



To: Cambridge Planning Board

From: Community Development Department (CDD) Staff

Date: May 15, 2025

Re: Marasao, et al., Zoning Petition

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## Overview

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**Petitioner:** Mushla Marasao, et al. (group of 10 or more registered voters), represented by “Lubavitch of Cambridge, Inc.”

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**Zoning Articles:** 5.000 and 8.000, Sections 5.28.21, 8.22.1, 8.22.2, and Table 5.1

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**Petition Summary:** Remove gross floor area (GFA) and floor area ratio (FAR) limitations for religious uses, permit conforming additions to nonconforming structures without limitation for religious uses, and permit religious uses with the same dimensional limitations as residential uses except that in a Residence C-1 district permeable open space would not be required, buildings would be permitted up to 6 stories and 74 feet above grade without meeting inclusionary housing requirements, and buildings taller than 35 feet and 3 stories above grade would not be required to notify neighbors and hold a meeting.

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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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**Melissa Peters** | Acting Assistant City Manager for Community Development  
**Sandra Clarke** | Chief of Administration & Operations

## CDD Staff Report

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### Summary of Petition Facts

The zoning petition deals with dimensional requirements for buildings occupied by religious uses. Under the Zoning Ordinance, religious uses include places of worship, rectories and parsonages, convents and monasteries, social and recreation centers, and other uses with religious purposes.

The Zoning Ordinance sets different dimensional limitations for residential and non-residential uses. Since the Multifamily Zoning Amendments were adopted in February, 2025, residential uses are limited primarily by the number of stories above grade and total building height above grade. Non-residential uses are still limited primarily by height above grade and by floor area ratio (FAR), which limits the ratio of floor area to total land area of a lot. Both residential and non-residential buildings are subject to setback and open space requirements.

Currently, religious uses are primarily limited by maximum height and FAR, like other non-residential uses. The petition proposes a structural change to how dimensional requirements are applied so that religious uses would be regulated like residential uses. The effects of the proposed changes include:

- Religious uses would not be subject to FAR limitations.
- Religious uses would be allowed at the same heights as residential uses, which can be up to 6 stories (74-75 feet) in most of the city and 7-10 stories (85-120 feet) in other districts.
- Religious uses would have the same setback requirements as residential uses, which are less restrictive than for non-residential uses.

In the following ways, this Petition would set slightly different standards for religious uses compared to residential uses:

- Religious buildings are not subject to inclusionary housing requirements, but in Residence C-1 districts they would be permitted to be up to 6 stories above grade (74 feet), which is currently only allowed for residential buildings meeting inclusionary housing requirements.
- Religious buildings in Residence C-1 districts would still have a total minimum open space requirement, but would not be required to have a permeable open space and a private open space component as is required for other uses.
- Religious buildings would not be subject to the new requirement in Residence C-1 districts that a building greater than 3 stories and 35 feet above grade needs to notify neighbors and have a meeting to answer questions and get input before receiving a building permit.

## Background

### *Planning for Religious Uses*

Religious uses fall under the larger category of “institutional” land use, which also includes educational, health care, social services, and government uses. Institutional uses are primarily (but not always entirely) non-residential and are typically non-commercial in nature. In contrast, office, retail, and industrial land uses are non-residential and typically support commercial businesses.

Educational uses have been the primary focus of institutional planning in Cambridge, and to a lesser extent health care uses, given the large amount of land that those uses occupy in the city. Since at least the 1980s, the main principle of Cambridge’s planning and zoning has been to allow institutional uses the flexibility to grow while remaining within existing campus boundaries and not encroaching into residential neighborhoods. This goal is reflected in the latest comprehensive plan, *Envision Cambridge* (2019):

- “Higher Education Institutional Areas should grow primarily within their traditional core campuses, with more substantial campus additions adjacent to mixed-use areas and scaling down adjacent to traditional residential neighborhoods.”
- “The major institutions, including Lesley University, Harvard University, the Massachusetts Institute of Technology, other educational institutions, and hospitals, should be limited to those areas that historically have been occupied by such uses and to abutting areas that are reasonably suited to institutional expansion, as indicated by any institutional overlay district formally adopted by the City.”

These objectives are not easily applied to religious uses, which tend to be more distributed throughout the city and not located in “campuses” (with some exceptions). *Envision Cambridge* does not have much to say about religious uses, but includes the following statement as part of the “Access to Opportunity” goal:

- “Provide access to opportunities for all people regardless of differences. Cambridge should have opportunities open to all, regardless of demographic differences such as race, ethnicity, sexual orientation, gender identity, religious belief, or any other characteristic.”

*Envision Cambridge* also encourages the following: “Incentivize flexible publicly accessible indoor space in private and institutional developments, including community rooms and other community facilities.”

### *Religious Uses in Cambridge*

The attached map shows locations of religious uses in Cambridge. (This is based on data from the Assessing Department, which approximates but does not align precisely with land use designations for the purpose of zoning.) Religious uses are located in many parts of the city including residential neighborhoods, institutional campuses, mixed-use corridors, and commercial

areas. There is significant variation in the sizes of sites, but often religious uses are found on lots that are larger than typical for the neighborhood.

The construction of new buildings for religious use is relatively rare in Cambridge. The most recent notable example is a new LDS Church completed in 2009 at 65 Binney Street. That project was built as-of-right within the use, height, and FAR limitations of the Industry A-1 district. Other religious buildings tend to be much older, in many cases predating the enactment of the Zoning Ordinance. In recent years, a more common type of development has been the conversion of older, formerly religious buildings to residential use, of which there have been several examples over the past 20 years.

#### *Legal Protections for Religious Uses*

At the state and Federal level, there are laws that limit the degree to which a local community can regulate religious uses.

At the state level, the so-called “Dover Amendment” was adopted in 1950 and now is in Massachusetts General Laws Chapter 40A, Section 3. The statute reads: “No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.”

In 1979 (and later updated in 1981), the Massachusetts state legislature enacted home rule legislation allowing Cambridge to regulate institutional uses, including religious and educational uses, in certain zoning districts. This legislation is the basis of Cambridge’s Institutional Use Regulations (Section 4.50, see below).

At the Federal level, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) limits regulation of religious uses that would result in:

- A “substantial burden” on religious activities without a “compelling governmental interest” and a showing that the regulation is the “least restrictive means of doing so;”
- Unequal treatment of religious compared to non-religious assemblies and institutions;
- Religious or denominational discrimination;
- Total exclusion of religious assemblies from a jurisdiction; or
- Unreasonable limitation of religious assemblies.

The U.S. Department of Justice website provides information: <https://www.justice.gov/crt/place-worship-initiative-what-rluipa>

#### *Current Cambridge Zoning*

The Table of Use Regulations (4.30) explicitly permits the following religious uses:

1. Place of worship
2. Rectory, parsonage
3. Convent, monastery
4. Social or recreation center
5. Other use with religious purposes

These uses are generally allowed in most zoning districts. As an exception, the Institutional Use Regulations (IURs) in Section 4.50 were created, with authorization from the 1979 home rule legislation, to apply specific limitations to institutional uses within residential neighborhoods (areas currently zoned Residence C-1, since the Multifamily Zoning Amendments) based on whether a site is located inside or outside of a designated “Institutional Overlay District.” This policy reflects the longstanding planning goal stated earlier of limiting institutional uses to existing “campus” districts. Within an Institutional Overlay District, the IURs generally allow religious uses as-of-right, only requiring a special permit where it would replace a residential use. Outside of an Institutional Overlay District, the IURs allow religious uses as-of-right where the existing use is institutional, but do not allow religious uses where the existing use is residential and require a special permit where some other use exists.

During consideration of the Multifamily Zoning Amendments, staff pointed out to Council that because the IURs apply only in districts that set a minimum limit on lot area per dwelling unit, they would need to be amended in some way to address the removal of minimum lot area per dwelling unit limitations. That discussion has yet to happen. However, that is not directly relevant to this Petition, which only seeks to amend dimensional regulations for religious uses.

The Multifamily Zoning Amendments deliberately did not change dimensional regulations for non-residential uses, because their purpose was only to promote housing. Most substantive changes were intended to fall within the scope of the “Housing Choice” legislation of 2021, which encouraged zoning changes that allow multifamily housing as-of-right and relax dimensional limitations for housing but not for other uses.

#### *Harvard Chabad House Application*

The Petitioners appear to be affiliated with the Harvard Chabad House, a religious center operating at 38 Banks Street. That site was the subject of a Board of Zoning Appeal (BZA) case heard in 2024. The owner had proposed to expand the Gross Floor Area on the site with an addition, which required a special permit for the enlargement of the existing institutional use outside of an IUR, a variance for FAR exceeding the district limit, and a special permit for modifications to parking design and layout. The BZA granted special permits related to the use and parking, but denied the requested variance to exceed FAR limits. The variance denial has been appealed by the owner and the special permits have been appealed by neighbors. Additionally, the owners filed a lawsuit in federal court alleging that the City is in violation of RLUIPA. The owners and City have participated in the federal court’s mediation program and discussions are ongoing.

## Considerations

As noted earlier, there will need to be a broader discussion about zoning for institutional uses following the adoption of the Multifamily Zoning Amendments and their effect on the Institutional Use Regulations. Dimensional requirements for institutional uses should be part of that discussion, because they are essential to advancing the city's land use policies.

Religious uses could be treated as distinct from other institutional uses, because they are more dispersed within the city, occupy far less of the city than educational uses, and are developed or enlarged relatively rarely. There may also be a rationale for different treatment of religious uses based on the special limitations imposed by RLUIPA.

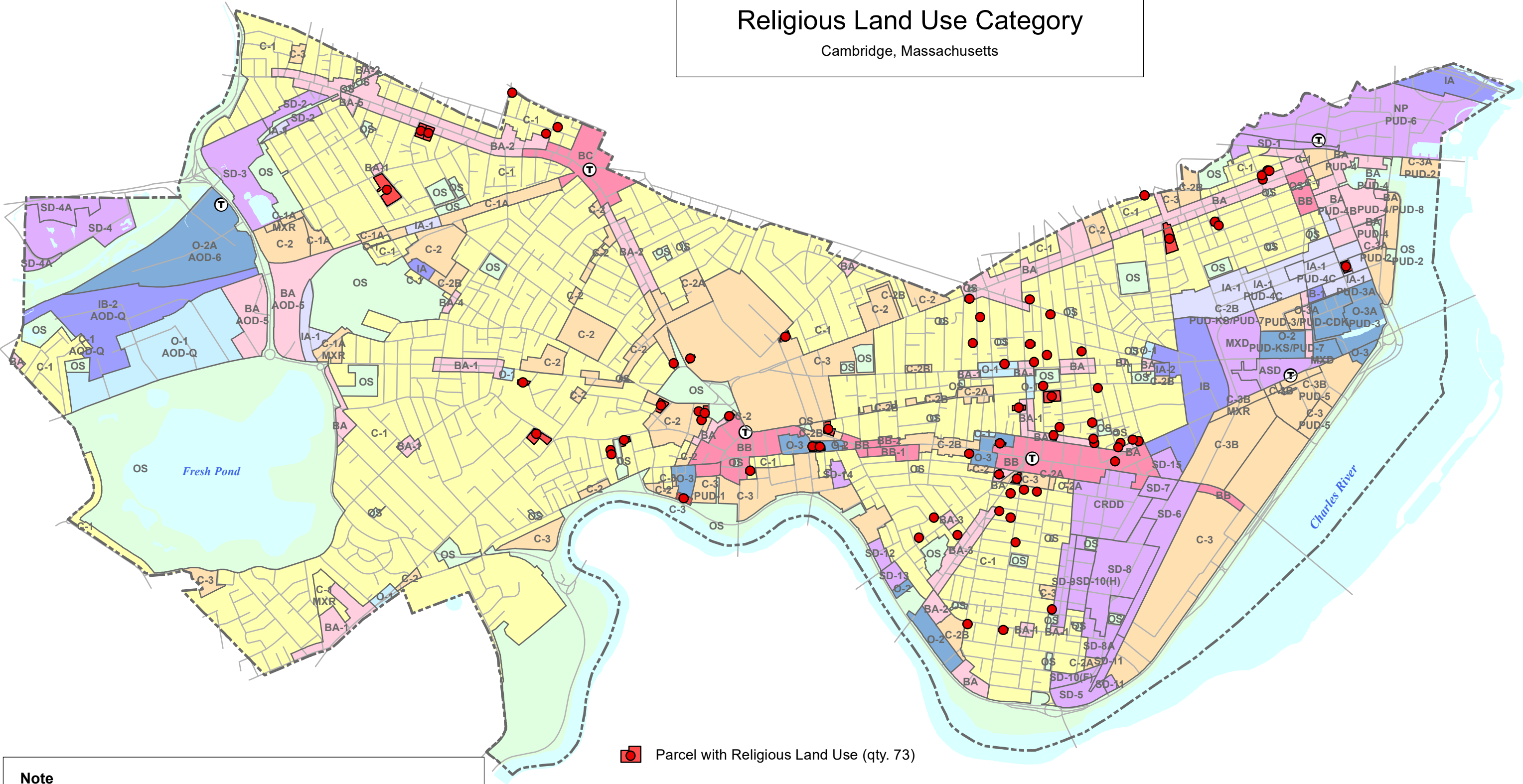
How exactly to regulate religious buildings dimensionally, and whether the Petition is a favorable approach to doing so, is an open question because there has not been a planning study focusing on religious uses. The following are some considerations that could be relevant.

- **Height concerns.** The impacts of additional height were discussed extensively during consideration of the Multifamily Zoning Amendments. Concerns about increased height in Residence C-1 districts were part of the rationale for limiting heights to 4 stories under normal base zoning and allowing 6 stories only as an incentive to support inclusionary housing. These concerns also led the Council to require neighbor notification for proposals above 3 stories in height. The same concerns about height are relevant to this Petition, which as proposed would permit 6 stories for religious buildings without necessarily providing affordable housing or requiring neighbor notification.
- **Precedent for non-residential uses.** Zoning reform for non-residential uses, similar to what was enacted for residential uses through the Multifamily Zoning Amendments, may be something the City wants to consider in the future. However, the considerations would be different because of the different planning issues involved. For example, one of the reasons why FAR limitations might be helpful for non-residential use is they are an effective way to regulate intensity of use, which is relevant for issues such as traffic. This may or may not be a concern for religious uses, but there should be a rationale for why religious uses are regulated differently from other non-residential uses in this respect. Otherwise, changing the way that religious uses are regulated in zoning could set a precedent for other institutional uses and for non-residential uses more broadly.



# Parcels in the Religious Land Use Category

Cambridge, Massachusetts



## Note

Land use categories reflect the principal use of each parcel. Parcels with buildings under construction are shown with the planned principal use of the parcel. Land use determination is based on Assessing data and is supplemented with information from building permits and Development Logs through July 1, 2024.