



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#343-16
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

MEMORANDUM

DATE: January 20, 2017

TO: Councilor Ted Hess-Mahan, Chairman
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director

RE: #343-16 – HIS HONOR THE MAYOR, COUNCILOR HESS-MAHAN, ALBRIGHT, CICCONE, CROSSLEY, AND NORTON proposing to amend Chapter 30 Section 6.7.1 Accessory Apartments and Section 5.1.4 Number of Parking Stalls in order to create a new accessory apartment ordinance that expands the availability of accessory apartments.

MEETING DATE: January 23, 2017

CC: Mayor Warren
City Council
Planning and Development Board
Donnalyn Kahn, City Solicitor

Expanding and simplifying the opportunity for Newton residents to create Accessory Apartments is an important step towards ensuring economic diversity, options for seniors, and preservation of some of Newton's historic buildings and the Zoning and Planning Committee made significant progress at its last meeting towards finalizing a proposed ordinance. The following memo and attachments address some of the issues discussed at that meeting.

"Look-Back" Provisions

A few members of the Committee expressed an interest in some form of a look-back provision, citing a concern that developers would be incentivized to tear-down existing homes in order to build homes with accessory apartments. For various reasons, staff finds that approving the proposed accessory apartment ordinance would not provide any particular incentive which would increase the number of tear-downs in Newton. In short, there is zero evidence to support the idea that allowing more accessory apartments in Newton would result in more tear-downs. The incentive to tear down existing homes is already built into Newton's zoning ordinance in ways that stand alone from

accessory apartments. The ordinance allows in many parts of the City, significantly larger homes to be built than currently exist. Developers seeking to maximize sale value generally maximize the square footage they can build, resulting in a tear-down that is allowed under the zoning. Furthermore, as data from the Assessor's Office has confirmed, there is no greater value in Newton for a home with an accessory apartment over one without, so there is no additional incentive. As a number of people have testified, it is not uncommon for someone who buys an existing home with an accessory apartment in Newton to reincorporate that living space into their primary unit, therefore removing the accessory apartment. Accessory apartments are a great option for the people who need them, either for financial or for family related needs; for everyone else, they are unnecessary and of no additional value.

One of the most frequent findings of research on accessory apartment ordinances is that, where there are excessive regulations on accessory apartments, the end result is not fewer accessory apartments but instead more illegal accessory apartments. The data in Newton is consistent with that research. A scenario that may result from maintaining a look-back provision is that homeowners who want to build an accessory apartment will still do so, whether in an existing structure or a newly built structure. Accessory apartments unknown to fire, police and inspectional services personnel results in units that are potentially unsafe for residents and the neighborhood.

The attached accessory apartment ordinance language includes the following provision proposing a one year look back period:

Section 6.7.1.C.5

The primary dwelling unit must have been constructed 1 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the 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 one year prior to the date of application;

Should the Committee find that expanding the ability to create accessory apartments will somehow induce a greater number of tear-downs, the one year requirement proposed above is more than long enough to address that concern. The Planning Department recommends that this provision is unnecessary.

Exterior Stairs

The concern was raised at the Planning Board around the appearance or visual intrusion of exterior stairs that might be constructed in order to reach an accessory apartment on an upper floor. Some language relative to this issue is proposed in the attached draft ordinance in the design criteria section:

Section 6.7.1.D.3.e

Exterior staircases shall be designed to minimize visual intrusion and be complementary to the existing building;

In short, staff, the Urban Design Commission (UDC), and the historic districts or Historic Commission, where applicable, would include review of such stairs in the overall assessment of the compatibility of all exterior alterations. Notably, no such restriction currently exists on single family homes generally so that someone with lodgers, as an example, would be allowed to have exterior stairs without this level of review.

Design Criteria

The Committee raised some questions about the Design Criteria section at 6.7.1.D.3. This section is not design review, in that the task of staff and the UDC is not to review design choices broadly, from an aesthetic perspective, but instead, is to ensure compliance with the basic design criteria of:

Section 6.7.1.D.3

Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood,

The sections that follow the paragraph above in the ordinance provide some of the general considerations to be made when assessing compliance with this section; considerations related to building materials, windows, rooflines and similar. The overall intent of these criteria, and the staff/UDC review, is to ensure that, where there are exterior alterations, the accessory apartment is effectively invisible from the street such that the essential single or two-family character of a neighborhood is not disturbed.

Accessory Apartment Permitting Process

Much as by-right accessory apartments are handled today, the permitting process is simply the building permit process with the additional requirements identified in the proposed ordinance text. This process is shown on the attached document. The process is simple, relatively quick depending on the complexity of the project, and integrates completely with other necessary reviews for health, safety, and environmental requirements.

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 residential 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. Preserve historic buildings, particularly historic carriage houses and barns.

B. **Accessory Apartment Defined.** A separate dwelling unit located in a Single-Family Detached or a Two-Family Detached building or in a detached building located on the same lot as a Single-Family Detached or a Two-Family Detached building, as an accessory and subordinate use to the primary 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.
2. **Detached Accessory Apartments.** An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building.

C. 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;
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;
5. No additional parking is required for the accessory apartment;
6. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, 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;
7. 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 this Chapter and the 780 CMR; and
8. The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this section 6.7.1. Such certification shall be filed annually and the property may be subject to inspection.

D. Rules for Internal Accessory Apartments

1. An Internal Accessory Apartment is allowed by right as a use accessory to a Single-Family Detached-building and a Two-Family Detached building.

2. 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 habitable space, as defined in Sec. 8.3, in the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40% of the total habitable space, whichever is less.

3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood, including, but not limited to, the following considerations:

- a. The exterior finish material should be the same or architecturally consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
- b. The roof pitch should be architecturally consistent with the predominant roof pitch of the remainder of the building;
- c. Trim should be consistent in type, size, and location, as the trim used on the remainder of the building;
- d. Windows should be consistent with those of the remainder of the building in proportion and orientation;
- e. Exterior staircases shall be designed to minimize visual intrusion and be complementary to the existing building;
- f. The Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development 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 created, except by special permit.

5. The dwelling unit must have been constructed 1 or more year prior to the date of application for permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the 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 one year prior to the date of application.

6. 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 take precedence.

E. Rules for Detached Accessory Apartments.

1. A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached Building or a Two-Family, Detached Building.

2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet. The City Council may grant a special permit for a larger Detached Accessory Apartment.

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 should 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 shall seek advice and counsel from the

January 17, 2017

Director of Planning and Development 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 6 feet from the principal dwelling unit on the site.

5. The Detached Accessory Apartment must meet the setback requirements of the primary dwelling unit, except by special permit.

6. Except as required above, a Detached Accessory Apartment is subject to the requirements of section 3.4.3. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

7. **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-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 qualify as "historically significant" under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance;

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.

G. 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.

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 residential 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. Preserve historic buildings, particularly historic carriage houses and barns.

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 primary 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;

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;

5. The dwelling unit must have been constructed 1 or more year prior to the date of application for permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the 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 one year prior to the date of application;

6. 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 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;~~

37. Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County or with the land court, 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;

48. 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; and

59. The ~~owner of the subject~~ property owner shall file with the Commissioner of Inspectional Services an affidavit sworn certification attesting to continued compliance with the requirements of this section 6.7.1. the continued residence of the owner on the subject property. Such affidavit certification shall be filed annually and the property may be subject to inspection 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 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 habitable space, as defined in Sec. 8.3, in the principal dwelling, whichever is less;² The City Council may grant a special permit for a larger

Internal Accessory Apartment up to 1,200 square feet or 40% of the total habitable space, whichever is less.

3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood, including, but not limited to, the following considerations:

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

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

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

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

e. Exterior staircases shall be designed to minimize visual intrusion and be complementary to the existing building;

f. The Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development 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

January 17, 2017

Historical Commission, or a local Historic District Commission, shall take precedence.

~~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;*~~

~~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 Board of Aldermen may grant a special permit for an A Detached Accessory Apartment is allowed by right as a use accessory 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 of the dwelling, whichever is more; The City Council may grant a special permit for a larger Detached Accessory Apartment.~~

~~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 should 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 shall seek advice and counsel from the Director of Planning and Development 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 6 feet from the principal dwelling unit on the site.~~

~~5. The Detached Accessory Apartment must meet the setback requirements of the primary dwelling unit, except by special permit.~~

~~6. Except as required above, a Detached Accessory Apartment is subject to the requirements of section 3.4.3. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.~~

~~7. 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-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 qualify as "historically significant" under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance;
- 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;
- e. 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 a application may be proposed to enlarge the accessory apartment within 2 years of receipt of a special permit hereunder this subsection from the Board of Aldermen.

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.

Accessory Apartment	Lot Size (Min sf)	Building Size (Min sf)
SR1		
Special Permit	15,000 [±]	3,100
SR2		
By Right	15,000	3,100
Special Permit	10,000 [±]	2,600
SR3		
By Right	10,000	2,500
Special Permit	7,000 [±]	1,800
Nonconforming two-family dwelling in SR1, SR2, SR3		
Special Permit	25,000 [±]	2,600
MR1, MR2		
Special Permit	8,000	2,600
Overlay District A		
By Right	43,500	4,400
Special Permit	15,000 [±]	3,200

Overlay District B		
By Right	16,000	3,600
Special Permit	10,000*	2,600
Overlay District C		
By Right	10,000	3,100
Special Permit	7,000*	1,800
Overlay District D		
By Right	30,000	4,000
Special Permit	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 GMR 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 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.~~

~~†G. Invalidation 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.~~

Accessory Apartment Permitting Process

* Specific to Accessory Apartments

Pre Application Review

•Zoning & Building Review

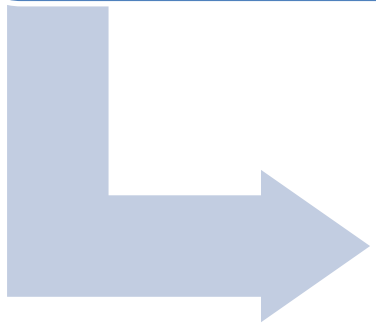
- Does the Accessory Apartment require a Special Permit per the Zoning Ordinance?*

Yes → Seek Special Permit

•Historic Review & Conservation Review

- Does my home trigger Historic or Conservation Lands review?

Yes → Meet Planning staff



Building Permit

- Bring building plans to Inspectional Services Department
- Receive Accessory Apartment Pre-Approval Letter from ISD Commissioner, Certified by Law Dept.*
- Fire Dept. reviews plans
- Engineering Dept. reviews plans (if necessary)
- Planning & ISD &UDC reviews Accessory Apartment plans for exterior alterations*
- Get Building Permit and complete work
- Call ISD for inspections



Accessory Apartment Approval

- Record Pre-Approval Letter with Registry of Deeds or land court*
- Bring stamped Pre-Approval Letter to ISD*
- Certificate of Occupancy
- Signed consistency affidavit will be reviewed annually*