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Carol O'Hare

From: Carol O'Hare [cbo1066@gmail.com]
Sent: Monday, November 23, 2015 2:23 PM
To: Cambridge City Council
Cc: Richard Rossi; 'Lopez, Donna'
Subject: City Council: "Accessory-Apartments & Basement-Space"/BarrettAmendment Petition - Not Ready for Prime Time! - City Manager's Agenda #3, Mon. 11/23/15
Importance: High

Dear Mayor Maher, Vice Mayor Benzan and City Councillors:

As a formality for the record, below is another copy of my communication to you in your capacities as the Ordinance Committee.

As you know, at your Ordinance Committee hearing last Thursday, 11/19, Mr. Barrett first publicly presented his proposed revisions to his Zoning Amendment Petition. As I understood him, those revisions would, among other things, have removed the owner-occupancy requirement for conversions of single-family to 2 residential units. He said that his revisions addressed "a resident's" previously expressed concerns (I believe that's me) about the enforceability of his proposed owner-occupancy requirement.

Certainly, dropping the owner-occupancy requirement eliminates that particular concern because there's nothing left to enforce. But, it's tortured reasoning to assert that that addresses the problem. Indeed, it obviously creates a new concern that, with no such restriction, more single-family residences may be converted throughout the city and with disparate effects.

Frankly, I can't keep up with the Barrett Zoning Amendment Petition, and I believe others can't either.

So, I again urge you to follow the Planning Board's recommendation and refer this to the just-initiated Master Planning Process for appropriate review and vetting. And, I hope that will be done without punting to the BZA or the Planning Board for case-by-case approval or denial determinations, which are burdensome for the Boards and for the public. And, what's worse, the outcomes of such hearings and proceedings may be disparate and variable.

Thank you for your time and attention.

Sincerely,

Carol O'Hare
 172 Magazine St.

Cc: Donna Lopez, City Clerk, for filing with the Official Record

From: Carol O'Hare [mailto:cbo1066@gmail.com]
Sent: Thursday, November 19, 2015 9:27 AM
To: Dennis Benzan (dbenzan@cambridgema.gov); 'dcarlone@cambridgema.gov'; 'Cheung, Leland'; 'Kelley, Craig'; 'nmazen@cambridgema.gov'; 'mmcgovern@cambridgema.gov'; 'Denise Simmons'; Timothy Toomey (ttoomey@cambridgema.gov)
Cc: David Maher (dmaher@cambridgema.gov); 'Lopez, Donna'
Subject: Ordinance Committee: "Accessory-Apartments & Basement-Space"/BarrettAmendment - Not Ready for Prime Time! - Hearing, 2 p.m., Thurs., 11/19/15

Dear Chairmen Benzan and Carlone and Members of the Ordinance Committee:

Below is another copy of my 10/26 "Quick Take" on the Barrett Amendment for your review before your 2 p.m. hearing today.

At their hearing, Planning Board Chairman Cohen reiterated my take on the proposed Barrett Amendment: "It's Not Ready for Prime Time." As the Planning Board's recommendations and others' public comments made clear, there's no quick-fix for the certain, consequential problems of adopting this city-wide zoning amendment outside the finally, just-initiated Master Planning process. Among other problems, there's basement-flooding, exacerbation of parking demand in packed residential neighborhoods, unanalyzed impacts and likely randomness of special-permitting the exclusion of basement space throughout the City from FAR calculations, and serious enforceability concerns. See <http://www.cambridgema.gov/CDD/zoninganddevelopment/Zoning/Amendments>.

Thank you for your time and attention.

Sincerely,
 Carol O'Hare
 172 Magazine St.
Cc: Donna Lopez for filing with the Official Record

From: Carol O'Hare [mailto:cbo1066@gmail.com]
Sent: Monday, October 26, 2015 11:55 AM **To:** Liza Paden **Cc:** [CDD personnel & Petitioners]

11/23/2015

Subject: Planning Board: "Accessory-Apartments & Basement-Space" Zoning Amendment - Not Ready for Prime Time!...

Dear Mr. Cohen, Chair, Ms. Connolly, Vice Chair, and Planning Board members:

My Quick "Take": Policy-wise, substantively and procedurally, the "Barrett" Amendment is not ready for prime time.

I've only briefly reviewed the "Barrett" Zoning Petition and had an email exchange with Doug Brown, one of the Petition's drafters, and I have concerns. The Petition seeks (i) to expand and liberalize property owners' ability to add or create accessory apartments in their existing and newly built 1- and 2-family residences and (ii) to exclude some basement spaces used for residential purposes from Zoning FAR calculations.

I understand and appreciate that one laudable goal of the proposed amendment (Amendment) is to encourage, ease and speed the development of additional rental housing, but, trite as it is, the devil is in the details. So, my three examples below illustrate that, although this proposed amendment (Amendment) would encourage more rental apartments, it would create obvious and subtler, serious problems, some of which would not really become evident until it's too late to address them.

1. The Amendment is based on Mass. Executive Office of Energy and Environmental Affairs' Model Bylaw for Accessory Dwelling Units (the "Model Law"). But, it omits a number of the Model's significant, protective provisions for assuring that this owner-occupancy requirement is maintained after the initial owner vacates. http://www.mass.gov/envir/smart_growth_toolkit/bylaws/ADU-Bylaw.pdf.

The Amendment requires: "The owner(s) of the residence in which the accessory apartment is created must continue to occupy at least one of the dwelling units as their primary residence [and p]rior to issuance of a building permit, the owner(s) must submit a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence."

a. Jeff Roberts observed in his 10/21/15 Memo: "Enforcement of the owner-occupancy restriction would be a challenge, particularly in cases where an owner creates an accessory apartment but then decides to sell the property in the future. For instance, if a future owner decides not to occupy the unit and to rent the principal and accessory units separately, it would not necessarily require zoning review and would be difficult to remedy if it were discovered after-the-fact. Requiring owners to move in (and tenants to move out) or to somehow remove the accessory unit might not be practical or desirable."

b. The Amendment establishes no consistent or reliable method for assuring that owner-occupancy in one of the dwelling units is continued by future property owners, including estates or heirs (after owner-occupants have died) or buyers in a foreclosure sale. While the drafters' approach may encourage conversions or constructions of accessory apartments, because of their concerns about simplifying the process, the long-term goal of maintaining owner-occupancy will predictably be at least blunted.

c. Totally inadequate, complaint-driven enforcement actions (if initiated) might make life somewhat miserable temporarily for a particular absentee owner, but I can't imagine any more wide-ranging effect.

d. Compare the Amendment with the Model Law, which provides several mechanisms for assuring continued owner-occupancy, including initially recording with the appropriate Registry of Deeds or Land Court the original owner-occupant's commitment to reside in one of the units. See applicable sections of the Model Law, including Comments & Recommendations, in the **References** section below. Through the Model Law's recording requirement and subsequent, appropriate filings when property ownership changes, the original commitment for owner-occupancy would more assuredly be continued by subsequent owners.

2. The Petition requires **no off-street parking** to be provided for Accessory Apartments. Mr. Roberts also mentioned this as a potential concern. Remembering the Cambridgeport residents' deluge of objections and protests after a Hubway bike dock was installed in former parking spaces abutting Dana Park, I'd guess that the Amendment's no-parking requirement would cause much more distress in this tightly packed city than it would in the suburban towns that could better handle such an exemption.

Our Zoning Ordinance's existing "Accessory Use Apartment" provision requires accessory off-street parking in Residence A neighborhoods that likely have capacity to provide it. Even though we might wish it not so, eliminating the off-street parking requirement while expanding the areas in which these accessory apartments are permitted, without any review of the ramifications in a particular case, is likely to create disharmony in jam-packed neighborhoods of the City where parking has become a major headache. This too will only become evident well after-the-fact.

The Model Law has this comment and recommendation:

COMMENT: The accessory dwelling unit may result in demand for extra vehicle parking; however, the number of additional vehicles associated with the property may be minimal due to the limited size of the unit. The typical requirement is for one additional on-site parking space for the accessory dwelling unit.

RECOMMENDED POSITION: Require one additional parking space and consider allowing a waiver when transit is a reasonable option."

3. The Amendment would assign to the already over-burdened Board of Zoning Appeal yet another discretionary responsibility: Authorization, by special permit, to **exclude basement and cellar "living space" from FAR calculations** for all buildings, other than 1- and 2-family residences whose basement space the Amendment would automatically exclude from FAR calculations.

- To grant such a special permit, the BZA must be able to make a finding that the proposed residential uses of such basement space "support the character of the neighborhood or district in which the applicable lot is located."
- But, must the BZA also make the other "special permit" findings? See Zoning Ordinance §10.43, quoted in the **References** section below? If not, this is a pretty wishy-washy standard.

the traffic and parking generated from such uses and the increase in developable structures could significantly impact the wider neighborhood, depending on the square footage of the basement area. The "special permit" outcome may also depend on which group of BZA members may hear a particular case, whether an applicant has knowledgeable representation and a range of other variables.

Thank you, as always, for your service, time and attention.

Sincerely,
Carol O'Hare
172 Magazine St.

References

Barrett Zoning Amendment materials:

http://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/Amendments/2015/Barrett/zngamend_barrett_petitiontext.pdf

CDD 10/21/15 Memo re Barrett Zoning Amendment:

https://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/Amendments/2015/Barrett/zngamend_barrett_cddmemo_20151021.pdf

Model By-Law for Accessory Dwelling Units (ADU): http://www.mass.gov/envir/smart_growth_toolkit/bylaws/ADU-Bylaw.pdf

Model ADU: Some Relevant Provisions & Comments

Approval for an ADU requires that the owner must occupy one of the dwelling units.

3. ...The zoning approval and the notarized letters required in 04.4 and 04.5 below must be recorded in the County Registry of Deeds or Land Court, as appropriate, in the chain of title to the property, with documentation of the recording provided to the Building Commissioner, prior to the occupancy of the accessory dwelling unit.

4. When a structure, which has received a permit for an accessory dwelling unit, is sold, the new owner(s), if they wish to continue to exercise the Permit, must, within thirty (30) days of the sale, submit a notarized letter to the Building Commissioner stating that they will occupy one of the dwelling units on the premises as their primary residence, except for bona fide temporary absences.

COMMENT: Some municipalities include a provision in the bylaw/ordinance stating that the zoning approval or Special Permit for the accessory dwelling unit will lapse if the owner no longer occupies one of the dwelling units. This adds unnecessary administrative burden on the municipality. Provided that similar circumstances prevail, a change of ownership should not automatically result in a permit lapse.

5. Prior to issuance of a permit, the owner(s) must send a notarized letter stating that the owner will occupy one of the dwelling units on the premises as the owner's primary residence, except for bona fide temporary absences.

COMMENT: Some bylaws/ordinances specify time periods for which the owner must occupy the dwelling in any given year, however, enforcement of this adds unnecessary administrative burden on local officials.

6. Prior to issuance of a permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.

COMMENT: This is to demonstrate that the accessory dwelling unit will not significantly affect the appearance of the single-family dwelling.

05.0 Administration and Enforcement

COMMENT: Cities and towns need to examine their development review processes to find ways that the review process can be streamlined so homeowners are encouraged to use the accessory dwelling unit ordinance. It is recognized that most towns have existing illegal accessory dwelling units, and if a town is to encourage homeowners to legalize the existing units or create new accessory dwelling units under this bylaw, the process should be made as straight forward as possible. Making the process simple for the homeowners while still imposing all reasonable requirements for accessory dwelling units helps reduce the administrative burden on municipalities.

COMMENT: Some towns require annual notarized letters attesting to the conditions of the accessory dwelling unit (owner-occupancy and any restriction on tenancy). Some bylaws require annual renewal of the permit.

RECOMMENDED POSITION: No requirements for annual compliance or renewal are recommended. This places unnecessary burden on local officials. Using change in ownership as the trigger for renewal of the accessory dwelling unit is preferable. [Emphasis added.]

Cambridge Zoning Ordinance §10.43 - Special Permit Criteria:

"Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because: (a) It appears that requirements of this Ordinance cannot or will not be met, or (b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and (f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30."