

1/10/2016

Dear Honorable Mayor Simmons and Honorable Cambridge City Council,

On Thursday January 7, 2016 the City Clerk released the City Council agenda for January 11, 2016 wherein contained another response from the DPW, ISD, and Community Development Department ("CDD") regarding the "Barrett Petition." To date I have received no communication from either of these departments regarding the content, purpose, or even its existence. However I have read through its entirety and have rewritten Jeff Robert's "alternative proposal" and included a clear outline identifying what effect their alternative proposal would have, and why it should be dismissed in part. I have also included an amended version of this alternative proposal, which if adopted in place of the current citizen's petition before the council, would not undermine the intent, effect, and purpose of the original. The "Barrett Petition" means a lot to the home owners of the city of Cambridge. I truly appreciate the time and effort you have placed in it.

### **THE NUMBERS**

- 1) The "Barrett Petition" as written and passed to a second reading **would create exactly one thousand four hundred and sixty three (1463) potential units** of additional housing. **CDD's alternative version would reduce this number by one thousand and eighty (1080)**. Essentially this would gut the purpose of the petition and make the accessory apartment ordinance as ineffective as it is in its current state.
  
- 2) CDD and ISD have now stated numerous times that; "*...the State Sanitary Code requires a minimum basement or cellar height of seven feet for all habitable uses. Building permits cannot be issued for habitable space in basements with a height of less than seven feet.*"

**Response:** This is completely true and something I have also stated at multiple hearings. **What CDD, ISD, and DPW have not stated is that currently, in a single or two family home, you ARE able to obtain a building permit for non-habitable space at or below 6' 11"**. This includes the placement of bathrooms in basement spaces.

The "Barrett Petition" recognizes this obvious incongruity and pushes development in single and two family homes toward safer heights, better ventilation, legal habitable uses, and works to stop the gamesmanship currently at work with this word play discrepancy. **The proposed changes encourage the creation of more habitable spaces with proper height; they do not encourage the creation of sub-standard spaces with low ceiling heights.**

- 3) CDD has included in their alternative version the current two step calculation for determining lot eligibility for an accessory apartment. First, they have reinstated what is referred to as the "Lot Per Dwelling Calculation." This calculation uses a set number to determine how many units one can place on a parcel based on overall lot size. Secondly, for the purposes of zoning only, CDD recommends continuing the practice of counting an accessory apartment as a dwelling unit.

**Response:** The "Barrett Petition" removes the unit per dwelling calculation and increases the lot size to five thousand (5000) sqft which is the average lot size for one and two family homes in areas of the city that are not in RES-A, where the current ordinance exclusively applies. The reasoning behind this was simple; remove redundancy and create a simple guideline for home creation. The building code still applies and the "Barrett Petition" relies on and anticipates adherence. Under CDD's recommendations it is unclear if lot size would be calculated per unit, creating the odd result of requiring even more land. **I am simplifying the calculations, not eliminating them.**

- 4) CDD and ISD propose to limit accessory apartments in Two-Family homes. The reasoning behind this has been explained by both city departments as a way to avoid having to comply with restrictive building code requirements that may necessitate ADA and fire code compliance.

**Response:** The "Barrett Petition" anticipates building code compliance and welcomes it. I do not view this requirement as a negative and see it as part of the intent of my petition. **However, given that our current ordinance has a mediocre definition of Accessory Apartment, and for the purposes of zoning it could create some administrative and legal issues, I agree, for now, application of the "Barrett Petition" Part A should be limited to single family homes for the purpose of accessory housing creation. I do not agree that Part B should be limited to single family homes.**

- 5) CDD's proposed alternative would require two-family homes or larger to get a special permit for exemption of GFA in a basement space. **In their narrative CDD offers no reason or purpose for this change.**

**Response:** M.G.L. ch. 40A recognizes the difference between single and two family homes against all other structures in the commonwealth. Our building code has a separate section for single and two family home construction. This is in part why as a single or two family home owner, under the current code, you can renovate non-habitable spaces below seven feet ('7) by right. To force two family home owners to seek a special permit defeats the substantial gamesmanship currently at play in the city

and arbitrarily assigns an unduly restrictive process to a group already protected and recognized as being different by the law of the Commonwealth of Massachusetts. **Further, and I hope unintended, CDD's version would encourage the elimination of two family homes in favor of vastly more lucrative and rare single family homes. By exempting space in a single family home and not a two family you give an economically advantaged group a significant benefit and encourage developers to significantly decrease units throughout the city. I encourage the council to flatly reject this significant and seemingly arbitrary change.**

### **DESIGN and FLOODING**

- 1) The CDD recommended alternative preserves the "built prior to 1940" caveat of the current ordinance. Their reasoning behind this was recognize that older larger homes are more suited for accessory housing construction and that we do not want to encourage nor do developers tend to build structures that would accommodate such units. **This one change would reduce the amount of potential housing by one hundred and eighteen (118) units.**

CDD further states, "...the intent is to provide for more efficient use of existing, larger homes, rather than encourage new homes to be built with accessory apartments in them."

**Response:** First, CDD has made a false assumption. **I would be happy to see new homes built with accessory apartments incorporated into their designs from Day 1.**

Further, the "Barrett Petition" removes this requirement. It was arbitrary when created and is arbitrary now. It is important to note that CDD agreed with the "Barrett Petition" relative to the overall size of the home to which the petition would apply; **eighteen hundred (1800) sqft.** There is a bit of a contradiction here. It is odd to think that someone building a home in 1941 would have anticipated the addition of an accessory unit, while someone in 1939 would not. Both of those houses are equivalent in their designs, maintenance costs, space allocations, etc. In fact, the newer house might actually be better suited to hosting an accessory unit, since building materials, techniques, and standards increase over time. **An arbitrary cutoff date serves only to reduce the amount of new housing created, both by preventing existing, post-1940 homes from being updated and by preventing brand-new homes from being built with accessory apartments going forward.**

- 2) CDD proposes to restore **Section 4.22.1.5** that was previously deleted in the original "Barrett Petition." This section prohibits any alteration that would increase FAR beyond that permitted in the district or which would further increase an existing violation of FAR.

**Response:** Regarding single family homes, Section 4.22.1.5 directly contravenes state law. MGL Chapter 40A, Section 3- Subjects which zoning may not regulate; states that “No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building.” **The Cambridge Zoning Ordinance, by placing limits on the use of interior area, doesn’t comply with state law.** To be clear, in striking this section, we were not proposing to make these homes immune from all FAR requirements. Instead, I am proposing to make them immune from FAR requirements in cases where all the new FAR was being added INSIDE the existing home.

- 3) CDD requires for both Part A and Part B extensive pre-application work (engineers reports, applications and approvals by city engineer prior to seeking permits, etc.) CDD states, “[L]ittle can be done to avoid impacts on basement spaces when overland flooding occurs.” and “This type of flooding is already a problem in many parts of the City.”

**Response:** I reject both of these statements. **First, proper building techniques can minimize or completely eliminate damage due to overland flooding. Secondly fewer than 100 homes are located within the current 100-year Flood Plain**

Single and two-family homes tend to be predominantly inhabited by the home owner. These types of caveats are extremely expensive and cost prohibitive to the home owner especially considering the overbearing requirement to seek approval and apply simply for the privilege of being able to seek approval and apply for a permit. **The process is duplicative, costly, and sets a burden so high as to undermine the intent and purpose of this petition.**

- 4) CDD suggests requiring home owners to install backflow protections and storm drain connection even where none currently exists on city property.

**Response:** Backflow protection should be required if plumbing fixtures exist at a level below the sewer line. However, adding a storm drain connection, even when no storm drain exists in the street, is extremely cost prohibitive, especially for 1- and 2-family homeowners. **This is a ridiculous requirement, was never required as part of the Basement Apartment Overlay District created for Lesley college, and is yet another restriction that would make using one's own home so costly as to be essentially a complete block.**

- 5) CDD suggests prohibiting basement space or accessory apartments in basements within current flood zones.

**Response:** I completely agree. Approximately 70 Cambridge homes fall within the 100-year flood zone (Zones A or AE), mostly located along Route 16 in North Cambridge. These homes already fall within the **FLOOD PLAIN OVERLAY DISTRICT** which requires a special permit for most types of construction, but 1-, 2-, and 3-family homes are currently exempt from these special permit requirements under Section 20.73.1. **Most of these homes are located on very small lots that would not meet the other requirements of the expanded accessory apartment ordinance, so they are unlikely to qualify for accessory units. Regardless, it doesn't make sense to add basement space in these homes.**

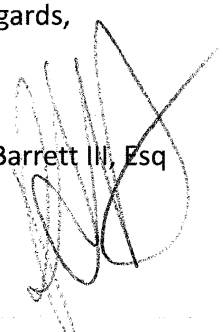
6) CDD suggests requiring an additional parking space per accessory unit created.

**Response:** Parking has been elevated to almost a religious conversation. You either believe in it or you do not. Our most recent study on the subject seems to suggest that over seventy percent of the residents prefer other means of transportation. The "Barrett Petition" is about housing, it is about flexibility, and it is about home owners. I did not put this forward to preserve an antiquated notion that celebrates parking above all else. **However, the process for creating an accessory apartment requires a special permit. Thus, in any given scenario it will be up to the Board of Zoning Appeal to determine on a case by case basis, with neighborhood input, whether or not a parking spot is required. I reject CDD's requirement.**

I thank you for your attention and patience. Attached is the revised version of CDD's alt proposal. I believe my original proposal is as sound and as viable as the version I am now proposing, however I want to be reasonable, respect the intent and concerns of city staff, but continue to advocate for what I know is to the benefit of every homeowner in this city. Should you choose to forward this amended version it would have the exact same effect as my original petition, but for the exclusion of two family homes.

Fondest Regards,

Patrick W. Barrett III, Esq

A handwritten signature in black ink, appearing to read 'Patrick W. Barrett III', is written over the typed name. The signature is stylized and somewhat messy, with overlapping loops and lines.

Barrett Suggested Modifications to CDD Alt Proposal to Barrett, et al., Zoning Petition

1. Retain the current definition of Accessory Apartment in Article 2.000:

**Accessory Apartment.** An accessory use with one or more rooms with separate kitchen and bathroom facilities, constituting a dwelling unit, located within and under the same ownership as a single family detached dwelling and designed for the occupancy of a single family.

2. Amend Section 4.22.1 consistent with the overall intent of the original petition, but to limit the scope to single family dwellings and to include provisions for basement housing units.

4.22 **Accessory Apartments.** The purpose of this Subsection 4.22 is to allow for the creation of accessory apartments in all districts. Many existing large single family homes are underutilized. alteration of these homes to provide additional dwelling units would be prohibited in most cases due to the existing floor area ratio and/or lot per dwelling unit requirements of Subsection 5.31. Given contemporary life styles, flexibility in the use of such dwellings without substantially altering the environmental quality of their surrounding neighborhoods. This Subsection 4.22 gives the Board of Zoning appeal authority to relax such requirements in certain instances enumerated below.

4.22.1 In all districts the Board of Zoning Appeal may grant a special permit for the alteration of a single family, detached dwelling legally as of the effective date of this Ordinance to provided one accessory apartment if the following conditions are met.

1. The dwelling was constructed prior to 1940, and The dwelling has not been substantially enlarged since that date. The addition in the aggregate of two hundred and fifty (250) square feet or more of gross floor area shall be considered a substantial enlargement.
2. Prior to alteration, the dwelling contains at least one thousand eight hundred square feet of gross.
3. The lot on which such accessory apartment is located contains at least five thousand (5000) square feet. The accessory unit shall **not** be included in calculating the lot area per dwelling unit.
4. Such accessory apartment shall not occupy more than nine hundred (900) square feet or thirty-five percent of the gross floor area of the principal dwelling, whichever is less, and shall not be located

**Comment [SCL1]:** This is the same as the Alt Version, I agree with limiting the scope to Single Family homes for Accessory Apartments...for now.

**Comment [SCL2]:** No change.

**Comment [SCL3]:** This section is largely the same but for striking out "existing" from the Alt version. Reason: I do not agree with the reasoning offered by CDD that a home built prior to 1940 is anymore suited than a home built today or beyond for an accessory apartment. The idea that we do not want to encourage this type of development in future homes is directly against the intent of this petition.

**Comment [SCL4]:** No Change.

**Comment [SCL5]:** Strike through on caveat for "existing" homes as this greatly reduces the impact of the intent and is too restricted on the scope of the change. Further I do not accept that "250 sqft" represents a significant enlargement but have left that language unchanged.

**Comment [SCL6]:** I agree with the lot size calculation but no not agree, that for the purposes of zoning an accessory apartment be included in the lot per dwelling calculation. To include this caveat reduces the housing potentially created by this petition by nearly 1000 units. It is also a redundant calculation for the purposes of zoning.

in a garage.

**Comment [SCL7]:** No change.

5. Any alteration which would increase the floor area ratio beyond that permitted in the district of which would further increase an existing violation of the applicable floor area ratio shall not be permitted.

**Comment [SCL8]:** No change.

6. Where an accessory apartment is created in a basement or cellar, the following additional requirements shall apply.

a. Dwellings 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.

**Comment [SCL9]:** No change.

b. Adequate, properly installed, backflow prevention devices that comply with all building code and other applicable requirements must be installed for all dwelling units located in a basement or cellar.

**Comment [SCL10]:** No change.

c. A special permit granted pursuant to this Section shall be conditioned upon full compliance with all applicable building and sanitary code requirements to be approved by the Superintendent of Buildings at the time of application for a building permit. As a condition of the special permit, the BZA may require reasonable measures as are deemed necessary for the adequate health, safety and privacy of the occupants.

**Comment [SCL11]:** No change.

d. An application for a special permit to create an accessory apartment in a basement or cellar shall include a report on historical occurrences and future likelihood of basement flooding in the area of the property, 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 and identify proposed mitigation, if any, from the City Engineer prior to submitting a special permit application. As a condition of the special permit, the BZA may require preventative measures to safeguard against future flooding of the accessory apartment as recommended by the City Engineer.

**Comment [SCL12]:** Completely strike this change due to it being unduly burdensome on the home owner. This would require that prior to application an inordinate amount of money be spent to receive assurances unlikely to be given. This wasn't require for the Basement Apartment Overlay and shouldn't be required for private home owners especially considering the reduction in scope from one and two family homes to single family only. Further M.G.L Ch 40a Sec 3 prohibits this type of regulation through zoning.

e. A special permit shall not be issued for a basement or cellar accessory apartment if the property falls within a special flood hazard area designated as a Zone A or AE on the Middlesex County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program.

**Comment [SCL13]:** I suggested that apartments not be built within flood zones, but this paragraph is overly prescriptive and would overburden the homeowner. Further, if you limit the application of accessory apartments to single family homes only as suggested there is significantly less need for this paragraph. Further, the Basement Apartment Overlay has no such provision.

In granting a special permit the Board may impose such conditions, including requirements for off street parking and limitations on accessory uses of the premises, as it may deem appropriate to avoid detriment to the neighborhood or to nearby persons or property. The Board of Zoning Appeal shall evaluate each special permit application which involves exterior changes with the appearance of and character of the neighborhood and may require that there be no change or minimal to any face of a building orientated toward a public way or visible from a public way.

No certificate of occupancy shall issue for any dwelling which contains any such basement or cellar dwelling units until the City Engineer has certified that all the requirements of Section 4.22.1 (a) and (b) have been fully complied with and the Superintendent of Buildings has certified that all requirements of this Section have been fully complied with.

**Comment [SCL14]:** No Change.

4.22.2 The requirement for an off street parking space specified in Article 6.000 shall **NOT** apply for the addition of one accessory apartment in a single family, detached dwelling.

**Comment [SCL15]:** I do not agree that we should be requiring parking spaces for accessory apartments. No evidence is presented by CDD that additional parking be required, further the latest impact study of residential parking suggests that demand for such parking spaces is much less than previously thought. Further a requirement for parking would further eliminate the potential number of units created. The whole process is subject to a Special Permit, thus if deemed necessary the BZA could require a parking space through the issuance of a Special Permit.

## PART B

3. Amend the definition of Gross Floor Area in Article 2.000 by adding (15) as follows:

### Gross Floor Area shall include:

- [...]
- (f) basement and cellar areas not excluded in (1), (3), (9), and (15) below;
- (g) area of parking facilities in structures except as excluded in (2) below; and
- (h) any accessory parking spaces not in above ground structures if in excess of the maximum number permitted on the premises as set forth in Section 5.25 and 6.30.

**Comment [SCL16]:** No change.

### Gross Floor Area shall not include:

- (1) area used for off street parking
- (2) area of parking facilities in structures located underground and area of on grade parking spaces outside the building footprint at or below the maximum number permitted on the premises as set forth in Sections 5.25 and 6.30;
- (3) basement and cellar areas devoted to operations and maintenance of the building such as heating and cooling equipment, electrical and telephone facilities, and fuel storage;

[...]

**Comment [SCL17]:** This is the same as the current ordinance and was never altered by my petition.

- (9) basement and cellar spaces with less than seven (7) feet of ceiling height measured from the floor to the line of the bottom of the floor joists, or to any subfloor or finished surface above any floor joists



that are spaced no less than four (4) feet on center, and further provided that the basement or cellar is not a Story Above Grade as defined in the State Building Code.

[...]

(15) Any basement or cellar living space in any single-family or two-family home.

4. Create the following Section 5.29 in Article 5.000:

**5.29** General GFA Exemption for Basement or Cellar Spaces. Any basement or cellar space that meets the definition of Gross Floor Area (GFA) in Article 2.000 of this Zoning Ordinance, and is not otherwise exempt as-of-right from GFA or FAR limitations, may be exempted from GFA and/or FAR limitations upon issuance of a special permit by the Board of Zoning Appeal (BZA). Prior to granting a special permit pursuant to this Section the BZA shall determine that the following requirements have been met along with the general special permit criteria in Section 10.43; prior to the issuance of a certificate of occupancy the City Engineer shall certify that all requirements of Section 5.29 (b) and (c) have been fully complied with, and the Superintendent of Buildings shall certify that all requirements of this Section have been fully complied with:

- a. Any exempted basement or cellar GFA shall comply with all applicable building, health, and accessibility codes. A special permit granted pursuant to this Section shall be conditioned upon full compliance with all applicable building and sanitary code requirements to be approved by Superintendent of Buildings at the time of application for a building permit. As a condition of the special permit the BZA may require reasonable measures as are deemed necessary for the adequate health, safety and privacy 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 along with any additional measures recommended by the City Engineer and required by the BZA as a condition of the special permit must be installed for all exempted basement or cellar GFA.

d. An application for a special permit pursuant to this Section shall include a report on the historical occurrences and future likelihood of basement flooding in the area of the property, 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 or cellar by way of sewer system backups or overland flooding and identify proposed mitigation to prevent 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. The City Engineer may recommend and BZA may require as a condition of the special permit, preventive measures to safeguard against future flooding of the exempted basement and cellar GFA.

**Comment [SCL19]:** No change.

**Comment [SCL20]:** I have added "Two-Family Home" back to comply with the original petition. Part of the intent of this petition was to recognize that the building code recognizes a difference between one and two family homes from all other building types. There is no reason by CDD given to remove two-family homes and as such should not be arbitrarily omitted. Far greater good will come to families of this city if two-families are included. They cannot put units down there but there are a host of other invaluable uses that shouldn't be excluded.

**Comment [SCL21]:** This is the same caveat that I struck in Part A. This is redundant and an unnecessarily burdensome requirement. Further, it renders CDD's objection exemption under Part B in section 2.000 moot. A requirement to provide a special report for approval prior to application for a special permit to which the project is the subject is duplicative, costly, and unnecessary given sections (a)-(c).

e. A special permit shall not be issued pursuant to this Section if the property falls within a special flood hazard area designated as Zone A or AE on the Middlesex County Flood Insurance Rate Maps (FIRMs) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Plain Insurance Program.

**Comment [SCL 22]:** Stricken as overly burdensome and duplicative of covenants already enumerated.