

Redistributed for 1/23/17 Discussion

Memorandum

To: Members of the Zoning and Planning Committee

From: Councilor Baker

Subject: Possible amendments to the proposed Accessory Apartment Ordinance.

Date: December 21, 2016

1. The existing zoning framework balances density and housing opportunity.

More than half of Newton's households are found in residential zones where the allowed use is single family housing, with the rest in two or multi family housing zones. In 1987, the Board of Aldermen created the current framework for accessory apartments, which allows separate units within an existing home or detached structure in these different residential zones. The framework recommended was designed to "balance the risks of increased density that accessory apartments can mean with the benefits of new housing opportunity which they can provide." Newton's 2007 Comprehensive Plan recommends refining accessory apartment zoning to allow more use of them "where appropriate," and "in those circumstances where it would not be disruptive of the neighborhood fabric." But it is deciding where, and in what circumstances, these proposed changes make sense for both neighborhoods and the city as a whole.

2. Possible amendments the proposed ordinance.

As you may know, I have concerns about expanding the opportunity for accessory apartments to 19,000 home sites in the City as of right. The Planning Board also did not support the proposed changes, but did recommend some modifications. In an effort to be specific about the changes that might work, while reserving judgment on the proposal as a whole, I have prepared the attached package of amendments, which does not preclude others, such as those offered by Councilor Yates or Councilor Crossley. The thrust of the attached proposed amendments would be as follows:

- Provide a citizen body to review "as-of-right" accessory apartment applications, as recommended by the Planning Board.
- Preserve the opportunity for accessory apartments in older homes while minimizing the risk of major redevelopment or teardowns, retaining provisions in our current ordinance.
- Providing that separate structure accessory apartments be subject to a special permit from the Council, as recommended by the Planning Board.
- Retaining the parking requirements to minimize impact on neighbors.
- Providing for additional visual protection of means of egress, as recommended by the Planning Board.
- Retaining the existing overlay district size thresholds to allow distinctions between areas of the City that desire more opportunity and those that may not.
- Providing for more robust certification requirements by the owner to assure compliance, to be complemented later by appropriate civil ticketing to assure compliance, as recommended by the Planning Board.

I realize that many of us may not yet agree on the appropriate policy, much less the appropriate language, but rather than talk in generalities, I have attempted to provide some specific options for the Zoning and Planning Committee to consider this evening. I look forward to seeing you tonight.

Cc: Newton City Council; Newton Planning and Law Departments; Newton Planning and Development Board.

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Sec. 6.7. Accessory Uses

6.7.1. Accessory Apartments

A. Intent. Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section. Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the look, *character* and scale of existing neighborhoods;
2. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
3. Create more housing units with minimal adverse affects on Newton's neighborhoods;
4. Provide an option for an income stream, particularly for low-income seniors; and
5. Promote the preservation of historic buildings, particularly historic carriage houses.

AB. Accessory Apartment Defined. A separate dwelling unit located in a Single-Family Detached or a Two-Family Detached building single-or-two-family dwelling or in a detached building located on the same lot as a Single-Family Detached or a Two-Family Detached building single-or-two family dwelling, as an accessory and subordinate use to the residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.

1. Internal Accessory Apartments. An accessory apartment located within a single- or two-family

dwelling ~~and the owner of the dwelling occupies either the principal dwelling unit or the accessory apartment;~~

2. Detached Accessory Apartments. An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building structure, and the owner of the dwelling unit occupies either the principal dwelling unit or the Detached Accessory Apartment.

BC. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner must occupy either the principal dwelling unit or the accessory apartment and comply with annual or on-transfer certifications as provided in this chapter.
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections; and there shall be no lodgers in the original dwelling unit or the accessory apartment.

5. No additional parking is required for the accessory apartment;

2. *The dwelling unit must have been constructed 10 or more years prior to the date of application for permit to construct an accessory apartment under this Sec. 6.7.1, as evidenced by a certificate of occupancy for the original construction of the*

Comment [LB1]: This is language from the current ordinance.

Comment [LB2]: The existing parking requirement would be retained.

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dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing dwelling on or before a date at least 10 years prior to the date of application;

36. The property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;

47. When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with ~~the decision~~; this Chapter and the 780 CMR. *Each owner certifying owner occupancy shall also certify that such accessory apartment is equipped with fire and smoke detectors, that a second safe means of egress is available, that the occupancy limits in this ordinance have been complied with, and that any rental of the accessory or primary unit shall be for at least thirty days or more at any one interval; and*

~~58.~~ The ~~owner of the subject~~ property owner shall file with the Commissioner of Inspectional Services an ~~affidavit sworn~~ certification attesting to the continued residence of the owner on the subject property *and compliance with the provisions of this Chapter, material provisions of which shall be part of such certification form.* Such affidavit certification shall be filed annually from the date of the issuance of the certificate of occupancy. GD. Accessory Apartments Allowed By Right Rules for Internal Accessory Apartments

~~1. Standards.~~ An Internal Accessory Apartment is allowed ~~by right~~ as a use accessory to ~~an owner occupied single-family~~ Detached dwelling; building and a Two-Family Detached building; subject to review by the Planning and Development Board in consultation with the Commissioner of Inspectional Services and the Historical Commission or Historic District Commission having review of the property; subject to Sec. 6.7.1.F, provided that:

A2. The An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total building size gross floor area, as defined in Sec. 1.5.5, in the principal dwelling, whichever is less; The City Council may grant a special permit for a larger Internal Accessory Apartment provided, however, that the resulting unit shall be no larger than 1500 square feet or forty per cent of the gross floor area, whichever is less.

3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the

Comment [LB5]: The existing ordinance has affidavits that are sworn to. A docket item has been proposed to allow civil ticketing for certain violations of the accessory apartment ordinance, possibly including this one.

Comment [LB3]: This language is in the current ordinance and is designed to allow accessory units in older homes but avoid demolition and new construction in place of such older homes.

Comment [LB6]: This language is designed to give effect to the recommendation of the Planning and Development Board.

Comment [LB4]: This language is designed to avoid commercial rentals of accessory apartments.

Comment [LB7]: In the draft there is no upper limit on the size of a special permit accessory apartment. This limit is designed to set some parameters.

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structure and the residential character of the neighborhood, including, but not limited to, the following considerations:

a. The exterior finish material must be the same or visually match in type, size, and placement, the exterior finish material of the remainder of the building;

b. The roof pitch must be consistent with the predominant roof pitch of the remainder of the building;

c. Trim must be consistent in type, size, and location as the trim used on the remainder of the building;

d. Windows must be consistent with those of the remainder of the building in proportion and orientation.

e. The **Planning and Development Board** in consultation with the **Commissioner of Inspectional Services** may seek advice and **counsel** ~~council~~ from the Director of Planning and Development, the **Historical or Historic District Commission** with review authority over the property, and/or the **Urban Design Commission** where there is a question in the application of the above rules.

4. Only one entrance may be located on the façade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created², except by special permit.

5. Where a building is determined to be of historic significance and therefore subject to procedures required under Section 22-50(C)(4) of the City of Newton Ordinances, any decisions of the Newton

Historical Commission or a local Historic District Commission shall be considered to be in compliance with this section 6.7.1.D.3.

B. There shall be no more than 2 exterior landings which may be covered which do not exceed 50 square feet in area, and are not within the setback area;*

c. Stairs shall not be located within the setback;*
and shall be within the envelope of the existing structure.

d. Additions and exterior alterations to the structure made within 4 years prior to application may not be applied towards meeting the requirements of Sec. 6.7.1.F.,*

~~e. No more than 1 accessory apartment shall be allowed per lot;~~

~~f. There shall be no lodgers in either the original dwelling unit or the accessory apartment;~~

g. Parking shall comply with Sec. 5.1; and

h. There shall be screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination.

**** Requirements marked with an asterisk may be altered by special permit.***

~~DE~~ Accessory Apartments Allowed by Special Permit **Rules for Detached Accessory Apartments.**

~~1. By Special Permit. The~~ **The City Council may grant a special permit for ~~a~~ Detached Accessory Apartment is allowed ~~by right~~ as a use accessory**

Comment [LB9]: This language is designed to respond to the recommendation of the Planning and Development Board for enclosed access.

Comment [LB10]: This language is from the existing ordinance and is designed to avoid partial demolition and new construction for accessory units as opposed to renovation and preservation of older homes.

Comment [LB8]: This language is designed to give effect to the Planning and Development Board recommendation about additional review.

Comment [LB11]: This is designed to retain the existing parking requirement for an accessory apartment.

Comment [LB12]: This parking and related language is in the current ordinance and screening is not covered.

Comment [LB13]: It is important to clarify what provisions may be modified by special permit. This language is from the current ordinance and the appropriate asterisks would need to be checked.

Comment [LB14]: This language responds to concerns expressed by the Planning and Development Board and others about the need for special permits for detached apartments.

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to an ~~owner-occupied~~ Single-Family, Detached Building dwelling in a single residence district, a nonconforming or a Two-Family, Detached Building, dwelling in a single residence district, or a single- or two-family dwelling in a Multi-Residence 1 or 2 district, or a detached structure, provided that the building and lot size provisions of Sec. 6.7.1.F are met, except as amended below:
A2. In a single residence district the A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, ~~or 33 percent of the total building size, whichever is less of the dwelling, whichever is more.~~ The City Council may grant a special permit for a larger Detached Accessory Apartment provided, however, that the resulting unit shall be no larger than 1500 square feet or forty per cent of the building gross floor area, whichever is less.

3. If the creation of a Detached Accessory Apartment involves exterior alterations to an existing building or construction of a new building, the following standards shall apply. The exterior finish material must be the same or visually compatible in type, size, and placement, as the exterior finish material of the principal dwelling unit on the site. The Commissioner of Inspectional Services may seek advice and ~~counsel~~ council from the Director of Planning and Development ~~the~~ Historical or Historic District Commission with review authority over the property, and/or the Urban Design Commission where there is a question in the application of this requirement.

4. The Detached Accessory Apartment must be at least ~~15~~ 6 feet from the principal dwelling unit on the site, as well as meet the otherwise applicable setbacks required for a single family detached dwelling in that zoning district, and further provided that the resulting floor area for the main dwelling and the accessory unit shall not exceed the otherwise applicable floor area limit for the lot.

5. A Detached Accessory Apartment is subject to the requirements of section 3.4.3. For the purposes of this section, ~~the City Council Commissioner of~~ ISD may determine, in consultation with the Commissioner of ISD, as well as Historical Commission, or Historic District Commission, if they have jurisdiction, or the Urban Design Commission, which lot line is the front on corner lots.

6. Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in a historic accessory building may be allowed ~~by~~ by right without requiring a special permit, and only subject to the rules in this section E.7, provided that exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a Local Historic District Commission:

a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must either (a) have been designated as a Newton Local Landmark, or (b) ~~be located within a local~~

Comment [LB16]: Having an accessory unit so close to main structure invites linkages that change the character of the use. Recall the whole issue of detached yet attached structures which have been challenging for the City.

Comment [LB15]: There is no upper limit on this special permit.

Comment [LB17]: Such structures can still be close to the lot line and existing homes which still makes them appropriate for a special permit.

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~~historic district~~ or (c) qualify as "historically significant" under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance; ***as determined by the Historical Commission or the Historic District Commission, whichever otherwise has review authority over the property.***

b. The proposed Detached Accessory Apartment will be greater than 12.5 feet from an abutting residential dwelling, except by special permit; and
c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve its historic character and integrity.

d. The Commissioner of Inspectional Services may seek advice and counsel from the Director of Planning and Development and/or the Newton Historical Commission or the Local Historic District Commission in the application of the above rules.

~~b. In a Multi-Residence 1 and 2 district the accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet;~~

~~c. Exterior alterations required to meet applicable Building, Fire or Health codes are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood.~~

~~d. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single-family dwelling or a nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of~~

satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of the accessory apartment as provided in this Sec. 6.7.1, whichever is greater.

E. No additions or exterior alterations beyond those in the final grant of an application may be proposed to enlarge the accessory apartment within 2 years of receipt of a building permit or special permit hereunder.

E. Accessory Apartment Overlay Districts

1. An accessory apartment is allowed in an Overlay

District according to the provisions of this 6.7.1 and Sec. 6.7.1.F.

2. District Boundaries. The following land, as noted on the Official Zoning Map, is placed in an Accessory Apartment Overlay District as specified:

a. Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.

b. Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.

c. Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.

d. Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

Comment [LB18]: It would be anomalous to allow any garage to become an as of right accessory apartment just because it is located in an historic district, but not otherwise. How this provision relates to special permits needs to be thought through.

Comment [LB19]: This language is adapted from the current ordinance and is designed to avoid serial applications.

Comment [LB20]: This overlay language is in the current ordinance and would retain the lot and building size thresholds in these districts to allow appropriate distinction among areas of the City and allow those areas which want them to have more accessory apartments without having to design new districts.

Accessory Apartment	Lot Size (Min sf)	Building Size (Min sf)
SR1		
Special Permit	15,000*	3,100

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SR2		
<i>By Right</i>	15,000	3,100
<i>Special Permit</i>	10,000*	2,600
SR3		
<i>By Right</i>	10,000	2,500
<i>Special Permit</i>	7,000*	1,800
Nonconforming two-family dwelling in SR1, SR2, SR3		
<i>Special Permit</i>	25,000*	2,600
MR1, MR2		
<i>Special Permit</i>	8,000	2,600
Overlay District A		
<i>By Right</i>	43,500	4,400
<i>Special Permit</i>	15,000*	3,200
Overlay District B		
<i>By Right</i>	16,000	3,600
<i>Special Permit</i>	10,000*	2,600
Overlay District C		
<i>By Right</i>	10,000	3,100
<i>Special Permit</i>	7,000*	1,800
Overlay District D		
<i>By Right</i>	30,000	4,000
<i>Special Permit</i>	15,000*	3,200

* If constructed on lot created prior to 12/7/1953

G. Building Size

In determining the building size with regard to accessory apartments, the building size shall be determined as follows:

1. Gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the Assessing Department unless otherwise indicated on floor plans prepared by a registered professional architect;

2. Existing unfinished space in basements and attics which would be finished for use as an accessory apartment shall be considered in the building size;

3. Existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment on the porch;

4. Existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment in the detached structure; and

5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet 780 CMR requirements for floor to ceiling height as specified in Section R305.

H. Pre-Existing Units. A pre-existing accessory apartment in a single- or two-family dwelling unit or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional standards above provided the following criteria are fulfilled:

1. Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described here shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1999 and ongoing from that date forward by

Comment [LB21]: It is important to make sure that the right information is counted for purposes of the size thresholds for accessory units. The provisions of the proposed and the new ordinance would need to be reconciled to make sure the correct information is counted.

Comment [LB22]: This language about pre-existing units is in the current ordinance.

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submission of probative documentary evidence to the Commissioner of Inspectional Services. Records including, but not limited to the following, may be submitted:

- a. A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or*
- b. Assessing Department records for the premises indicating the existence of the second dwelling unit; or*
- c. Records of Internal Revenue Service tax returns for the owners of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or*
- d. Permits from the Department of Inspectional Services, other than the actual building alteration permit which provided for construction of the dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the second dwelling unit; or*
- e. Sworn affidavits by former or present tenants of the second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or*
- f. Any other documentary evidence which is material and relevant and demonstrates the existence of the second dwelling unit as of December 31, 1999 and forward.*

2. Standard of Proof.

a. Conflicting Evidence. If the documentary evidence available is conflicting, the Commissioner of Inspectional Services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1999 and forward from that date is supported by a preponderance of evidence.

b. If no Department of Inspectional Services records or Assessing Department records are available for a given premises, then sworn, notarized affidavits as provided above shall be presumed to be reliable, unless there is substantial evidence to the contrary.

3. Requirements. The requirements of Sec. 6.7.1. C.1.a., b., c., d., e., f., g., and h. must be satisfied.

IG. Invalidity Clause. *If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.*

Comment [LB23]: Whatever happens in terms of amendments needs to be sorted out as a matter of appropriate cross-references and legal form and character.