w]e seek to assure development densities well related to both neighborhood character and infrastructure capacity.” *Id.*, pp. 1-3.

These considerations are particularly important at Riverside where what is contemplated is the creation of an entirely new multi-building village center where none now exists. This sort of dramatic change has the potential to overwhelm and completely alter the existing neighborhood character, pulling the rug out from under those who have are deeply invested—economically, socially and emotionally—in the small, quiet neighborhoods where they chose to live. To avoid this result, it is vital to consider the visual and aesthetic impacts of any proposed development at Riverside and to ensure that they are consistent with, rather than disruptive of or in conflict with the existing neighborhoods. For example, where people now see small houses and trees with open sky above from their yards, windows or when walking in their neighborhoods, they should not see towering glass and steel structures. The nighttime must also be considered. Light from the development should not intrude into people’s homes or yards, and the view of the night sky should not be a glowing tower.

Further, the look and feel of the site as one travels along Grove Street should fit with the neighborhoods that surround it. Building design and materials used should reflect and complement the character of the surrounding residential areas.

All of the above issues fall within the existing § 7.3.3.C.2 of the Ordinance prohibiting special permit approval for a project that will have any adverse impact on the surrounding neighborhoods. But, given the potential size of development at Riverside, these adverse effects are of such import that they should be called out and addressed expressly.

The Charles River also cannot be ignored. Nor can Riverside Park (even though not in Newton and currently underutilized). In spite of the nearby highways and overpasses, the stretch of the Charles River near Riverside is remarkably natural and unspoiled, as is the view from the adjacent portion of Riverside Park. Care must be taken to avoid undermining this area as a respite from man-made structures for canoeists, kayakers, paddle-boarders and visitors to the Park.

For all of the above reasons, the Riverside Committee proposes the addition of requirements that special permit applicants: (a) provide photographs of the existing appearance of the site from various locations in Lower Falls and Auburndale (from both street level and second-story window vantage points) as well as from the Charles River and Riverside Park, plus the same photographs that include project renderings accurately scaled and inserted to show the visual appearance the proposed project will have; (b) to provide simulations showing how the project will appear at night when fully illuminated; and (c) conduct a “balloon test” for any structure proposed to be over 100 feet tall. In a balloon test, balloons are placed in the exact locations and heights of proposed structures to depict their outline. Balloon tests are an often-used method to demonstrate the visual impact a structure will have, since photographs can be misleading and never duplicate how things actually appear to the human eye. *See proposed amendments, § 5.3.5.A.12.*

The Riverside Committee further proposes the addition of special permit criteria requiring the City Council to assess and make findings concerning both visual impacts (including lighting impacts) of the project on the surrounding neighborhoods, the Charles River and Riverside Park, as well as consistency of the project design and architecture with the character

and look and feel of the surrounding neighborhoods. *See proposed amendments, § 5.3.5.B.4, 5, and 11.*

E. Noise Impacts – Section 7.3.5.A.13 (Noise Impact Filing Requirement); Section 7.3.5.B.6 (Noise Impact Special Permit Criteria)

As noted above, excessive noise is not just annoying and distracting. It is also harmful.

As stated in a Journal of Urban Health article:

Environmental noise has been linked to several non-auditory, biologically relevant health outcomes, including: increased levels of hypertension and high blood pressure, lowered cognitive ability, and an increased prevalence of cardiovascular disease. Exposure to environmental noise from traffic-related sources is reportedly the most annoying of all urban pollution types, interfering with enjoyment of daily activities and largely affecting sleep and rest patterns. In a recent Canadian survey, 20–28% of urban populations attributed noise from road traffic to disruptions during sleep, conversation, and communication tasks such as reading and writing.

King, G., et al., *Noise Levels Associated with Urban Land Use*, J Urban Health. 2012 Dec, 89(6): 1017-1030 (internal footnotes omitted).¹⁶

Neither the surrounding neighborhoods nor the residents of a development at Riverside should be subjected to unacceptable noise levels. Remarkably, the current Ordinance contains no provisions about noise impacts of the development on the surrounding neighborhoods or noise levels within the development itself.

Even after construction is complete, a development at Riverside may increase noise levels in Newton Lower Falls and Auburndale because of increased traffic on Grove Street and Rt. 128/I-95 (including increased truck traffic servicing retail and office uses on the site) and also because of the potential for traffic noise from Rt. 128/I-95 to be reflected toward Lower Falls by any tall buildings constructed along the highway/Lower Falls-facing portion of the site. The residences on Grove Street across from the Hotel Indigo and across from the Riverside Center

¹⁶ This publication also identifies mixed-use developments as a planning strategy that carries with it the risk of increased environmental noise.

are particularly vulnerable not just to vehicle activity Grove Street, but also to outdoor activities on the site. However, even the portion of Newton Lower Falls across Rt.128/I-95 from the site is vulnerable to noise at the site. Many in Lower Falls recall the difficult period after the hotel transitioned from a Holiday Inn to a Hotel Indigo, when music from outdoor parties literally caused our houses to shake. Although that activity was eventually stopped (and we certainly expect both better behavior from those responsible for a development at Riverside as well as more effective enforcement against such activities), these events demonstrate the ability of sound to travel across the highway into Lower Falls.

Noise within the development is also a concern. A densely-developed project with residences set close to both the internal roadways as well as the MBTA facilities may result in unacceptable noise levels from ordinary street traffic, activities on sidewalks and other outdoor spaces, MBTA buses, private buses, MBTA trains, and MBTA maintenance and storage operations.

Accordingly, the Riverside Committee proposes the addition of an Ordinance provision requiring submission of a noise analysis by the applicant that addresses noise impacts on Newton Lower Falls and Auburndale as well as an internal site noise analysis. *See proposed amendments, § 7.3.5.A.13.*

The Riverside Committee also proposes the addition of special permit criteria concerning noise. These criteria would require a finding by the City that the project will not increase noise levels in Newton Lower Falls or Auburndale and that there will not be noise levels in excess of 55 decibels in any portion of the development site where there will be residential uses, civic open

space or beneficial open space. *See proposed amendments, § 7.3.5.B.7.* Fifty-five decibels is the maximum outdoor noise level to allow for intelligible conversation.¹⁷

F. Wind Impacts – Section 7.3.5.A.14 (Wind Impact Filing Requirement) and Section 7.3.5.B.7 (Wind Impact Special Permit Criteria)

Because tall buildings create uncomfortable and even dangerous wind effects, many cities in North America and Europe have adopted pedestrian-level wind standards and require testing for wind impacts as part of the approval process for proposed tall buildings, including Boston, New York, San Francisco, and Toronto. Although Newton, having few taller buildings, has not adopted wind standards to protect the comfort and well-being of pedestrians, in the MU3 District where tall buildings may be permitted by special permit, the special permit criteria should include such a standard and applicants should be required to perform a wind study.

Accordingly, the Riverside Committee proposes the addition of a special permit criterion setting standards for pedestrian-level winds. *See proposed amendments, § 4.3.5.B.8.* These standards are those included in the Boston Zoning Code. The Riverside Committee also proposes the addition of a requirement that special permit applicants submit a wind study. *See proposed amendments, § 7.3.5.A.14.* This provision is also based on the requirements used in Boston, found in the Boston Redevelopment Authority (now Boston Planning and Development Authority) Development Review Guidelines. However, Boston requires wind tunnel studies and the proposed amendment would permit, as an alternative, the use of computational fluid dynamics simulations, which appear to have gained recognition as an acceptable study methodology.

¹⁷ Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety. Washington, D.C: U.S. Environmental Protection Agency; 1974

G. Comprehensive Signage Program – Section 7.3.5.B.12

Section 7.3.5.B.12 of the current Ordinance requires the applicant to develop a signage program that must be approved by the City Council. It states that signage should be “complementary to the architectural quality of the mixed-used development and the character of the streetscape,” but has no restrictions on signage. Restrictions should be included to protect the residential character of the surrounding neighborhoods and Grove Street—none of which should become commercialized.

Retail signage visible on Grove Street or from Newton Lower Falls or Auburndale would be entirely inconsistent with the existing character of the neighborhood. In addition, the objective should not be to make Riverside a retail destination for people who live elsewhere, which will only bring increased traffic. It should primarily service residents of the development, who will not need signage on Grove Street to know what is available there. In addition, retailers can easily advertise through other means if they so desire.

It would also be inappropriate for signage that advertises office tenants to be placed where visible from Grove Street or any residential area of Newton Lower Falls or Auburndale. Again, the visual aesthetic of residential areas should remain residential.

Accordingly, the Riverside Committee proposes that § 7.3.5.B.12 be supplemented to require: (1) that the signage program include no office or retail signage visible from Grove Street or residential areas of Newton Lower Falls and Auburndale; and (2) that it be a condition of any special permit that the retail and office tenants be prohibited from placing any signage, whether temporary or permanent, in locations where it would be visible from Newton Lower Falls or Auburndale.

H. Provisions Reinforcing the Special Permit Criterion of Section 7.3.3.C

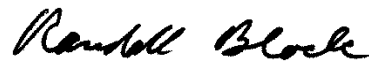
Section 7.3.3.C of the Zoning Ordinance includes special permit criteria that are applicable to all special permit applications in all zoning districts, including in the MU3 District. Indeed, § 7.3.5.B (which contains the special permit criteria specific to the MU3 District) states that the City Council shall not grant a special permit unless it finds that the proposal meets all of the criteria in § 7.3.5.B, “in addition to those listed in Sec. 7.3.3.” Nevertheless, based on discussions with various City officials, the Riverside Committee is concerned that there is little awareness that the City Council must consider and make findings concerning the special permit criteria in § 7.3.3 in connection with an MU3 special permit application.

Of particular importance to Newton Lower Falls and Auburndale is § 7.3.3.C.2, which states that no special permit can be granted absent a finding that: “The use as developed and operated will not adversely affect the neighborhood.” It should be made abundantly clear that this provision applies in the MU3 District and that the neighborhood means Newton Lower Falls and Auburndale.

In addition, it should be made clear that, if the proposed project will cause adverse impacts on Newton Lower Falls and Auburndale, it is not open to the City Council—sitting as the special permit granting authority—to grant the special permit because there are perceived benefits of the proposed development. As the Massachusetts Appeals Court has held, special permit proceedings are adjudicatory, and the special permit granting authority acts in a quasi-judicial rather than a legislative capacity. *Mullin v. Planning Bd. of Brewster*, 17 Mass. App. Ct. 139, 143 (1983). *Accord Tenneco Oil Co. v. City Council of Springfield*, 406 Mass. 658, 659 (1990). Thus, special permit decisions must be based on the Zoning Ordinance, which cannot be overruled, cast aside, or modified by policy considerations. For these reasons, the Riverside

Committee seeks the addition of an introductory paragraph to § 7.3.5.B (the MU3 “Review Criteria” section) making clear that all of the special permit criteria set forth in § 7.3.3 are applicable in the MU3 District, including § 7.3.3.C.2, and that a special permit may not be granted absent a finding that the proposed develop will have no adverse effect on Newton Lower Falls and Auburndale, made without engaging in policy-making, *i.e.*, weighing of those adverse effects against perceived benefits of the proposed project (*e.g.*, tax revenue).¹⁸

The LFIA Riverside Committee



By: Randall Block, Chair

Dated: May 31, 2019

¹⁸ The Riverside Committee also seeks a minor change to the language of § 4.3.5.B.4 (re-numbered 4.3.5.B.9 in the proposed amendments), which suggests, incorrectly, that the avoidance of adverse impacts on the neighborhood is discretionary, rather than mandatory.