



CITY OF CAMBRIDGE, MASSACHUSETTS

# PLANNING BOARD

CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139

Date:	March 28, 2017
Subject:	Zoning Petition to Amend Section 8.23 – Reconstruction of Nonconforming Structure or Use Following Fire, Explosion or Other Catastrophe
Recommendation:	The Planning Board recommends ADOPTION, with suggested modifications.

To the Honorable, the City Council,

On March 21, 2017, the Planning Board held a public hearing regarding the City Council petition to amend Section 8.23 of the Zoning Ordinance, relating to the restoration or reconstruction of nonconforming structures that have been damaged or destroyed by fire, explosion or other catastrophe. The current provisions of Section 8.23 allow nonconforming uses or buildings to be restored as they were prior to such damage when the cost of restoration would be less than fifty (50%) percent of the replacement value of the structure, while the proposed provisions would allow non-conforming uses or buildings to be restored as they were regardless of the amount of damage, even if the building is completely destroyed. The Board heard from representatives of the City Manager's office, interested members of the public, and CDD staff.

The Board supports the intent of the proposal and appreciates the sense of urgency to provide relief to property owners and residents whose buildings have been impacted by fire. Ultimately, the Board believes it is within the policy-making purview of the City Council to determine whether nonconforming structures that have been destroyed should be allowed to be rebuilt to their pre-existing condition without a variance or special permit.

The Board does have suggestions for improvements to the zoning text as listed below. The Board recommends that these modifications be incorporated prior to adoption of the proposed amendment, provided they would not require the petition to be re-advertised. If a suggested modification is found to require re-advertisement, it might be considered as part of a future zoning petition.

- Clarify that the intentional destruction of a structure would not disqualify a property owner from the benefit of these provisions if the owner was not responsible for the damage. Consider replacing the parenthetical “(except one that has been determined by the Cambridge Fire Department to have been caused intentionally or by arson)” with

“(except one that has been determined by the Cambridge Fire Department to have been caused intentionally by or on behalf of the owner).”

- Revise the text to use defined terms used elsewhere in the Zoning Ordinance such as gross floor area, open space, and height, and clarify that buildings must be reconstructed within their existing footprint if that is the intent of the provisions. Also, the proposed zoning text uses both terms “building” and “structure;” if they are meant interchangeably, one consistent term should be used. Consider defining “other catastrophe.”
- Consider replacing “Such ...” at the start of the second-to-last sentence with the phrase “In such case, ...” and clarify that neither a special permit nor a variance would be required.
- Given the potential difficulty in completing a major restoration project within 24 months due to insurance and other concerns, consider restating the timing provision so that construction must commence within 24 months of the fire/catastrophe, then proceed continuously to completion.
- The Board is sympathetic to allowing those certain alterations to the reconstruction of a pre-existing structure that would have been allowed for an existing nonconforming use or structure, either as-of-right or by special permit, pursuant to Section 8.22. For instance, in some cases design alterations might be necessary in order to conform to current building code standards. If it is found that the proposed amended provisions of Section 8.23 would not allow the types of alterations currently allowed in Section 8.22, then the Board suggests that the Council consider proposing the allowance of such change by special permit as a future separate zoning petition, so as not to delay the adoption of the current petition.

Respectfully submitted for the Planning Board,

A handwritten signature in black ink, appearing to read 'H Theodore Cohen', with a long horizontal line extending to the right.

H Theodore Cohen, Chair.