



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.