

Memorandum

To: Members of the City Council

From: Councilor Baker

Subject: 343-16 related to accessory apartments – proposed amendment for detached structures

Date: March 31, 2017

The Planning Department estimated that under our current accessory apartment ordinance about 2600 dwellings in Newton could install an accessory apartment today without a special permit. The basic criteria are that the primary dwelling is large enough for an accessory unit, and the surrounding lot is large enough to absorb the increased density to minimize neighborhood impacts.¹ Accessory Apartments in separate structures now require a special permit. All new accessory apartments currently require a screened off-street parking space.

By contrast, the proposed new ordinance would allow accessory apartments as of right in the primary dwelling or in a separate structure in all 19,800 one and two family homes in Newton regardless of building or lot size, so long as generally applicable dimensional limits such as setbacks and floor area ratio are met, and no additional parking space would be required, though screening would be required if one is built.

These proposed revisions to the accessory apartment ordinance embodies a significant policy shift to our zoning code, as stated by the Chair and Vice Chair of the Planning and Development Board, Scott Wolf and Peter Doeringer, commenting as private citizens in a separate letter to us, dated March 23:

“We disagree with the Planning Department as to the intent of the amendment, i.e. to provide a city-wide, by-right accessory apartment use. Establishing a universal by-right entitlement (with conditions) to accessory apartments is too blunt a policy change given the positions of the proponents and opponents of the amendment and the fact that this is uncharted territory with hard-to-predict consequences for Newton.”

Even aside from the potential municipal fiscal impacts of this change, largely unexamined so far, the expected increase of accessory apartments in detached structures will likely result in a substantial change in the city’s development patterns. At the Zoning and Planning meeting on March 27, the Planning Department estimated that, on 7,625 lots (39% of our total residential lots), an as of right accessory apartment in a detached structure could be built, subject to further analysis on a parcel by parcel basis.²

The reason is that under the proposed ordinance, these detached accessory as of right accessory apartments can be up to 1200 sf of habitable space. This opportunity effectively allows a side or rear lot subdivision of a lot without the dimensional and other special permit

¹ Requiring more space for more density is part of Newton’s zoning. For example, to build a two-family home in a single residential district requires a special permit and a lot size equal to what would be required for two separate single family homes. Section. 3.1.11 of our ordinances.

² All 19,800 lots could be available under the new ordinance if the owner sought a special permit to install an accessory apartment in or next to a new primary dwelling after demolishing the old one.

provisions for neighbors and neighborhoods required under our current ordinance for such subdivisions. (See the attached excerpt, which is essentially the same as Section 7.3.4 in our new ordinance.) Moreover, my understanding is that if adopted, this would be the only zoning ordinance in the Commonwealth to allow accessory apartments in detached structures without requiring a special permit.

Finally, if accessory apartments are to be allowed as of right throughout the city for approximately 19,800 single family and two family residences, they should first be encouraged in existing homes, where the impacts are more likely to be closely monitored by the owner occupant, rather than in separate structures.

Therefore, when proposed new ordinance is reported out on Monday, April 3, I intend to move an amendment that accessory apartments in detached structures retain the requirement for a special permit. I urge you to support it.

Thank you.

Cc: City Council; Planning and Development Board; Law, Planning and Inspectional Services Departments.

NEWTON CODE ONLINE — ZONING § 30-15

(r) Requirements For Creation of Rear Lots in Residential Districts.

Purpose: The purpose of this subsection is to eliminate or mitigate against potential undesirable development impacts on adjacent residential uses and neighborhoods by the application of the density and dimensional controls set out in Table 4 of this subsection as well as through the requirement of a special permit that shall include, but not be limited to, a review of proposed building placement and buffering.

(1) Definition of rear lot.

A rear lot is defined as a parcel of land not fronting or abutting a street, as defined in section 30-1, which does not have the required minimum frontage directly on a street, and which has limited access to a street by either (1) a “flag pole” or “pan-handle” shaped portion of the lot, (2) an easement over an adjoining lot possessing frontage directly on the street, or (3) a private right-of-way as shown or described in plans or deeds duly recorded with the Middlesex (South) Registry of Deeds. A rear lot may, with the permission of the board of aldermen in accordance with the procedure provided in section 30-24, satisfy the minimum frontage requirement for the zoning district in which it is located by measuring lot frontage along the rear line of the lot or lots in front of it.

(2) Administration.

a) Creation of rear lots in residential zoning districts shall require a special permit from the board of aldermen in accordance with the procedure provided in section 30-24. The rear lot development density and dimensional controls in section 30-15(r), Table 4, shall apply to the proposed rear lot(s) and the remainder of the original lot shall be subject to the density and dimensional controls of section 30-15, Table 1, for lots created after December 7, 1953, unless waivers from either of such controls are granted by the board of aldermen in accordance with the section 30-15(r) (3) below.

b) The provisions of section 30-26 shall not apply to the creation of rear lots under this subsection.

c) In addition to the provisions of section 30-23 and 30-24, general application requirements and criteria for grant of a special permit for a rear lot development are as follows:

i) Applicants must submit a sufficient number of copies of architectural plans for all proposed residential buildings and structures, a landscape plan, site plan, and an area plan showing distances from proposed building(s) or structure(s) to existing residential buildings and structures used for accessory purposes on the original lot and all abutting lots, along with information on the heights and number of stories of these existing building(s) or structure(s). All plans must be prepared, stamped and signed, as appropriate, by an architect, landscape architect, professional engineer or registered land surveyor.

ii) The board of aldermen shall consider the special permit application for a rear lot development in light of the following criteria:

- (a) Whether the proposed building(s) or structure(s) exceed the respective average height of abutting residential buildings and structures used for accessory purposes;**
- (b) The scale of a proposed building(s) or structure(s) in relation to adjacent residential buildings and structures used for accessory purposes and the character of the neighborhood;**
- (c) Topographic differentials, if any, between proposed building(s) or structure(s) and adjacent residential buildings and structures used for accessory purposes;**
- (d) Proposed landscape screening;**
- (e) Adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways;**
- (f) Whether any historic or conservation public benefit is provided or advanced by the proposed development;**