CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

IRAM FAROOQ
Assistant City Manager for
Community Development

To: Planning Board

From: Jeff Roberts, Land Use and Zoning Planner

Date: October 21, 2015

Re: **Barrett, et al. Zoning Petition**

Overview

The petition proposes two distinct sets of amendments to the Zoning Ordinance. In each case the effect of the change would be citywide.

Part A: Accessory Apartments

The Ordinance currently allows accessory apartments by special permit within single-family homes in the Residence A group of zoning districts. The petition proposes the following substantive changes:

- Allow accessory apartments in two-family homes as well as single-family.
- Allow accessory apartments in all zoning districts, not only Residence A.
- Allow accessory apartments in dwellings built on or after June 1, 1940.
- Change the minimum Gross Floor Area for a dwelling with an accessory apartment from the current 3,500 square feet to 1,800 square feet.
- Change the minimum lot area for a dwelling with an accessory apartment from 3,000 square feet per dwelling unit to 5,000 square feet total.
- Delete the stated restriction on alterations that would create or increase a violation of the floor area ratio (FAR) limitation.
- Require that a dwelling with an accessory unit must be owner-occupied.
- Allow conversion of an existing two-family home to a single-family home with an accessory unit by right.
- Eliminate parking requirements for accessory apartments.

Part B: Basement Floor Area

The petition proposes changing the definition of Gross Floor Area (GFA) as it relates to space at the basement level of a building, which currently excludes basement floor area meeting any of the following criteria:

- Space used for parking and loading.
- Areas devoted to the operations and maintenance of the building.
- Space with less than seven (7) feet of ceiling height.

The petition proposes to exclude basement space from GFA in the following more general categories:

- All basement or cellar space in a single-family or two-family home.
- All basement or cellar space in any other building, by special permit.

344 Broadway
Cambridge, MA 02139
Voice: 617 349-4600
Fax: 617 349-4669
TTY: 617 349-4621
www.cambridgema.gov

Staff has met with the lead petitioner to discuss the proposal. This memo addresses several of the potential impacts and other issues raised, considering the proposal as two individual amendments as well as their potential combined effects.

Accessory Apartments

Issues related to accessory apartments can be divided into three main categories: the purpose of accessory apartments, the characteristics that differentiate accessory apartments from other types of dwelling units, and the other regulations and restrictions that apply to accessory apartments.

Purpose of Accessory Apartments

The concept of an accessory apartment is more typical in planning and zoning for communities that are, unlike Cambridge, predominantly single-family residential. In places where two-family and multifamily housing is not allowed, some cities and towns allow accessory apartments as a way for homeowners to make use of space within a house to allow additional housing options while minimally impacting the single-family character of the neighborhood.

Some of the typical objectives commonly cited for accessory apartments are as follows:

- To allow economic opportunities for homeowners who have unneeded space but do not wish to move. Sometimes this is associated with families "downsizing" their needed living space or senior homeowners who prefer to "age in place."
- To provide housing opportunities for single people, younger workers or others who might have few housing options in communities that contain predominantly larger single-family homes.
- To allow homeowners to create separate living space for family members, often referred to as "in-law apartments." Some communities require that the person occupying an accessory apartment is a relative of the owner (this is not required under current zoning or the proposed amendment).
- To provide for the creation of affordable units. Some Massachusetts communities have considered promoting accessory apartments as an alternative to creating multifamily housing to meet affordable housing thresholds under the Chapter 40B statute.

In the current Cambridge zoning, the purpose of accessory apartments is explained as such:

> [Section 4.22] "These [Residence A] districts contain a number of large single family homes that are underutilized. … Given contemporary life styles, housing needs and energy and maintenance costs, it is beneficial to the City to allow greater flexibility in the use of such [existing large single-family] dwellings without substantially altering the environmental quality of such residential districts."

Proposed Changes: The petition would retain most of the wording in the purpose, but removes reference to the particular district and includes two-family homes in the description (discussed further below), the implication being that the issues identified are relevant to single-family and two-family homes throughout the city.

Characteristics of Accessory Apartments

One of the key technical issues with the concept of accessory apartments is the distinction between an accessory unit and any other type of dwelling unit in a two-family or multifamily dwelling. Without a clear distinction, an accessory apartment could simply be a mechanism to expand the number of units on a lot without triggering other zoning limitations. In the model zoning text in the Massachusetts "Smart Growth / Smart Energy Toolkit," which is referenced in the petition, accessory apartments are characterized as being "clearly a subordinate part of the single-family dwelling," which states the intent but requires more specificity to be applied as a strict regulation.

In the current Cambridge zoning (Article 2.000), the following definition is provided, with the two operative distinctions being that an accessory apartment must be (a) within a single-family residence and (b) under the same ownership as the principal single-family residence:

> "***Accessory Apartment.*** An accessory use with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit, located within and under the same ownership as a single family detached dwelling and designed for the occupancy of a single family."

Proposed Changes: The petition would amend the definition to allow accessory apartments in two-family dwellings as well as single-family. This provision would be fairly unique since accessory apartments are usually limited to single-family homes, the purpose being to provide a legal alternative to creating a two-family dwelling. It is not entirely clear how accessory apartments would be added to two-family dwellings in practice, but the petitioner clarified to staff that the intent is to allow two-family dwellings to add one accessory apartment only in cases where the entire building is under common ownership and the owner occupies one of the units. This intent would need to be clarified in the zoning text, because the units in a two-family dwelling could be separately owned (as condos or townhouses) and the provisions might be interpreted to allow each of those separately owned units to create an accessory apartment.

Though not included in the definition, the petition proposes the following additional qualifications that describe the characteristics of accessory apartments:

- A dwelling with an accessory apartment must be owner-occupied (i.e., the homeowner must reside either within the principal dwelling or within the accessory apartment).
- An accessory apartment is limited to 900 square feet of GFA, or 35% of the GFA of the principal dwelling, whichever is less.

These qualifications are more typical for accessory apartment regulations in other communities. However, there are some issues to be considered. Enforcement of the owner-occupancy restriction would be a challenge, particularly in cases where an owner creates an accessory apartment but then decides to sell the property in the future. For instance, if a future owner decides not to occupy the unit and to rent the principal and accessory units separately, it would not necessarily require zoning review and would be difficult to remedy if it were discovered after-the-fact. Requiring owners to move in (and tenants to move out) or to somehow remove the accessory unit might not be practical or desirable.

The limit on size also raises some questions related to the typical understanding that accessory apartments are meant to be "clearly a subordinate part" of a larger dwelling. Although the proposed zoning established a maximum size where the current ordinance does not, 900 square feet is not a particularly small unit size compared with much of the housing in Cambridge, including many two-bedroom units. The additional limitation of 35% of the size of the dwelling may help to ensure that accessory apartments are relatively small compared to the principal dwelling; however, in the case of a two-family dwelling, it could result in three units (two principal, one accessory) that are of equal size.

Additional Regulations and Restrictions for Accessory Apartments

The following table lists the current restrictions in the ordinance compared to the proposed changes in the petition:

Current Zoning	***Proposed Change***
Accessory apartments are limited to houses built before June 1, 1940 that have not been enlarged by more than 250 feet since built.	Accessory apartments are allowed in existing or new houses that have not been enlarged by more than 250 feet since built.
Accessory apartments are limited to dwellings with at least 3,500 square feet of GFA.	Threshold is reduced to 1,800 square feet.
Accessory apartments are limited to lots with at least 3,000 square feet of lot area per dwelling unit.	Accessory apartments are limited to lots of at least 5,000 total square feet (with no explicit limitation on lot area per dwelling unit).
No restrictions on where an accessory apartment may be located.	Accessory apartments may not be located in a garage; otherwise no limitations specified.
Alterations that increase the FAR above zoning limitations are not allowed	Requirement is deleted. Articles 5.000 and 8.000 of the zoning would generally prohibit changes that exceed or further exceed the FAR limitation.
An off-street parking space is required for an accessory apartment.	No off street parking is required for an accessory apartment.

Another proposed provision is that a two-family home could be converted to a single-family home with an accessory unit without requiring a special permit. It is not clear how a homeowner would benefit from this provision because maintaining an existing two-family home has the same benefits and fewer restrictions than accessory apartments. More typically, a homeowner would benefit from converting a dwelling with an accessory apartment into a normal two-family dwelling.

One of the more significant considerations is that the proposed changes would allow a new home to be designed and built with an accessory apartment, rather than allowing an accessory apartment only as an adaptive use of an older, larger home. The zoning would retain the provision that a home would not be eligible if it were enlarged by more than 250 feet since built, though this provision may no longer be consistent with the intent of the zoning because it would put more restrictions on a lot with an existing home with past enlargements than if the lot were demolished and a new, larger home were built.

Some additional clarity would also help explain how the zoning development standards in Article 5.000 are intended to be applied to accessory apartments, particularly the FAR and lot area per dwelling unit controls. The petition proposes deleting a sentence prohibiting alterations that would create or increase an FAR conformity on the lot, which is also a standard provision in the nonconformity provisions of Article 8.000 of the Zoning Ordinance. It is not clear whether the specific intent is to allow alterations that would create or increase an FAR nonconformity (as they would still be otherwise prohibited by Articles 5.000 and 8.000) or to reduce redundancy.

Also, the current zoning ordinance does not clearly explain whether an accessory apartment would be included in the determining lot area per dwelling unit limitations. The ordinance does partly define an accessory apartment as "constituting a dwelling unit" and the current zoning sets a limitation of 3,000 square feet of lot area per dwelling unit for a single-family home with an accessory apartment, suggesting that the intent is to include both principal and accessory units in the calculation (since the minimum lot size in Residence A districts is 6,000 square feet). The petitioner explained to staff that the intent was not to include accessory apartments in calculating lot area per dwelling unit limitations, which should be made explicit in the zoning.

Overall Considerations

Since 1981, Cambridge's zoning has allowed accessory apartments only by special permit within certain strict limitations, including a limited number of districts. The main intent and greatest effect of the proposed regulations would be to make many more houses eligible to include accessory apartments. Any single-family or two-family home, new or existing, with at least 1,800 square feet of GFA and at least 5,000 square feet of lot area would be eligible to seek a special permit to create an accessory apartment without requiring new parking.

Few special permits have actually been sought and granted by the BZA pursuant to the current zoning. Though the petition notes that between 6,000 and 7,000 single-family or two-family homes exist throughout the city, it is impossible to determine how many such homes would meet all of the criteria to take advantage of the provision, how many would find it economically advantageous to seek the special permit and perform the work necessary to accommodate the accessory unit, and how many would ultimately be approved and established.

Aside from the technical issues raised and clarifications required, the Planning Board and City Council would need to consider as a matter of policy whether the benefits of allowing more accessory apartments would outweigh the potential impacts of greater household density in existing neighborhoods, including demands on transportation and parking, infrastructure and public resources.

Another consideration is the long-term effect of allowing dwellings to be altered to accommodate multiple smaller units. While it might be an attractive option for current homeowners seeking better ways to use their space, it might limit the options for future homebuyers seeking larger living spaces for families. After creating an accessory apartment, it could be physically, economically, or otherwise logistically difficult to reabsorb it into the principal dwelling.

Basement Floor Area

Meaning of Gross Floor Area

In a general sense, Gross Floor Area (GFA) is a measurement that represents the full area of built space on a lot, inclusive of the full physical space occupied by a building. In zoning specifically, the definition of GFA is one of the more fundamental elements of regulating the scale, intensity and form of development. Many zoning limitations and requirements are based on the calculation of GFA in a building or on a lot, and the definition of GFA is often used to promote particular citywide policies such as incentivizing desired uses or discouraging unwanted development types.

As an example, in the current definition, structured parking facilities located above grade are included in the calculation of GFA while structured parking facilities located below grade are not included in the calculation of GFA. This provision has been a major factor encouraging new development to provide its parking below-grade where it is feasible.

Basement GFA

Under current zoning, floor area at the basement level is excluded from the definition of GFA if it meets one of the following criteria:

- Is used for parking and loading.
- Is devoted to the operations and maintenance of the building such as heating and cooling equipment, electrical and telephone facilities, and fuel storage.
- Has less than seven (7) feet of ceiling height.

The proposed amendment would add the following to the categories of excluded basement floor area:

- Any basement or cellar space in a single-family or two-family home.
- Any basement or cellar space in any other building subject to a special permit.

Overall Effects of Proposed Change

The proposed change would provide some relief from GFA restrictions in certain scenarios, including the following:

- Existing buildings that currently have living space in the basement, which would be included in GFA, might receive additional development capacity because that existing space would no longer count in determining floor area ratio (FAR) limitations.
- Existing buildings that currently have basement space that is used as low-height storage, mechanical systems or some other use that is exempt from GFA might convert basement space to living space without violating GFA limitations, if building code requirements are met.
- New buildings would more likely be designed with usable space in the basement in order to maximize the value of the building. It is already the case that many single-family and two-family homes are designed with ceiling heights of 6’-11”, which is habitable under the current state building code but is not defined as GFA per zoning.

Considerations

The main consideration is the impact of "freeing" permitted square footage for buildings with basement space, whether the basement space is existing or new. Some of the potential issues specific to basement living space are discussed further below under "Combined Effects".

The following more technical issues should also be considered:

- The petition strikes some text in the current zoning, which states that any basement space not explicitly excluded from the definition of GFA would be included in the definition of GFA. Although this may not have a practical effect, it makes a key part of the ordinance somewhat more vague.
- Is it troublesome to have a zoning definition rely on a special permit, as has been proposed in the case of buildings other than single-family and two-family dwellings. A definition should remain consistent and not vary on a discretionary basis. A different approach to have the intended effect might be to include a provision in the Development Standards, Article 5.000 of the Zoning Ordinance, allowing a special permit to be granted by the BZA to exclude basement or cellar GFA when calculating FAR limitations or other applicable zoning requirements.

Combined Effects

The petition as a whole proposes to relax some restrictions on adding living units to single-family and two-family homes as well as relaxing some restrictions on the development and use of basement space, particularly in single-family and two-family homes. Although it is not explicitly stated, one concern is whether these combined provisions would encourage the creation of basement-level apartments. The building code allows basement living space if it meets certain minimum standards, but City departments have expressed concerns about whether this type of housing is desirable given the potential risks.

Some of the common risks associated with basement living space include flooding, sewer backups, and moisture leading to mold or other health concerns. These were the subject of discussion related to the Basement Housing Overlay Zoning in recent years. In some cases, appropriate measures can be taken to mitigate the risks. For instance, the Basement Housing Overlay Zoning requires separated sewer/drainage lines and backflow prevention for all basement units, and various measures can be taken to prevent moisture or remove mold if it occurs.

However, little can be done to avoid impacts on basement spaces when surface flooding occurs. This type of flooding is already a problem in many parts of the city and may be exacerbated over time with the effects of climate change. This issue was also identified in the Basement Housing Overlay Zoning discussions, resulting in the requirement for an engineering report that assesses the history and risk of overland flooding before a special permit can be sought.

The zoning proposal retains the special permit requirement for accessory apartments, providing an opportunity for greater review and mitigation so long as clear criteria are established to inform the review. However, this would only apply for accessory apartments or other projects seeking relief.