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CITY OF CAMBRIDGE  
COMMUNITY DEVELOPMENT DEPARTMENT

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Community Development

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Chief of Administration

To: Planning Board  
From: Jeff Roberts, Senior Manager for Zoning and Development  
Date: March 17, 2017  
Re: **Proposed Amendments to Section 8.23**

**Overview**

Section 8.23 of the Zoning Ordinance concerns the restoration or reconstruction of non-conforming structures damaged by fire, explosion or other catastrophe.

Current zoning allows such non-conforming structures to be restored, without requiring a variance, provided that the cost of restoration is less than half of the replacement value of the building at the time of the catastrophe, the construction occurs only within the existing building footprint, no non-conforming aspect of the structure is increased, and restoration is completed within 12 months of the catastrophe.

In response to a City Council Policy Order following the Wellington-Harrington fire that occurred in December, 2016, the City Manager provided revised zoning language for Section 8.23, which the City Council referred for hearing as a zoning petition (see attached Policy Order Response). The revised language would make the following substantive changes:

- Allowing any non-conforming structure to be restored or reconstructed as it existed (in terms of use, FAR, density, height, setbacks) as of right, even if the structure is mostly or completely destroyed.
- Providing that the allowance would not be available if a fire or explosion were deemed to have been caused intentionally or by arson. When the revisions were submitted to City Council, the City Manager suggested that the text could be clarified such that arson committed against the property owner would not necessarily disqualify this allowance.
- Allowing up to 24 months to restore or rebuild the structure. When the revisions were submitted to City Council, the City Manager suggested that the allotted time period may be extended to 30 months, and 36 months was suggested by members of the Council.

As with the current zoning, these revised provisions would be applicable citywide. The current and proposed text of Section 8.23 are provided on the following page, and the Policy Order Response that accompanied the petition is attached.

***Current Text of Section 8.23:***

If a nonconforming structure or use shall have been destroyed or damaged by fire, explosion or other catastrophe to such an extent that the cost of restoration would be less than fifty (50) percent of the replacement value of the building at the time of the catastrophe, such buildings or use may be rebuilt or restored and used again as previously. If a nonconforming structure or use shall have been destroyed, damaged, or caused to be moved as the result of a public taking, said structure or use may be relocated or reconstructed on the lot or on an abutting lot in the same ownership, provided that said relocation or reconstruction does not result in the enlargement of the nonconforming use or structure. Such rebuilding or restoring shall not require a special permit and shall be completed within twelve months after such catastrophe. The building as restored shall not be greater in volume, lot coverage, or floor space, and, if the yard requirements are not met, shall not extend further into the required yards than the original nonconforming structure. If destroyed to such an extent that the cost of restoration would exceed fifty (50) percent of such value, such building or use shall not be restored and may be replaced only by a conforming building or use.

***Proposed Text of Section 8.23:***

If a nonconforming structure or use shall have been destroyed or damaged by fire or explosion (except one that has been determined by the Cambridge Fire Department to have been caused intentionally or by arson) or other catastrophe, such buildings or use may be rebuilt or restored and used again as previously. If a nonconforming structure or use shall have been destroyed, damaged, or caused to be moved as the result of a public taking, said structure or use may be relocated or reconstructed on the lot or on an abutting lot in the same ownership, provided that said relocation or reconstruction does not result in the enlargement of the nonconforming use or structure. Such rebuilding or restoring shall not require a special permit and shall be completed within twenty-four (24) months after such catastrophe. The building as restored shall not be greater in volume, lot coverage, or floor space, and, if the yard requirements are not met, shall not extend further into the required yards than the original nonconforming structure.



February 13, 2017

To the Honorable, the City Council:

In response to Awaiting Report Item Number 16-102, regarding zoning and building code restrictions as they relate to rebuilding properties destroyed in the December 3<sup>rd</sup> fire and Awaiting Report Item Number 16-105, regarding what measures can be taken to rebuild the homes impacted by the fire that may be non-conforming with the current zoning code, please find attached a proposed zoning petition that would amend Chapter 8.23 of the Zoning Ordinance regarding non-conforming structures. I recommend that the City Council file the attached as a City Council zoning petition.

By way of background, this petition would address a provision of the Zoning Ordinance that has raised concerns with regard to the catastrophic ten-alarm fire that occurred during the afternoon of Saturday, December 3, 2016, in the Wellington-Harrington neighborhood. Eighteen (18) buildings sustained varying degrees of damage and over 140 residents were displaced. Several of the damaged buildings were uninhabitable as a result of the fire.

Many of the structures that existed in the area before the fire occurred were non-conforming structures, meaning they did not meet current zoning requirements. Therefore, under current zoning, several cannot be rebuilt as they had existed prior to the fire without obtaining a variance from the Board of Zoning Appeal.

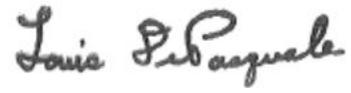
In general, zoning requirements allow for the transition of City neighborhoods to come into conformance with current zoning requirements with regard to allowed uses, density, and dimensional standards, as individual sites are redeveloped. However, the damage caused by the December 3<sup>rd</sup> fire was unprecedented in recent City history. The proposed zoning change will help to protect the existing character of a neighborhood in the wake of a devastating event such as the December 3<sup>rd</sup> fire, while still allowing for evolution of non-conforming properties toward conformance with current zoning requirements as other planned redevelopment occurs. It is important to note that there are certain building and safety code requirements that are governed by State law, and are not affected by any changes to the City's Zoning Ordinance.

With the new proposed language for Chapter 8.23 of the Zoning Ordinance:

- A non-conforming structure can be rebuilt as it existed (in terms of use, FAR, density, height, setbacks) as of right, if the structure was partially or wholly destroyed as a result of a fire or other catastrophic event.
- Up to 24 months to rebuild the structure is provided.
- The rebuilt structure must be within the same footprint as the previous building.

- All other applicable building and safety codes still apply.

Very truly yours,

A handwritten signature in black ink that reads "Louis A. DePasquale". The signature is written in a cursive, slightly slanted style.

Louis A. DePasquale  
City Manager

LAD/mec  
Attachment(s)