



---

## CITY OF CAMBRIDGE

Community Development Department

---

**IRAM FAROOQ**

Assistant City Manager for  
Community Development

**SANDRA CLARKE**

Deputy Director  
Chief of Administration

**KHALIL MOGASSABI**

Deputy Director  
Chief Planner

To: Yi-An Huang, City Manager

From: Iram Farooq, Assistant City Manager for Community Development  
Nancy E. Glowa, City Solicitor

Date: March 20, 2023

Re: Council Order O-3 of 3/6/2023, related to the Barrett, et al., Zoning Petition

---

We submit the following in response to Council Order O-3 of 3/6/23, which requests that CDD provide language that would propose amendments to the Patrick Barrett et al. North Mass Ave BZ-5 Zoning District Petition (the "Petition") to include the amendments proposed by the Petitioners. For reference, CDD staff have reviewed the so-called Letter of Commitment dated February 24, 2023 (the "Letter of Commitment"), which sets forth commitments that the developer North Cambridge Partners LLC (the "Developer") of the project proposed to be located in a part of the proposed BA-5 Zoning District at 2400-2414 Massachusetts Avenue in Cambridge (the "Project") has made to "abutting neighbors of Alberta Terrace, Cedar Street, and Harvey Street" (the "Neighbors") of the Project, and also reflects the Petitioners' proposed amendments to the Petition that were presented by the Petitioners to the Ordinance Committee on February 28, 2023. CDD Staff have also addressed some of the practical issues raised in the CDD memorandum dated December 13, 2022. A redlined version of the Petition with CDD's recommended amendments to the Petition is attached and discussed further below.

### **I. Summary of Amendments to Zoning Text**

#### **A. Changes in Letter of Commitment**

The following amendments are proposed by the Developer in Section 2c. of the Letter of Commitment:

- i. Amend footnote 1 to increase the distance from the residential district in the second sentence to fifty feet (50') from thirty-five feet (35').
- ii. Amend footnote 4 to read "All ground floor retail spaces may be exempt from FAR calculations by special permit only, provided that the retail does not front a residential district."
- iii. Prohibit lab uses.

The first two proposed amendments would be incorporated into footnotes to the Table of Dimensional Requirements for the proposed new BA-5 Zoning District. They modify footnotes included in the original Petition. Because modifications that alter the fundamental character of the original Petition are not legally permitted, the Council

must determine whether these proposed changes would alter the fundamental character of the original Petition.

Because prohibiting laboratory use in this area was not a component of the Petition as originally advertised, the third proposed amendment also raises the question of whether such a change would impermissibly alter the fundamental character of the original Petition, which the City Solicitor addresses below. That amendment could be accomplished by amending the cell in Section 4.34 of the Table of Use Regulations next to the row heading “f. Technical office for research and development, laboratory & research facility subject to the restrictions in Section 4.21m” and below the column heading that contains “Bus A-5” to read “Yes <sup>62</sup>”; and by adding a new footnote “62” to the end of Section 4.40 to read “62. Not permitted in a Business A-5 district.” However, given the concerns raised in the City Solicitor’s opinion, we have not included that change in the redlined version of the Petition so that it can be considered separately by the Council.

#### *B. Changes for Clarity and Consistency*

Separate and apart from the proposed amendments to the Petition that are proposed in the Developer’s Letter of Commitment, CDD staff recommends some proposed amendments to the Petition to improve the overall construction of the zoning text. CDD has therefore added those recommended changes to the Petition in the attached redlined draft of the Petition. For example, as noted in the earlier December 13, 2022 CDD memo, overlay zoning is intended to modify base zoning, so it is confusing that the Petition includes provisions in the base zoning that modify or supersede overlay zoning. The preferred approach would be to amend overlay zoning directly, and CDD has thus made proposed amendments to the attached redlined draft of the Petition that would address that. Other changes are suggested by CDD for consistency with other parts of the Zoning Ordinance.

## **II. Other Issues**

Some commitments made by the Developer in its Letter of Commitment and discussed at the Ordinance Committee meeting on February 28, 2023, while related to zoning, are not proposed as amendments to the Petition and are therefore not before the Council for its consideration in connection with the Petition and any proposed amendments thereto. Moreover, these proposed commitments relate only to the Developer’s Project and are discussed below to ensure that the Council has a clear understanding that while the Developer has made these proposed commitments in the Letter of Commitment if the Petition as amended is adopted, the proposed commitments do not involve the City, will not be part of the Zoning Ordinance, and will not be enforceable by the City.

#### *A. Parking*

The Developer commits in its Letter of Commitment (Paragraph 2d.) to a 1:1 parking ratio for the Project. However, we note that no minimum parking is required by zoning per the citywide zoning amendment adopted by the City Council in 2022.

#### *B. Project Review*

The Developer commits in its Letter of Commitment to “to conduct and perform all studies and narratives required by Article 19.24 and to make those studies available upon request to the Neighbors.” Such studies will be required by zoning for projects of at least 50,000 square feet of Gross Floor Area that will require a Project Review Special Permit from the Planning Board. If those studies are not required, they could be made available to neighbors voluntarily but would not be subject to any required review or certification by City staff. Under the current BA-2 zoning, a Project Review Special Permit is required for developments of at least 20,000 square feet.

While a Construction Management Plan typically covers some of the topics listed in Paragraphs 2h. and 2j. of the Letter of Commitment and often is included as a condition of a Project Review Special Permit (see Section 18.20 of the Zoning Ordinance), the Developer agrees in the Letter of Commitment to such a condition even for projects that do not need a special permit.

In the Letter of Commitment, the Developer also agrees that because the Massachusetts Avenue Overlay District is an Area of Special Planning Concern, the Developer will have a public advisory review meeting regardless of whether a special permit is required in connection with the Project.

#### *C. Sustainable Design and Development*

The Developer commits in its Letter of Commitment to “follow the regulations of Article 22 (Sustainable Design and Development)”. Under zoning, a Project of at least 25,000 square feet would be subject to the Green Building Requirements (Section 22.20), which require design to a minimum standard using the LEED, Passive House, or Enterprise Green Communities rating programs. Cambridge has adopted the Massachusetts Specialized Stretch Energy Code, effective July 1, 2023, but that is separate from the Zoning Ordinance and therefore would not be required as part of any amendment to the Zoning Ordinance.

#### *D. Sidewalk Widening*

In order to make any of the following proposals described in this section of the Letter of Commitment part of the Zoning Ordinance, further amendments would need to be made to the original Petition.

- i. In Paragraph 2i., the Developer proposes widening of sidewalks on Alberta Terrace, Cedar St, and Harvey St. Presumably, the Developer intends to accomplish this by setting the buildings back, and not by widening the sidewalks into the public right-of-way, although that has not been made clear in the Letter of Commitment.
- ii. Providing public rights-of-way on a private lot cannot be required by zoning, except as part of an optional zoning provision that provides some “bonus” in exchange for voluntarily agreeing to provide public land. However, zoning could require a small minimum front yard setback that could be used as additional paved area on a private lot. The property owner could also voluntarily provide a setback in order to accommodate increased sidewalks and work with the City to negotiate an easement for public access.
- iii. The revised text of the Petition does not currently require any front yard setback, but that could be included based on the desired additional sidewalk width as measured from the front lot lines.

#### *E. Open Space*

In Paragraph 2k. of the Letter of Commitment, the Developer commits to having at least 15% of lot area be devoted to “a blend of private and public green and/or permeable open space.” The base zoning typically includes requirements for “Private Open Space” serving a residential use, and the Petition continues to propose no requirement for a minimum amount of Private Open Space. However, the Building and Site Plan Requirements applicable to a project of at least 25,000 square feet would require a minimum 15% of lot area to be “any combination of Green Area or Permeable Open Space as defined in Article 2.000” (see Section 19.59). This standard could be modified by special permit from the Planning Board.

#### *F. Height*

Height was discussed at the Ordinance Committee but no change to the Petition has been included. The Developer indicated that the proposed building for its Project would be up to 70 feet in height, but that the height limit of 80 feet was proposed in the Petition to accommodate ancillary structures such as roof decks.

The newly adopted Climate Resilience Zoning, in Section 5.23, Paragraph (g), exempts the following features from height limitations: “structures appurtenant to Green Roof Area or usable outdoor space adjacent to a Green Roof Area, including but not limited to elevator and stair access headhouses and Shade Canopies located above the roof, provided that the area of such features is less than the total adjacent Green Roof Area.” It should be noted that “Green Roof Area” must include planted vegetation meeting the standards in Section 22.30, but that the height exception may extend to adjacent structures.

### III. Legal Opinion

In conjunction with the issues raised by CDD and CDD's recommend amendments to the Petition, the City Solicitor provides the following legal opinion concerning those recommendations and in response to some comments raised by CDD.

As an initial matter, as the City Solicitor explained at the February 28, 2023 Ordinance Committee meeting, the Petitioners' Letter of Commitment set forth commitments that the Developer has made to the Neighbors. This is not a letter of commitment offered to the City as part of a contract zoning initiative and it does not contain mitigation measures or public benefits that the Developer has agreed to provide to the City if the zoning amendment is adopted. Accordingly, the provisions in the Letter of Commitment would not be part of the Zoning Ordinance and would therefore not be enforceable by the City. In addition, as discussed previously, because the Letter of Commitment relates only to the Developer's Project, it raises questions about whether the Petition, if adopted, could be challenged as spot zoning.

As CDD notes above, while the Developer has made the following commitments to the Neighbors in its Letter of Commitment: that the developer will provide for a 1:1 parking ratio; that the developer will perform the studies required by Section 19.50 of the Cambridge Zoning Ordinance whether or not a special permit is required; that the developer will comply with Article 22 of the Zoning Ordinance whether or not the development is subject to Article 22, that the developer will voluntarily widen the sidewalk; that the developer will provide at least 15% of lot area devoted to open space whether or not required under the Zoning Ordinance; and that the developer will not exceed the height in the massing study even though 80 feet will be allowed by the Petition; these commitments would not be required pursuant to the Zoning Ordinance and therefore would not be enforceable through zoning enforcement. Enforcement could only be done through actions brought by private parties who had standing to enforce the Letter of Commitment.

Additionally, the February 24, 2023 Letter of Commitment proposes amending the Zoning Ordinance by incorporating a new footnote to the Table of Use Regulations that would prohibit laboratory use. CDD has incorporated this proposed amendment in the attached redlined version of the Petition, per the Council's request. However, as noted above, because the original Petition did not address laboratory use, adding a prohibition on laboratory use into the zoning, if deemed a change to the fundamental character of the Petition, would require that the Petition be re-filed, with notice and new hearings.

#### IV. Proposed Revisions to Zoning Petition:

[NOTE: markup formatting is shown in relation to the original Barrett, et al., Zoning Petition.]

1. ~~That the~~ Amend the Zoning Map of the City of Cambridge such that the area ~~along~~ bounded by Massachusetts Avenue ~~between the intersection of~~ Cedar Street, and Alberta Terrace, including a portion of Harvey Street, which is currently Zoned Business A-2 and Residence B, be rezoned to the newly created zoning district entitled "Business A-5" and ~~to amend the boundaries of included in the~~ Massachusetts Avenue Overlay District ~~such that the above referenced area is~~ included in its entirety.

1a. Amend the table of zoning districts in Section 3.11 of the Zoning Ordinance of the City of Cambridge by adding a new line beneath "23. Business A-4 District ...." with leftmost columns to read "24. Business A-5 District ...." and rightmost column to read "Local business and multifamily dwellings" and renumber subsequent lines sequentially.

~~1.2. To add a new Business A-5 line to Amend~~ Section 5.33 of the Zoning Ordinance of the City of Cambridge as follows ~~by adding the following language:~~

Add the following language to Section ~~5.31~~ 5.33 Table 5-3 Table of Dimensional Requirements – Business Districts, beneath the words Bus. A-4

"Bus. A-5"

Add the following language on the same line referred to above underneath the column entitled (1) Max. Ratio of Floor Area to Lot Area

"1.0/4.0 (q)"

Add the following language on the same line referred to above underneath the column entitled (2) Minimum Lot Size in Sq. Ft.

"5,000"

Add the following language on the same line referred to above underneath the column entitled (3) Min. Lot. Area. for Each D. U. in Sq. Ft.

"300"

Add the following language on the same line referred to above underneath the column entitled (4) Minimum Lot Width in Feet

"50"

Add the following language on the same line referred to above underneath the column entitled (5) Minimum Yard in Feet Front

"none"

Add the following language on the same line referred to above underneath the column entitled (5) Minimum Yard in Feet Side

"none"

Add the following language on the same line referred to above underneath the column entitled (5) Minimum Yard in Feet Rear

"none"

Add the following language on the same line referred to above underneath the column entitled (6) Maximum Height in Feet

"80 <sup>(q)</sup>"

Add the following language on the same line referred to above underneath the column entitled (7) Min. Ratio. of Private Op. Sp. To Lot Area

"none"

Add the following language in the section 2. Footnotes under footnote "(p)" designated footnote "(q)" that includes the following language to read as follows:

"(q) The following dimensional modifications shall apply in the Business A-5 district:

(1i) Notwithstanding Section 20.104.1 (Maximum Height) the maximum height allowed in the BA-5 Zoning district shall be 80'. For any portion of a building within thirty-five feet (35') of a residential district, the height of that portion of the building shall not exceed thirty-five feet (35').

2) Notwithstanding Section 20.110.31 (FAR) the maximum allowed FAR in the BA-5 Zoning District shall be 4.0.

3) Notwithstanding Section 20.100 or any other section of this ordinance Sections 20.110.21 (2), (4), (5), and (6) shall not apply to the BA-5 Zoning District.

(4ii) All ground floor commercial spaces shall be exempt from FAR calculations. The Planning Board may grant a special permit to exclude Retail or Consumer Service Establishments, as listed in Section 4.35 of the Zoning Ordinance, from the calculation of Gross Floor Area (GFA) and Floor Area Ratio (FAR) on the lot if they are located on the Ground Story. The conditions of the special permit shall clearly describe what areas are excluded and what range of

uses shall be permitted, along with other conditions to ensure that the objectives of the area are met.

(5iii) Notwithstanding any other section of this Zoning Ordinance, roof decks on any floor-story of a building are shall be exempt from gross floor area calculations provided the roof deck is not within 20' of a residential district."

2.3. To add a new use category Amend Section 4.30 of the Zoning Ordinance of the City of Cambridge by adding the words "Bus A-5" beneath the words "Bus A-3" in the sixth column headings of Section 4.31 the Table of Use Regulations.

3.4. To amend Section 6.36 of the Zoning Ordinance of the City of Cambridge, Schedule of Parking and Loading Requirements, by adding the following language to the second column after the words Bus A-4 amending the third column heading to read as follows: "Res C, C-1, C-1A, Off 1, Bus A (Comm), Bus A-1, Bus A-2, Bus A-3<sup>14</sup>, Bus A-4, Bus A-5, Ind A-1, Ind B-2".

"Bus. A-5"

4.5. Amend Section 20.104.1 of the Zoning Ordinance of the City of Cambridge to read as follows:

"20.104.1 Maximum Height. The maximum height of any structure in the Overlay District shall be sixty (60) feet or the height applicable in the base district, whichever is less, except that in the Business A-5 district the base district height limit shall control."

6. Amend Section 20.110 of the Zoning Ordinance of the City of Cambridge to read as follows:

"20.110 Additional Standards Applicable in the Business A-2 Districts. Within the portions of the Overlay District having a base Business A-2 zoning district designation (the BA-2 Districts) the regulations set forth above in Subsections 20.103 to 20.109 shall apply except as modified by this Section 20.110. However, the provisions of this Section 20.110 shall not apply in the portion of the BA-2 District north of the centerline of Richard Avenue. The provisions of this Section 20.110 shall not apply in the Business A-5 district."



## Markup Illustrating Amendments to Section 5.32:

**Table 5-3 Table of Dimensional Requirements—Business Districts**

District	(1) Max. Ratio of Floor Area to Lot Area	(2) Minimum Lot Size in Sq. Ft.	(3) Min. Lot Area for Each D.U. in Sq. Ft.	(4) Minimum Lot Width in Feet	(5) Minimum Yard in Feet			(6) Maximum Height in Feet	(7) Min. Ratio of Private Op. Sp. to Lot Area
					Front	Side	Rear		
Bus. A	1.0/1.75	none	600	none	none	none	$\frac{H+L^{(a)}}{5}$	35/45 to 65 <sup>(b)</sup>	none
Bus. A-1	1.0/0.75	none	1200	none	none	none	$\frac{H+L^{(a)}}{5}$	35	none
Bus. A-2	1.0/1.75	none	600	none	5 <sup>(m)</sup>	10 <sup>(i)</sup>	20 <sup>(j)</sup>	45 <sup>(k)</sup>	none
Bus. A-3	0.75 <sup>(f)</sup>	5,000	1,500	50	$H+L^{(h)}/4$	$H+L/5$	$H+L^{(a)}/4$	35	30%
Bus. A-4	1.0 <sup>(p)</sup> /1.75	5,000	600	50	$H+L/4^{(p)}$	$H+L/5^{(p)}$	$H+L/5^{(p)}$	35 <sup>(p)</sup>	none
<a href="#">Bus. A-5</a>	<a href="#">1.0/4.0<sup>(q)</sup></a>	<a href="#">5,000</a>	<a href="#">300</a>	<a href="#">50</a>	<a href="#">none</a>	<a href="#">none</a>	<a href="#">none</a>	<a href="#">80<sup>(q)</sup></a>	<a href="#">none</a>
Bus. B	2.75/3.0	none	300	none	none	none	none	80	none
Bus. B-1	1.50 /3.25	none	300	none	none	none <sup>(e)</sup>	none <sup>(e)</sup>	55/90 <sup>(c)</sup>	<sup>(d)</sup>
Bus. B-2	1.50 /3.0	none	300	none	none	none <sup>(e)</sup>	none <sup>(e)</sup>	45	<sup>(d)</sup>
Bus. C	1.25/2.0	none	500	none	none	none	20 <sup>(j)</sup>	55 <sup>(g)</sup>	none
Bus. C-1	2.75/3.0 <sup>(n)</sup>	none	450 <sup>(n)</sup>	none	none	none <sup>(o)</sup>	20 <sup>(j)</sup>	50 <sup>(g)(l)</sup>	none

### 2. Footnotes:

[...]

[\(q\) The following dimensional modifications shall apply in the Business A-5 district:](#)

- [\(i\) For any portion of a building within fifty feet \(50'\) of a residential district, the height of that portion of the building shall not exceed thirty-five feet \(35'\).](#)
- [\(ii\) The Planning Board may grant a special permit to exclude Retail or Consumer Service Establishments, as listed in Section 4.35 of the Zoning Ordinance, from the calculation of Gross Floor Area \(GFA\) and Floor Area Ratio \(FAR\) on the lot if they are located on the Ground Story. The conditions of the special permit shall clearly describe what areas are excluded and what range of uses shall be permitted, along with other conditions to ensure that the objectives of the area are met.](#)
- [\(iii\) Notwithstanding any other section of this Zoning Ordinance, roof decks on any Story of a building shall be exempt from gross floor area calculations provided the roof deck is not within 20' of a residential district.](#)