



CITY OF CAMBRIDGE

Community Development Department

To: Planning Board

From: Community Development Department (CDD) Staff

Date: November 10, 2021

Re: **Francis Donovan, et al., Zoning Petition**

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Overview

Petitioner: Francis Donovan, et al., (group of at least 10 registered voters)

Zoning Articles: 4.000 (Use Regulations), 5.000 (Development Standards), 6.000 (Parking and Loading Requirements), 20.000 Overlay Districts

Petition Summary: Amend the regulations for “Detached dwelling not occupied by more than one family” in all Residence zoning districts, amend general development standards to include standards related to affordability for certain residential structures; amend standards for surface parking to require permeable materials in some cases, and create a new “Citywide Commercial, Institutional, and Public Property Overlay District.”

Planning Board Action: Recommendation to City Council

Memo Contents: Summary of the proposed zoning, background information on the topic of the Petition, and considerations and comments from staff.

Summary of Petition Effects

The Petition has four main parts, which appear to have the following intents:

1. Amending use regulations in Residence base zoning districts such that “a maximum of three dwelling units may occupy a structure in what is currently a single-family home; four dwelling units may occupy a two-family home.”
2. Requiring that some units meet “current affordability guidelines” in any new structure with more than three residential units or new residential structures replacing current three family or larger residential structures, and allowing an increase in permissible dwelling units and GFA within an owner-occupied “single- or two-family home or affiliated Auxiliary Dwelling Unit, if the principal residence is owner-occupied and at least one of the units is affordable.”
3. Requiring new residential parking to be “of permeable construction to absorb rainwater and reduce runoff” and “surfaced with permeable paving materials that absorb rain water and minimize runoff.”
4. Creating a “Citywide Commercial, Institutional, and Public Property Overlay District,” with unspecified boundaries (possibly intended to include all zoning districts), which “will require all employers of more than 100 persons to provide area plans and annual reports for housing, transportation, parking, and infrastructure for 85% of its full-time employees, students, and affiliates by the year 2040.”

However, in many respects it is difficult to tell exactly what development allowances or requirements are proposed to be created or amended by this Petition, and the language would need clarification. Some aspects of the Petition may also be outside the purview of zoning.

This memo provides some high-level considerations but does not address every detail in the Petition.

Background

Based on the Petition’s preamble, its goal is to address various topics of public interest, including housing affordability, climate change, “development pressures,” “architecturally beautiful and historic housing,” and equity. The following sections of the preamble suggest some of what the Petition is intended to accomplish:

“Many single-family and multi-family homes can be adapted to create a new supply of residential units such as studios, one-bedrooms, and smaller two-bedroom units, as well as single-room-occupancy communities and cooperatives within shared living spaces ...”

“... for purposes of equity, it is time to end zoning for exclusively single family housing throughout the city, and do so in a way that will not exacerbate housing costs by substantially increasing property values, or destroying the rich array of sustainable historic housing, or adding to environmental problems by tearing down and building new larger more expensive housing ...”

The topic of amending the Zoning Ordinance to eliminate districts that permit only single-family housing has been discussed on several occasions. Earlier this year, during consideration of the Carolyn Fuller, et al., (“Missing Middle Housing”) Zoning Petition, the Planning Board suggested that the issue would

benefit from further study. At a more recent joint hearing of the City Council’s Neighborhood and Long-Term Planning, Public Facilities, Arts & Celebrations Committee and the Housing Committee, it was suggested that a future joint meeting might be held with the City Council and Planning Board to discuss this topic further.

This Petition suggests one approach to amending zoning so that some zoning districts would not be restricted to single-family housing, but it also incorporates other elements that are not directly related to that issue.

Zoning Considerations

Amendments to Use Regulations (Article 4.000)

The Petition would add a footnote to the Table of Use Regulations modifying the regulations for “Detached dwelling not occupied by more than one family” in all Residence zoning districts. Usually, footnotes in the Table of Use Regulations set forth exceptions to the regulations for a specific use in a specific set of districts – for example, multifamily dwellings are permitted in many districts (denoted by “Yes” in the table), but in some districts a footnote indicates that a Planning Board special permit is required under some circumstances.

It is unclear if this new footnote is intended to change whether or not detached single-family dwellings are allowed in Residence districts. The text in the proposed footnote seems to suggest that a single-family dwelling could be converted to a structure with up to three units, and a two-family dwelling could be converted to a structure with up to four units, with no alterations allowed to the exterior frontage and only “minimal” or “minor” changes allowed to the rear and sides. The text implies that a property owner could seek a special permit to make other exterior alterations, but does not set limitations or criteria for approval.

If the intent of the footnote is to permit conversions of existing single-family or two-family structures to three-family or four-family structures, respectively, then additional amendments would be needed to clarify that multifamily dwellings are permitted in those districts where they currently are not, subject to conditions. The criteria and permitting process for such conversions should also be stated more clearly. For example, if the intent is to apply to existing structures, more detail would be needed to clarify what structures are eligible (based on date of construction, for example). Additionally, using “minimal” or “minor” to describe exterior changes that are allowed as-of-right is vague and could lead to difficulties implementing or enforcing this provision.

More importantly, as discussed at previous Planning Board and City Council hearings on this topic, allowing a conversion from a single-family or two-family use to a multifamily use would not necessarily enable the addition of dwelling units, because most sites are constrained by the restrictive minimum lot area per dwelling unit requirements in Residence A-1, A-2, and B districts. Other dimensional requirements, including FAR limits, setbacks, and parking, could also make it impractical to make such alterations without also needing to seek zoning relief.

Affordability Requirements (Article 5.000)

The Petition proposes adding new footnotes to Section 5.16 of the Zoning Ordinance. There is currently no Section 5.16, but if it were inserted, it would be under the heading “General Regulations,” which contains development standards that are applicable in all zoning districts.

The first two of the proposed footnotes contain requirements for “Any new structure with more than three residential units” and “New residential structures replacing current three family or larger residential structures.” In either case, the proposal appears to require the inclusion of affordable units, in the latter case subject to waiver by special permit from the Planning Board. The next footnote suggests that a 30% increase in FAR and unit density would be permitted for “an existing single- or two-family home or affiliated Auxiliary Dwelling Unit, if the principal residence is owner-occupied and at least one of the units is affordable,” but only up to an FAR of 0.50, which is already the maximum as-of-right FAR in Residence A-1, A-2, and B zoning districts. The final proposed footnote appears to waive affordability requirements for a new structure that replaces a demolished single-family or two-family structure and does not exceed the existing structure’s footprint or height.

There is some ambiguity in the proposal around which types of developments are intended to be subject to these requirements and which are not, which would benefit from greater clarity. Also, the provisions described above may not be practical without also amending other dimensional requirements, such as height and setbacks, and it is unclear whether meeting the proposed affordability standards would be economically feasible. Moreover, requiring additional affordability under base zoning, beyond the Inclusionary Housing Requirements in Section 11.203, would raise important legal considerations needing further study.

Permeable Residential Parking (Article 6.000)

The Petition proposes new footnotes in Section 6.22 and 6.45 of the zoning, both seeming to have the intended outcome of requiring new surface parking to be paved with permeable materials. It should be noted that Section 6.22 currently regulates where accessory parking can be located for a particular use – e.g., how far away spaces can be, if located off-site – so it might be confusing to add a provision regulating the design of parking facilities. Section 6.45, and other sections under the heading “6.40 Design and Maintenance of Off Street Parking Facilities,” contain other requirements for dimensions, landscaping, and screening of parking spaces.

In concept, this proposal is not dissimilar to other provisions in the Zoning Ordinance requiring permeable surfaces, such as private open space requirements in Section 5.22. However, there may be practical issues with applying permeability standards to parking. For example, because all surfacing materials have different levels of permeability, it is not always easy to determine whether or not a paving material meets the necessary criteria. Traditionally porous materials such as gravel or unit pavers, when used for automobile parking, can become less permeable as they are used and compacted over time. Also, even if the surface paving material is porous, the subsurface materials beneath might not be permeable enough to absorb rainwater in the intended manner.

Citywide Commercial, Institutional, and Public Property Overlay District (Article 20.000)

The Petition would establish the aforementioned overlay district but does not provide a map or otherwise specify where the overlay district would apply. According to the proposed text, it would apply “to properties within the City of Cambridge owned or leased by employers of more than 100 full-time persons, students or affiliates.” Such employers would be required to submit a “regional plan” and “Annual Reports” covering a variety of topics related to their employment base and particular goals and targets. It is not clear when such reports would be required or the process by which they would be reviewed. The Petition also references an unspecified “Letter of Commitment,” but it is not clear where such a letter would originate or what it would contain. The proposal does not set forth any clear regulations having to do with land use or development. It makes references to “plans for new residential and commercial structures,” and states that building permits and certificates of occupancy “shall be conditioned on certification by all relevant departments of the City to the Superintendent of Buildings that the reports are accurate and goals are being met ...” There are also references to Planning Board review, but no specific procedures are explained.

Many issues would need to be clarified and discussed further in order to provide a meaningful review of this proposal. Since the proposed requirements do not provide clear standards or regulations for land use and development, they may be outside the purview of zoning. Further, there may be legal issues with establishing a zoning district that does not have established boundaries, and with mandating that a property owner makes some type of commitments in a Letter of Commitment. In addition, regulating the use of land based on the employment characteristics of the owner or lessee of that land, rather than the characteristics of the development itself, may not be permissible.