



To: Planning Board Members

From: CDD Staff

Date: September 23, 2025

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

## Overview

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**Petitioner:** Martin Bakal, et al. (group of 10 or more individuals registered to vote in Cambridge)

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**Zoning Articles:** 4.000 – Use Regulations

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**Petition Summary:** Add “paved way greater than 10’ wide” to the Table of Use Regulations in Section 4.30 as a prohibited use in Open Space districts and a permitted use in all other districts; add a footnote to Section 4.40 with further stipulations for what constitutes a “paved way” and stating that the area of paved ways in contiguous Open Space Districts “shall not be increased by more than 2% of the total of said contiguous area within a two-year period.”

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**Planning Board Action:** Recommendation to City Council.

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

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## Effects of Petition

The Petition includes a few substantive components:

- Establishing “paved way greater than 10’ wide” as a principal use in the Zoning Ordinance, which is further defined in the footnote to include “all forms of paving materials, permeable and impermeable, including, but not limited to, concrete, bituminous concrete, stone, curbstones, pavers, brick, stone dust, wood, plaster, and metal.” This approach would define many areas throughout the city with diverse types of functions as a distinct principal use and would diverge from the traditional view of a “principal land use” as the main or dominant use of land such as a residential or commercial building or public park.
- Prohibiting the “paved way greater than 10’ wide” use in Open Space zoning districts. The result is that such a use could not be established without a use variance from the Board of Zoning Appeal (BZA), which requires meeting a high legal standard for hardship. Such a use could be maintained where previously established, but the alteration or enlargement of such a use would be limited by the Nonconformance provisions of Article 8.000 of the Zoning Ordinance and applicable provisions of state law.
- Stating in a footnote that “In an Open Space District, for a contiguous area of Open Space bounded by streets, roadways, highways, or non-Open Space Districts, the areas of paved ways within said area shall not be increased by more than 2% of the total of said contiguous area within a two-year period.” The intent of this addition is unclear as the prior two points would make the use prohibited in Open Space Districts altogether, and this provision may conflict with the aforementioned nonconformance provisions already applicable to the enlargement of prohibited uses.

## Background

### *Open Space Districts*

The Open Space zoning designation is unique. Most zoning districts are intended to regulate the uses within a district so that the owner can make economic use of the land within a set of constraints. Open Space districts severely limit the use of land to civic uses such as public parks and recreation and impose dimensional requirements that strictly limit building construction. Therefore, it can only reasonably be applied to land owned by the City or other public entity and used for a public purpose.

In that regard, the intent of Open Space districts is less for the City to broadly influence land use than for the City to set expectations for land that it owns and maintains. Because higher jurisdictions like state and federal agencies can be immune from local zoning, it is primarily an instance of the City regulating the City, with the City Council having the authority to set or change regulations and the City’s BZA having the ability to grant relief.

### *Open Space Planning*

Cambridge's decisions about the development and improvement of open space are informed by several factors, including broad citywide open space planning goals, neighborhood planning goals, site-specific studies and design processes, and applicable local, state, and federal regulations. Each stage of the planning process involves extensive public engagement and input.

The following are some examples of open space planning initiatives and goals.

- Open Space and Recreation Plan Update // Our Parks, Our Plan (2023-2032). One theme of this plan is expanding and improving park access for all, and goals include making parks and park programs welcoming for all and making it easier for people to get to and travel through parks and open space in ways that are active and sustainable. Another theme is activating and enhancing public spaces, with a goal of promoting healthy play and active recreation for people of all ages, abilities, genders, and backgrounds.
- Envision Cambridge (2019), the city's most recent comprehensive plan. Action items include providing open space for both athletic and non-athletic activities, including both organized and spontaneous games and events, and providing a diverse range of play environments across the city to serve a full range of age groups, ability levels, and interests. Other goals in Envision Cambridge include creating a connected network of high-quality open spaces that links all residents to local and regional natural assets, provides a range of activities and experiences, encourages social connections, and is inclusive of all people.

### **Discussion on Proposed Zoning**

By creating sweeping restrictions that limit the type and extent of surfacing that can be used in Open Space Districts, the Petition would have substantial impacts on the City's ability to plan and program Open Space. The Petitioners cite urban heat impacts as a consideration, which is an important factor that informs the City's open space planning. However, the Petition would also prohibit or severely restrict the following uses:

- Play courts such as basketball and tennis, including accessible play areas designed for people with disabilities
- Accessible pathways that accommodate active movement such as bicycling, running and walking
- Accessible plazas and seating areas that often require paved surfaces
- Active and passive recreation that uses permeable paving materials such as stone dust, like Fresh Pond Reservation

In addition to these potential planning conflicts, the approach of defining and regulating any type of paved area as a principal land use is an unprecedented application of zoning in Cambridge. One likely effect is that City attempts to plan or program open space for activities such as those listed above would require a use variance from the BZA, which, even if granted, would be vulnerable to

appeal. There are also likely to be unexpected consequences to classifying all paved surfaces more than 10' wide as a principal land use, which diverges from the typical understanding of what constitutes a principal land use. "Paved ways more than 10' wide" would exist on many lots throughout the city that are characterized by other principal land uses.

As a result of these two issues, a major concern with the Petition if adopted is that it would weaken any planning process conducted to establish goals, consider tradeoffs, and make decisions about the use of a public space in favor of a process adjudicated by the Board of Zoning Appeal and potentially the Massachusetts Land Court or Superior Court. Due to the nature of zoning processes, this would likely elevate the influence of abutting property owners, who have standing to appeal land use decisions, over the interests of the broader public that uses the park or open space. It could also result in extensive delays implementing improvements due to additional permitting and legal processes.