UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Proposed Amendments to the Missing Middle Housing Zoning Petition

Since the day we publicly introduced the Missing Middle Housing zoning petition, we've said that the text as filed was not a finished product, and that we are committed to listening to feedback and working on amendments to improve it. We are grateful to everyone who has given us feedback on the petition so far, including citizens, CDD, Councilors, and members of the Planning Board. It has been extraordinarily helpful, and we have come up with a few changes we would like to see the Council consider, both major and technical.

We are cognizant of the limits of what zoning can and can't do. Zoning cannot dictate how on-street parking is regulated, how properties are taxed, how demolition permits are granted, or how city money is spent on affordable housing or homeownership assistance. (All of those things are in the Council's purview, but not within the purview of zoning.) Notably, zoning also cannot force private entities to do things that are unprofitable. However, our zoning code can be a powerful tool of exclusion, and we have a responsibility to make sure it is the opposite. **While this petition cannot and is not intended to solve every aspect of our housing and climate crises, it aims to create new standards for development in residential neighborhoods which are more consistent with Cambridge's values of affordability, inclusivity, and sustainability.**

Listed briefly, the nine amendments we would like to propose are:

By far the most consequential is Amendment 1. A summary of the proposed amendments in table form is below, followed by the full text of the proposed amendments with explanation.

UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Summary of Proposed Major Amendments

Amdt. #	Current Zoning	Originally Proposed	Proposed Amendment	Explanation
1	Maximum FAR of 0.5, 0.6, or 0.75, depending on district	Maximum FAR of 1.25	Maximum FAR of 0.5, with bonus to 1.25 if three conditions are met: - GFA is less than 6000 sqft - GFA is less than 1500 sqft / unit - If multiple buildings, at most 40% of GFA is in single-family or two-family dwellings	The goal of the MMH petition is to allow the construction of multifamily housing that is small-scale, less expensive, and more sustainable than existing construction. These conditions will ensure that the MMH FAR boost is only used for those purposes.
2	Minimum private open space of 40%, 36%, or 30%, depending on district	Minimum private open space of 25%	Minimum private open space of 33%	Required private open space percentage is a blunt zoning tool that, if taken too far, may de-incentivize new housing (particularly for additions). However, the removal of parking minimums creates an opportunity to slightly increase private open space standards in many parts of the city with little risk.
3	(N/A)	(N/A)	Reduction of units on a nonconforming structure in Residence N requires a BZA variance	Down-conversions harm neighborhoods by removing availability of housing and potentially displacing tenants. A key goal of MMH is to make up-conversions more attractive than down-conversions, both procedurally and financially.
4	(N/A)	(N/A)	Otherwise conforming construction on a building with nonconforming setbacks shall be allowed without a BZA variance so long as the nonconformity is not made worse.	A key goal of MMH is to ensure that construction of missing middle housing does not require a variance. However, setbacks are one of the primary causes of building nonconformities, and will remain so even if MMH is passed. This amendment, consistent with other sections of Article 8, allows pre-existing nonconformities to remain without a BZA variance.

UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Summary of Proposed Minor ("Technical") Amendments

Amdt. #	Current Zoning	Originally Proposed	Proposed Amendment	Explanation
5	No limit on # of stories allowed	Limit of 3 stories, waivable by Planning Board special permit	Limit of 3 stories	BZA variance process is sufficient for exceptional cases
6	Townhouses have a height limit of 40 feet, with a maximum cornice line of 30 feet	Townhouses have a height limit of 40 feet, with no cornice line restrictions	Restore current zoning	Original change not necessary for MMH objectives
7	Minimum lot size of 5000 sqft; minimum lot width of 50 ft	Minimum lot sizes / widths do not apply in residential districts	Restore current zoning	Original change not necessary for MMH objectives
8	(N/A)	(N/A)	These zoning changes shall not take effect until one month after the City Solicitor affirms that Massachusetts General Court legislation authorizes the City of Cambridge to regulate institutional uses in a Residence N district.	To ensure that institutional use regulations can continue to apply in Residence N, a home rule petition may be required.
9	Special districts refer to Residence B, C, C-1	(No change)	Special districts refer to Residence N	Districts B, C, and C-1 are being replaced with N, so all references to those districts must also be replaced.

UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Major Amendments

Amendment 1. Adding conditions to the FAR increase.

Amend Table 5-1 (Table of Dimensional Requirements - Residential Districts)

District	(1) Max. Ratio of Floor Area to Lot Area
Res. N	0.5 (p)

Add footnote, then renumber to reflect deleted footnotes: **(p) In a Residence N district the applicable Maximum Ratio of Floor Area to Lot Area shall be 1.25 provided the following conditions are met:**

1. **The total Gross Floor Area of buildings on the lot is less than 6000 square feet.**
2. **The total Gross Floor Area of buildings on the lot is less than 1500 square feet times the number of residential dwelling units.**
3. **If there are multiple buildings on the lot, at most 40% of the total Gross Floor Area is contained within single-family or two-family dwellings.**

Explanation. *The goal of the Missing Middle Housing petition is to allow the construction of small-scale multifamily housing like townhouses, three-deckers, and fourplexes throughout Cambridge. Allowing an FAR of 1.25 is necessary for such construction; most three-deckers in Cambridge have an FAR of between 1.0 and 1.25. However, unconditionally allowing an FAR of 1.25 may also result in undesirable outcomes, like the enlargement of existing single-family dwellings, or increasing competition for larger lots that might have been used for affordable housing developments under the 100% Affordable Housing Overlay. These three conditions are designed to ensure that the FAR of 1.25 is only available to multi-family housing that is small-scale, less expensive, and more sustainable than current construction.*

The first condition, a limit of the overall project scale to 6000 sqft of Gross Floor Area, is designed to ensure that the MMH petition "stays in its lane" of being appealing only on smaller lots. ***This reduces the likelihood of interference with the 100% Affordable Housing Overlay****, as most affordable housing developments are larger due to eligibility criteria and per-project overhead.*

The exact value of 6000 sqft came out of discussions with CDD, and is designed to leave enough room for e.g. a sixplex of 2BR units. The condition is best expressed as a GFA limit,

rather than as a limit on the number of units, because the most reliable indicator of the sale price of construction is its square footage. (Putting a cap on the number of units rather than on the number of square feet of construction would incentivize fewer, larger, more expensive units, similar to what we see today.)

The second condition, a limit of the per-unit project size to 1500 sqft per unit, is designed both to create a strong incentive to increase the number of dwelling units, as well as to prevent the FAR bonus from being taken advantage of by single-family dwellings. ***This ensures that more units are preferred to oversized units****, while also preserving the option of small additions to existing buildings. The more dwelling units are built within a structure, the smaller and thus less expensive each unit becomes, and therefore the more appealing the project is for the purposes of this petition.*

The effect of this condition is to create a "sliding scale" of floor area limits, where the allowed GFA grows with the number of units. On a 4000 square foot lot (the median neighborhood lot size in Cambridge), the "sliding scale" would look as follows:

- *1 unit: 2000 sqft allowed (0.5 FAR)*
- *2 units: 3000 sqft allowed (1500 sqft/unit)*
- *3 units: 4500 sqft allowed (1500 sqft/unit)*
- *4+ units: 5000 sqft allowed (1.25 FAR)*

In the 1-4 unit range, changing building code requirements may complicate the addition of units, so this sliding scale provides an incentive to overcome those complications. Once the number of units reaches at least four, profit incentives encourage builders to build more, smaller units (e.g. six 800 sqft units are more valuable than four 1200 sqft units), so we expect units produced to be significantly smaller than the 1500 sqft maximum in most cases.

The third condition, a limit of the amount of GFA that can be in detached single-family or two-family dwellings, is designed to encourage multi-family housing to be attached in a single building rather than split into detached buildings. Attached housing is preferable because it is more energy-efficient, results in more contiguous and more functional open space, and is generally less expensive than detached housing.

Also, current zoning contains a GFA exemption for basement units in single-family or two-family dwellings, which creates a powerful incentive to build detached housing rather than attached housing. While we expect the Climate Resilience Zoning task force recommendations to extend that exemption to multi-family housing, until then, there must be something to counter that incentive.

This condition restricts the possibility of backyard infill *(i.e. an existing single-family or two-family dwelling adding an additional building in the backyard) to only scenarios where the existing building is under 0.5 FAR and at least three units are added in the additional building. Otherwise, the units must be attached.*

Lastly, the base FAR of 0.5, while not a change in the Residence A-1, A-2, or B districts, is a decrease in the Residence C and C-1 districts. Backyard infill of a single, large, additional unit,

currently common in neighborhoods like Cambridgeport and the Port, would no longer be permitted; instead, such infill would have to either be smaller, or meet the conditions above.

Amendment 2. Increasing required private open space.

Amend Table 5-1 (Table of Dimensional Requirements - Residential Districts)

District	**(7) Min. Ratio of Private Op. Sp. to Lot Area**
Res. N	33%

Explanation. *Because "open space" can cover anything from a balcony to a backyard to a sidewalk to a patio, private open space requirements are at best an indirect tool for producing any particular outcomes, particularly in multi-family housing. In an urban environment, we tend to believe that the most effective way to ensure universal access to quality green space is through public open space, such as parks, and through improvements to the public realm, like street trees. Furthermore, while it is usually not a problem for total teardown-and-redevelopment scenarios, a high private open space requirement can limit the creation of missing middle housing in scenarios where units are added to an existing structure.*

However, there are three reasons we believe a modest increase in the private open space requirements are warranted:

- *First, the Climate Resilience Zoning task force is expected to produce Cool Factor recommendations soon, which will be pegged to private open space requirements and are much more direct about ensuring that open space is used in a way which enhances and cools the public realm.*
- *Second, the elimination of residential parking minimums creates more flexibility in how lot space can be used.*
- *Finally, as a matter of equity, the Residence C-1 neighborhoods are the ones with the least amount of public open space, so where practical we should seek to protect and increase private open space in those neighborhoods (which currently have a private open space requirement of 30%).*

Thus, we propose to increase the private open space requirement to 33%.

UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Amendment 3. Requiring a variance for dwelling unit removal.

Amend Section 8.22.1

The following alterations, reconstructions, extensions, and/or enlargements of nonconforming structures, which do not result in a use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent than the existing use, or which are undertaken to accommodate a new conforming use, shall be permitted after the issuance of a building permit by the Superintendent of Buildings**, provided that in a Residence N district there is no reduction of the number of residential dwelling units in a nonconforming structure**. Any change, extension or alteration of a nonconforming use shall be subject to the provisions of Subsection 8.22.2.

Amend Section 8.22.2(c)

In a Residence District the Board of Zoning Appeal may grant a special permit for the alteration or enlargement of a nonconforming structure, not otherwise permitted in Section 8.22.1 above, but not the alteration or enlargement of a nonconforming use, provided any enlargement or alteration of such nonconforming structure is not further in violation of the dimensional requirements of Article 5.000 or the off street parking and loading requirements in Article 6.000 for the district in which such structure is located and provided such nonconforming structure will not be increased in area or volume by more than twenty-five (25) percent since it first began to be nonconforming. **Such a permit shall not be granted in a Residence N district if the alteration or enlargement provides fewer residential dwelling units than the existing nonconforming structure.**

Explanation. *A key goal of the Missing Middle Housing zoning petition is to reverse the current disparity where up-conversions generally require relief or review from the Board of Zoning Appeal, but down-conversions do not. Down-conversions are substantially detrimental to the surrounding neighborhood, by decreasing the availability of housing within that neighborhood, as well as potentially by displacing tenants in the removed units. This amendment, similar to a provision in San Francisco, would require any down-conversions of nonconforming structures in a Residence N district to result in a conforming structure, unless the BZA grants a variance.*

Amendment 4. Allowing the retention of pre-existing setback nonconformities.

Amend Section 8.22.1

Insert after (i): **j. Any construction, aleration, reconstruction, extension or enlargement otherwise permitted in paragraphs (a) through (i) above where a structure is also nonconforming due to yard or setback requirements, or where the structure is only nonconforming due to yard or setback requirements, provided that no new**

nonconformities are created and that the existing nonconformities are not horizontally extended.

Explanation. *Section 8.22.1 contains many provisions in the spirit of "modification of a nonconforming structure is fine, as long as the nonconformity is not made worse", but no such provision covers setback nonconformities, which are by far the most common form of nonconformity in Cambridge neighborhoods and will remain as such even under MMH. A key goal of the petition is to ensure that construction of missing middle housing does not require a BZA variance, as we have seen that builders will go to great lengths to avoid a variance. This amendment ensures that one particular MMH construction scenario - an addition to the back of a nonconforming structure - would not require a variance.*

Minor (Technical) Amendments

Amendment 5. Tightening the 3-story limit.

Amend Table 5-1 (Table of Dimensional Requirements - Residential Districts)

Amend: **(o) In a Residence N District, no building may contain more than three stories above grade** ~~without a special permit granted by the Planning Board~~**.**

Explanation. *In the initially filed version of the MMH petition, footnote (o) was added to ensure that the height limit of 40' was used only for the purpose of bringing existing three-deckers into conformance, and not for the purpose of creating four-story structures. The reason for including a Planning Board special permit option for relief was in case unique site requirements, such as a strange lot shape or the preservation of existing trees, warranted a four-story structure on a smaller footprint rather than a three-story structure on a larger footprint. However, a BZA variance is likely sufficient for that relief, the need for which should be quite rare, so we propose removing the special permit option.*

Amendment 6. Restoring townhouse cornice line requirement.

Amend Section 11.15.3

Maximum Height. In a townhouse development the maximum permitted height shall be four habitable stories and the maximum height of the cornice line shall be thirty (30) feet. Any part of a townhouse structure which projects above the cornice line shall be set below an imaginary inclined plane beginning at the thirty (30) foot cornice line on any facade of the structure facing a street or facing any lot line abutting a residentially zoned lot, and thereafter rising at a forty-five degree (45°) angle. However, portions of the building may rise above the imaginary inclined plane provided the area of those portions above the inclined plane projected onto the vertical plane does not exceed ten (10) percent of the area of the vertical plane lying between

the thirty (30) foot cornice line and the maximum height of the structure, calculated for and limited to each separate plane.

However, the maximum height of any portion of a townhouse development shall be forty (40) feet~~, except that in a Residence B district the maximum height shall be thirty-five (35) feet~~.

Amend Section 11.15.32

However, the maximum height of any portion of a townhouse development shall be forty (40) feet~~, except that in a Residence B district the maximum height shall be thirty-five (35) feet~~.

Explanation. *In the initially filed version of the MMH petition, the above paragraph setting the maximum height of the cornice line to thirty (30) feet was removed in order to allow for greater design flexibility. However, a concern has been raised that this change would result in little to no advantage to project feasibility or amount of housing, which is the primary goal of this petition, and may impact the aesthetic look of the resulting development. As such, we propose leaving the cornice line requirements as they are in current zoning.*

Amendment 7. Restoring minimum lot sizes and widths.

Amend Section 5.31

Remove: ~~Add: 2. Minimum lot sizes and minimum lot widths do not apply in residential districts.~~

Amend Table 5-1 (Table of Dimensional Requirements - Residential Districts)

Remove: ~~Remove Column 2 ("minimum lot size in square feet") and Column 4 ("minimum lot width in feet")~~

Add:

District	**(2) Minimum Lot Size in Sq. Ft.**	**(4) Minimum Lot Width in Feet**
Res. N	5000	50

Explanation. *In the initially filed version of the MMH petition, minimum lot sizes and widths would no longer apply to residential districts. This was intended to allow greater flexibility to create townhouse developments and to allow construction on lots smaller than 5000 sqft to proceed without a BZA variance. However, we are confident that existing sections 5.21.1,*

8.22.1(a), 11.14, and the petition's change to section 11.15.1, are sufficient to accomplish that objective. Furthermore, allowing further subdivisions of lots could potentially have unintended consequences for affordable housing or edge cases with unusually-shaped lot splits. Therefore, we recommend removing this change.

Amendment 8. Protecting institutional use regulations.

Add, at the start of zoning ordinance changes: **These zoning changes shall not take effect until one month after the City Solicitor affirms that Massachusetts General Court legislation authorizes the City of Cambridge to regulate institutional uses in a Residence N district.**

Explanation. *Chapter 565 of the 1979 General Court, as amended by Chapter 287 of the Acts of 1980, gives the City of Cambridge the authority to regulate the use of land for institutional purposes in certain zoning districts. Ensuring that that authority extends to the Residence N district may require legal analysis, and depending on the results of that analysis, may require a home rule petition. This amendment, by delaying the implementation of the petition until the completion of that analysis and/or home rule process, ensures the persistence of the institutional use regulations.*

Amendment 9. Replacing references to consolidated districts.

Amend Section 17.10 ("Special District 1")

Replace all references to ~~Residence C-1~~ with **Residence N**.

Amend Section 17.20 ("Special District 2")

Replace all references to ~~Residence B~~ with **Residence N**.

Remove Section 17.23.1 ("Additional Permitted Residential Uses"). ~~Multifamily Dwelling, Section 4.31.g shall be permitted, subject to the special permit requirements for Townhouse development in a Residence B District.~~

Amend Section 17.24.1(1): The FAR applicable in the Special District 2 shall be 0.50, **unless a proposed use would allow a greater FAR in a Residence N district, in which case the FAR allowed in the Residence N district shall be allowed**.

Amend Section 17.24.2(1): The Minimum Lot Area for Each Dwelling Unit shall be ~~two thousand and five hundred (2,500)~~ **five hundred (500) square feet**.

Amend Section 17.80 ("Special District 8/8A")

UPDATED 2021-05-04 - FINALIZED FOR PLANNING BOARD

Replace all references to ~~Residence C-1~~ with **Residence N**.

Amend Section 17.90 (“Special District 9”)

Replace all references to ~~Residence C~~ with **Residence N**.

Amend Section 17.100 (“Special District 10”)

Replace all references to ~~Residence C~~ with **Residence N**.

Amend Section 17.500 (“Special District 14”)

Replace all references to ~~Residence C-1~~ with **Residence N**.

Explanation. *There are a number of references to Residence A-1, A-2, B, C, and C-1 districts throughout the Cambridge zoning ordinance, which need to be removed or replaced by references to Residence N if those districts are being consolidated into Residence N. The initially filed version of the MMH petition updated most of the references, but missed these.*