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## CITY OF CAMBRIDGE

Community Development Department

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To: Planning Board  
From: Jeff Roberts, Director of Zoning and Development  
Date: March 21, 2019  
Re: **Accessory Apartments Zoning Amendment Petition (continued)**

### Update

On January 22, 2019, the Planning Board held a hearing on the City Council's petition to amend the provisions of the Zoning Ordinance pertaining to Accessory Apartments (also referred to as "accessory dwelling units," "accessory units," or "ADUs") (the "Petition"). The Board voted a recommendation on the Petition (attached).

At the Ordinance Committee hearing on the Petition on February 5, 2019, the committee voted an Amendment by Substitution (the "Amended Petition") (attached) that changed many of the provisions of the Petition. Some provisions are deleted, including the following:

- Limitation of one accessory dwelling unit per lot is deleted.
- Limitation on "substantial enlargement" of a dwelling since built is deleted.
- Requirement for owner-occupancy of at least one of the dwelling units is deleted.
- Consideration by the BZA of flooding concerns in basement units is deleted.

Some other new provisions are added, including the following:

- An "Accessory Structure Apartment" would be limited to "an existing accessory structure on the same lot as a single- or two-family home."
- "Accessory apartments are exempt from FAR calculations to determine allowable gross floor area of a lot" is added.
- "Any Accessory Apartment or basement egress or stairwell may extend beyond the minimum yard regulations within the meaning of Section 5.24.2 in all districts" is added.

Given the changes to the Petition, CDD staff found it prudent for the Planning Board to review the changes and provide any additional comments regarding the Amended Petition. For convenience, attached to this memo are 1) the current zoning text, 2) the original Petition text, and 3) the Amended Petition text.

In addition, CDD has conferred with staff from the Inspectional Services Department (ISD), Department of Public Works (DPW), and Law Department to discuss issues that were raised during the Planning Board and Ordinance Committee hearings. The issues that were discussed, as set forth further below:

- Information on Accessory Apartment proposals since 2016 zoning amendment
- Clarifying the language to resolve issues raised at the hearings
- Provisions to manage flood risk to basement-level units
- Concerns about short-term rentals and interest in promoting affordability

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## Information on Issues Raised at Hearings

### *Accessory Apartment Proposals Since 2016 Zoning Amendment*

Attached is a chart summarizing five accessory apartment cases that were heard by the Board of Zoning Appeal (BZA) since the 2016 accessory apartment zoning amendment. Of those five, one was withdrawn. The properties were located throughout the city and in different zoning districts – Residence A-1, A-2, B, and two cases in C-1 (before 2016, accessory apartments were allowed only in Residence A-1/A-2 districts).

In all but one case, the accessory apartment was located at the basement level. Also in all but one case, variances were needed in addition to the special permit for the accessory apartment. In three of the five cases, a variance was needed because the lot size was less than 5,000 square feet. Two cases involved demolition and construction of a new building, and on at least one occasion the BZA raised questions about the intent of the zoning language because “existing” buildings – without reference to a certain date – could include new buildings once they are constructed.<sup>1</sup>

In discussions with ISD, it was also noted that there have been many other projects seeking to add bedrooms and bathrooms to basements (which is allowed by the Building Code and encouraged in some cases because zoning exempts basements from FAR limitations). These projects have often included other improvements, such as separate exterior entrances and utilities that would allow future installation of kitchen appliances, that could make the spaces easy to convert to separate dwelling units.

### *Language Clarifications*

Though CDD staff did not participate in writing the Amended Petition text, some parts of the Amended Petition seem intended to address concerns raised at the Planning Board hearing, mainly by eliminating provisions that Planning Board members found difficult to understand. For example, the Planning Board raised concerns about whether it would be difficult to determine if a dwelling had been substantially enlarged since built as set forth in the Petition. Board members offered several suggestions to resolve this issue at the hearing, one of which was to eliminate the requirement completely and rely on the FAR limits of the district. However, the Amended Petition has no limitations on enlargements to a structure since built. The Amended Petition would exempt accessory apartments from all FAR limits, which could result in even greater enlargements to existing buildings.

The Amended Petition also eliminates the owner-occupancy requirement, which obviates some concerns that were raised about enforcement challenges, but also suggests a different policy approach from the current zoning requirements or the original Petition. As noted in the prior discussion, accessory apartments have always been required to remain in common ownership with the principal dwelling.

The Amended Petition clarifies some of the intent of allowing “Accessory Structure Apartments” by requiring them to be existing structures on the lot of a single-family or two-family home. However, there remain some issues, such as potential conflicts with other zoning provisions in Article 4.000 that

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<sup>1</sup> In one of these cases, abutters filed an appeal in Land Court and argued that the Zoning Ordinance did not allow an accessory apartment in a new building. However, that case was resolved because the applicants changed their plans and eliminated the accessory apartment, so the Land Court never reached that issue.

expressly prohibit accessory structures from being used as dwelling units. The concept of accessory structure apartments also raised questions at the Ordinance Committee Hearing around what level of alteration would be needed to convert an accessory structure into a habitable unit, given that accessory structures can include a variety of different types and conditions. There was also uncertainty about whether multiple accessory structures on a lot could be converted to multiple individual apartments.

The Amended Petition also includes an exemption from setback requirements for basement egress. This reflects a frequent issue where habitable space (e.g., bedrooms) has been created at the basement level, which triggers a building code requirement to provide emergency egress. Usually, this takes the form of “window wells,” or enlargements of below-grade openings that would allow people to climb out through the window. Because many existing buildings are built close to lot lines, the window wells could extend into required setbacks, and in some cases that could create a zoning violation and could have adverse impacts on abutters. Based on the wording, it is unclear whether this addition to the Petition is meant to apply just to accessory apartments or to all basement egresses or stairwells.

#### *Provisions to Manage Flood Risk*

Both the Planning Board and Ordinance Committee recommended using the provisions of the Basement Housing Overlay District as a model for flood protection in the case of basement accessory apartments. In consultation with DPW, staff have prepared potential language as an appendix to this memo.

One additional issue that arose through interdepartmental discussion is flood risk around the aforementioned “window wells” typically installed when basements are converted to habitable space. Though they are required by building code for egress, they also have the potential to collect water in the event of flooding. Preventing such flooding might require building raised barriers around the wells, which exacerbate the potential setback issues noted above.

#### *Short-Term Rentals and Affordable Housing*

Concerns were raised by the Planning Board and the Ordinance Committee about the potential for accessory apartments to be used for short-term rental. It was noted by staff that because the short-term rental ordinance (Section 4.60) expressly allows the short-term rental of residential dwelling units that are either operator-occupied or owner-adjacent, and accessory apartments are residential dwelling units, this use cannot be prohibited in accessory apartments without further amending Section 4.60 as well as Section 4.22.

The Ordinance Committee also asked whether incentives could be provided for affordability, which is a topic that would require additional study and discussion. The issue was raised during the 2016 zoning amendment, and it was noted that while accessory apartments might help to provide more affordable options in the market, as a practical matter it would be challenging to apply meaningful affordability restrictions in the manner of the City’s current affordable housing programs.

### **Current Zoning Text for Accessory Apartments**

**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.

**4.22** Accessory Apartments. The purpose of this Subsection 4.22 is to allow for the creation of accessory apartments in all districts. Many large single and two-family homes are underutilized. Alteration of these homes to provide additional dwelling units would be prohibited in most cases due to the existing floor area ratio and/or lot area per dwelling unit requirements of Subsection 5.31. 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 dwellings without substantially altering the environmental quality of such residential districts. This Subsection 4.22 gives the Board of Zoning appeal authority to relax such requirements in certain instances as enumerated below.

**4.22.1** In all districts the Board of Zoning Appeal may grant a special permit for alteration of a single family or two-family, detached dwelling to provide one accessory apartment if the following conditions are met:

1. The dwelling has not been substantially enlarged since built. The addition in the aggregate of two hundred and fifty (250) square feet or more of gross floor area shall be considered a substantial enlargement.
2. Prior to alteration the dwelling contains at least one thousand eight hundred (1,800) square feet of gross floor area.
3. The lot on which such accessory apartment is located contains at least five thousand (5,000) square feet of lot.
4. Such accessory apartment shall not occupy more than nine hundred (900) square feet or thirty-five (35) percent of the gross floor area of the principal dwelling, whichever is less, and shall not be located in a garage.
5. The owner(s) of the residence in which the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence. Prior to issuance of a building permit, the owner(s) must submit a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence.
6. Any existing two-family home may be converted to a single family home with accessory unit by right, without need for a Special Permit.

In granting a special permit the Board may impose such conditions, including requirements for off street parking and limitations on other accessory uses of the premises, as it may deem appropriate to avoid detriment to the neighborhood or to nearby persons or property. The Board of Zoning Appeal shall evaluate each special permit application which involves exterior changes with the appearance of and character of the neighborhood and may require that there be no change or minimal change to any face of a building oriented toward a public way or visible from a public way.

**Zoning Text – Original Petition Version (Referred December 3, 2018)**

**Accessory Apartment.** An accessory use with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit, located with and under the same ownership as the primary dwelling per Section 4.22.1 and designated for the occupancy of a single family.

**4.22.1** In all districts, the Board of Zoning Appeal may grant a Special Permit for alteration of a single family, two-family or accessory structure in existence as of 1 January, 2019 to provide one accessory apartment if the following conditions are met:

1. Only one accessory dwelling unit is allowed on any lot.
2. The dwelling has not been substantially enlarged since built. The addition in the aggregate of two hundred and fifty (250) square feet or more of gross floor area or six (6) inches of height shall be considered a substantial enlargement.
3. Prior to alteration, the principal dwelling contains at least one thousand eight hundred (1800) square feet of gross floor area.
4. Such accessory apartment shall not occupy more than nine hundred (900) square feet or thirty- five (35) percent of the gross floor area of the principal dwelling, whichever is less.
5. The owner(s) of the residence in conjunction with which the accessory dwelling unit is created must continue to occupy at least one of the dwelling units as their primary residence. Prior to issuance of a building permit, the owner(s) must submit a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence. Subsequent changes in ownership does not remove the requirement for the owner(s) of the accessory dwelling unit to live in one of the dwelling units as their primary unit.
6. Any existing two-family home may be converted to a single-family home with an accessory unit by right, without need for a Special Permit.
7. Parking requirements are not applicable to accessory dwelling units.
8. The accessory apartment does not count towards determination of lot area per dwelling unit.
9. The Board will consider flooding concerns when reviewing basement accessory units. In granting a Special Permit, the Board may impose such conditions, including limitations on other accessory uses of the premises, as it may deem appropriate to avoid detriment to the neighborhood or to nearby persons or property. The Board of Zoning Appeal shall evaluate each Special Permit application which involves exterior changes with consideration of the appearance and character of the neighborhood and may require that there be no change or minimal change to any face of a building oriented toward a public way or visible from a public way.

**4.22.12** Accessory Structure Apartment. An accessory apartment in an accessory structure on the same lot may be allowed by Special Permit if the following criteria are met:

1. The gross floor area of the apartment does not exceed one thousand (1000) square feet.
2. The Special Permit Granting Authority determines that the exterior appearance of the accessory structure is compatible with the principal dwelling on the same lot and with dwellings and accessory structures on adjoining lots.

**Zoning Text – Amended Petition Version (Presented on February 5, 2018)**

**Accessory Apartment.** An accessory use with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit, located with and under the same ownership as the primary dwelling per Section 4.22.1 and designated for the residential occupancy.

**4.22.1** In all districts the Board of Zoning Appeal may grant a special permit for alteration of any single-family, two-family, or an accessory structure in existence as of Feb 1, 2019 to provide one accessory apartment if the following conditions are met:

1. Prior to alteration the dwelling contains at least one thousand eight hundred (1,800) square feet of gross floor area.
2. An Accessory Apartment shall not occupy more than nine hundred (900) square feet or thirty-five (35) percent of the gross floor area of the principal dwelling, whichever is less.
3. Any existing two-family home may be converted to a single-family home with accessory unit by right, without need for a Special Permit.

In granting a special permit the Board may impose such conditions, including limitations on other accessory uses of the premises, as it may deem appropriate to avoid detriment to the neighborhood or to nearby persons or property. The Board of Zoning Appeal shall evaluate each special permit application which involves exterior changes with the appearance of and character of the neighborhood and may require that there be no change or minimal change to any face of a building oriented toward a public way or visible from a public way.

**4.22.12** Accessory Structure Apartment. An accessory structure apartment is accessory apartment built within an existing accessory structure on the same lot as a single- or two-family home. The Special Permit Granting Authority must make a determination that the exterior appearance of the accessory structure apartment is compatible with the principle dwelling on the same lot and with dwellings and accessory structures on adjoining lots. An Accessory Structure Apartment may not exceed nine hundred (900) square feet.

**4.22.2** Additional Regulations for Accessory and Accessory Structure Apartments

- 1) The requirement for an off-street parking space specified in Article 6.000 shall not apply for the addition of one accessory apartment in a single family, two-family, or accessory structure in all districts.
- 2) The lot per dwelling unit calculation does not apply to accessory apartments or accessory structure apartments.
- 3) Accessory apartments are exempt from FAR calculations to determine allowable gross floor area of a lot.
- 4) Any Accessory Apartment or basement egress or stairwell may extend beyond the minimum yard regulations within the meaning of Section 5.24.2 in all districts.

**Summary of Board of Zoning Appeal (BZA) Accessory Apartment Cases, 2016-2018**

<b>Address:</b>	<b>46 Parker Street</b>	<b>33 Kinnaird Street</b>	<b>16 Kennedy Road</b>	<b>151 Clark Street</b>	<b>99 Rindge Avenue</b>
Neighborhood:	West Cambridge	Riverside	West Cambridge	The Port	North Cambridge
Zoning District:	Residence A-2	Residence C-1	Residence A-1	Residence C-1	Residence B
Type of Project:	Alteration of existing single-family	New construction of single-family	New construction of single-family	Alteration of existing single-family	Alteration of existing single-family
Location of Accessory Apartment	Basement (existing)	Basement (new)	Basement (new)	First floor (existing)	Basement (existing)
Other Relief Needed:	Variances for lot size less than 5,000 SF, increased FAR exceeding limit for addition of dormers; SP for windows in required setback	Variances for lot size less than 5,000 SF, construction in required setbacks; SP for tandem parking less than 5 feet from lot line	Variance for construction in rear setback	Variances for lot size less than 5,000 SF, increased FAR exceeding limit for addition of dormers and egress stairs; SP for windows in required setback	None
Decision:	Applicant withdrew application for accessory apartment	Granted	Granted	Granted	Granted

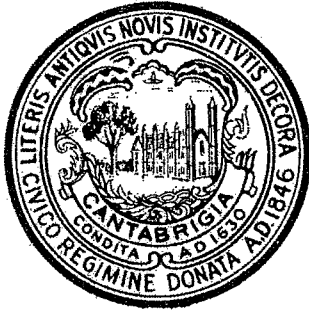
### **Possible Zoning Text to Address Flood Risk**

*As suggested by the Planning Board, the following text was prepared by CDD and DPW staff and is modeled after the requirements in the Basement Housing Overlay District, Section 20.640.*

Where an accessory apartment is created in a basement or cellar, the following additional requirements shall apply.

- (a) A special permit granted pursuant to this Section shall be conditioned upon full compliance with all applicable building and sanitary code requirements applicable to basement units to be approved by the Commissioner of Inspectional Services at the time of application for a building permit. As a condition of the special permit, the BZA may require reasonable measures as are deemed necessary for the adequate health, safety and privacy of occupants and occupants of adjacent properties.
- (b) Adequate, properly installed, backflow prevention devices that comply with all building code and other applicable requirements must be installed for all units located in a basement or cellar, along with any additional measures determined to be required by the City Engineer.
- (c) An application for a special permit to create an accessory apartment in a basement or cellar shall include a report on historical occurrences and future likelihood of basement flooding in the area of the property, prepared by a registered professional engineer, with a functional scope determined by the City Engineer to be appropriate to the location of the project. In general, the report shall assess the likelihood of flooding in the basement or cellar by way of sewer system backups or overland flooding and identify proposed mitigation to prevent any such flooding. The Applicant shall obtain approval of the report and proposed mitigation, if any, from the City Engineer prior to submitting a special permit application. As a condition of the special permit, the BZA may require preventive measures to safeguard against future flooding of the accessory apartment as recommended by the City Engineer.





CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Date:	February 26, 2019
Subject:	City Council Zoning Petition to Amend Section 4.22 "Accessory Apartments"
Recommendation:	The Planning Board recommends ADOPTION following further staff review and improvements to petition language.

To the Honorable, the City Council,

The Planning Board held a public hearing on this petition on January 22, 2019. The proposed zoning would amend several of the current zoning provisions pertaining to the creation of accessory apartments within principal single-family or two-family dwellings, and proposes to enable the creation of accessory apartments within accessory structures in addition to principal structures. The Board heard a presentation from City Councillor Craig Kelley and testimony in support of the petition from several members of the public. Following the hearing and deliberations, the Board voted to transmit the following recommendation.

The Board is conceptually in favor of this proposal and supports the creation of accessory apartments. Given the need for housing in the city of a variety of types, this zoning mechanism provides a good way for existing structures to be adapted to create smaller units and provide more housing options. The Board understands that the current petition is motivated by a sense that the objectives of the previous 2016 zoning amendments have not been realized, and that due to complications with the current language, some proposals have not been able to go forward or have needed to seek variances.

However, the Board has many concerns about the petition as it is currently written and fears that without proper attention to the language, there might still be problems in its implementation. For example, it is not entirely clear what provisions apply to what types of structures and projects, what provisions are required as prerequisites, and what provisions are criteria to be applied by the Board of Zoning Appeal (BZA) in their review. The proposal to enable "accessory structure apartments" raises several questions such as whether the structures must be existing or if they can be new construction, if the structures might be moved within the lot or across lots, and to what types of principal uses the accessory apartments could be accessory. The proposal to allow accessory structure apartments also conflicts with zoning language in other sections of Article 4.000 that expressly prohibit the conversion of accessory structures to dwelling units.

The Board strongly recommends consulting with City staff, including the Community Development Department, Inspectional Services Department, and Law Department, to consider

improvements to the language that would clarify its intent and avoid confusion or unintended problems in its implementation. It is important for the departments that are responsible for implementation to provide insight into issues that are likely to arise.

There are also a few substantive concerns about the zoning language that should be addressed. The Board understands that the intent of this provision is to allow the adaptation of pre-existing structures to accommodate accessory apartments, and not to incentivize new construction or substantial reconstruction of buildings with the intent of later creating an accessory unit. However, the provision disqualifying buildings that have not been substantially enlarged since built (an increase of 250 square feet being the threshold for substantial enlargement) may be too restrictive given the age of many residential buildings in Cambridge and difficulties in determining how they might have been altered in the past. Board members suggested alternative approaches to discourage builders from taking advantage of this provision in an unintended way, such as disqualifying buildings that have been enlarged after the reference date for existing buildings (January 1, 2019) or including the extent to which a building has been substantially or recently enlarged as a consideration for BZA review. It was also suggested that if the district FAR limitations apply, the degree to which a building has been altered may not be a concern so long as it remains within district limitations or within the existing conditions of the building, if it is legally non-conforming.

The Board also raised concerns about the potential flood risk to accessory apartments that might be created in existing basements, as was discussed when the zoning was last amended. The Board recommended considering language to address this issue similar to the criteria included in the Basement Housing Overlay District, which requires specific utility improvements and working with the Department of Public Works (DPW) to assess the potential risk of flooding that could not be easily mitigated. An excerpt from that language is attached.

The Board had additional concerns about the potential for accessory apartments to be used for short-term rental, given that the Board’s enthusiasm is based on the potential to create more long-term units to house Cambridge residents rather than creating more short-term accommodations. The Board understands that addressing this issue more fully may require addressing the Short-Term Rental provisions in Section 4.60, which is not part of this petition. Board members also raised concerns about the enforceability of owner-occupancy requirements in perpetuity, acknowledging that provisions related to ownership and residency are difficult to regulate through zoning.

Respectfully submitted for the Planning Board,



Catherine Preston Connolly, Chair.

*Attachment: Excerpted Language from Basement Housing Overlay District:*

- 20.640** *Conditions for Grant of Special Permit.* Prior to granting a special permit pursuant to this Section the Planning Board shall determine that the proposed conversion of basement space to dwelling units complies with the General Special Permit Criteria set forth in Section 10.43 as well as with the following requirements:
- a. Each new unit converted from existing basement space shall comply with all building, health, and accessibility codes applicable to residential dwelling units in the basement of structures. A special permit granted pursuant to this Section shall be conditioned upon full compliance with all building and sanitary code requirements applicable to basement units to be approved by the Commissioner of Inspectional Services at the time of application for a building permit. As a condition of the special permit, the Planning Board may require reasonable measures as are deemed necessary for the adequate privacy and security of the occupants.
  - b. Buildings must contain, or install, full separation between storm water and sanitary sewer lines from the building to the connection in the street regardless of whether the street in which the building is connected currently is separated.
  - c. Adequate, properly installed, backflow prevention devices that comply with all building code and other applicable requirements must be installed for all newly created units along with any additional measures determined to be advisable by the City Engineer.
  - d. An application for a special permit pursuant to this Section shall include a report on historical occurrences and future likelihood of basement flooding in the area of the proposed conversion, prepared by a registered professional engineer, with a functional scope determined by the City Engineer to be appropriate to the location of the project. In general, the report shall assess the likelihood of flooding in the basement units by way of sewer system backups or overland flooding and identify proposed mitigation to prevent any such flooding. The Applicant shall obtain approval of the report and proposed mitigation, if any, from the City Engineer prior to submitting a special permit application. As a condition of the special permit, the Planning Board may require preventive measures to safeguard against future flooding in the proposed basement-level units as recommended by the City Engineer.