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Barney Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: February 24, 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: February 27, 2017

CC: City Council
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner of ISD

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How to appropriately regulate the creation of accessory apartments has been a long-standing issue in Newton. The benefits of creating such units include providing opportunity for seniors to remain in their homes for longer in the city, creating a low-impact form of generally affordable housing, assisting in the preservation of historic homes and accessory structures, and addressing the issue of unsafe illegal accessory apartments. These benefits have long been recognized by the City Council and led to the creation of the existing rules. Unfortunately, these rules have, for the most part, continued to limit and hinder the ability of Newton residents to create accessory apartments, despite the Council's stated desire of facilitating the creation of these units. The proposed ordinance is the result of considerable study and work by the Zoning and Planning Committee and Planning Department staff. The proposed ordinance is built on extensive research into best practices related to accessory apartment ordinances and analysis of Newton's data on accessory apartments to date. These amendments create a set of rules that are more equitable and fair with respect to facilitating the creation of accessory apartments while effectively ensuring that accessory apartments are safe

for those who may live in them and respectful of the single-family and two-family neighborhoods where they are located.

Newton's Board of Aldermen adopted the first Accessory Apartment Ordinance in 1987, which was promptly followed by the formation of a committee to rewrite the ordinance, "which, after two years since its enactment, has not resulted in a single apartment being legalized or created."¹ The findings of the committee were that the special permit process presented a significant barrier to the ability of homeowners to create accessory apartments. The committee worked for a year in an attempt to improve the rules to allow more homeowners to take advantage of the benefits of accessory apartments. Nearly 30 years have passed since this committee recommended a new accessory apartment ordinance, which was adopted, however the results have been underwhelming. This time period though has given us data to assess the impacts of accessory apartments on the City as well as a body of experience and research from other communities to draw from in the development of this proposed accessory apartment ordinance.

Previous memorandums to the Zoning and Planning Committee have extensively described accessory apartments, the benefits they offer to the City of Newton, the limitations of the existing accessory apartment ordinance and the data and evidence collected that support the proposed ordinance. These reports can be found online at www.newtonma.gov/accessoryapartments. To sum up some of the highlights of this work:

- In the last 20 years there have been 73 accessory apartments created in Newton or less than four a year, representing .002% of Newton's total housing stock
- The existing ordinance ties a homeowner's ability to create an accessory apartment to the size of their lot such that large lot owners can more easily create an accessory apartment. This approach makes it easiest for wealthier homeowners to create accessory apartments. Meanwhile, the existing ordinance unfairly places a disproportional burden, a costly special permit process, on those less able to afford it.
- Currently, Newton homeowners can already rent to up to three lodgers in their single-family or two-family home, as long as cooking facilities are shared; they can already have family members reside in their home; they can already build accessory buildings within limitations set by the zoning ordinance, including accessory buildings with living space. Under the rules of the proposed ordinance, the only difference between what is currently allowed and what is proposed is that the tenants or family members living in the accessory unit may have separate cooking facilities (a stove). A more accurate title for this ordinance might be the "Second Kitchen Ordinance."
- The experience of other municipalities that have allowed accessory apartments demonstrates that a limited and relatively small number of households create these units. There is a significant cost associated with creating a dwelling unit and relatively few households are likely to make the choice to become a landlord, but for certain people, there is a significant benefit in having this option.

¹ Zoning and Planning Subcommittee Report on Accessory Apartments, September 27, 1989.

The committee formed back in 1988 to improve the Accessory Apartment Ordinance identified four key concerns that they sought to mitigate. The same four concerns have been offered again relative to the currently proposed ordinance. As described by that committee, those concerns were:

The subcommittee was aware that if accessory apartments were to proliferate widely they could:

- 1. Change the character of Newton's single family neighborhoods, which over time might resemble a two-family zone;*
- 2. Drive up housing costs;*
- 3. Increase the demand for city services without an increase in revenue;*
- 4. Leave some neighborhoods vulnerable to the problems associated with student housing.*

Each of these concerns has been addressed in the proposed ordinance or through research as described below. First, across every study and example from other communities that have adopted by-right accessory apartment ordinances, there is not a single example of these units "proliferating widely." As has been stated previously, accessory apartments are the right solution for a limited number of households. They allow parents or children to share a home without sharing a kitchen. These units allow a senior household to create a revenue source and, perhaps even more importantly, mitigate the potential challenges of social isolation and reduced capacity to care for a single family home, so that they can stay in their home and community as they age². Most households in Newton do not have these needs, but some do and the City should offer the flexibility to those people to be able to easily meet these needs.

Community Character – As far as protecting the physical appearance of a neighborhood, one of the primary principles guiding the creation of the proposed accessory apartment ordinance is that the accessory apartment should be "invisible from the street." To the greatest extent possible, the average passerby should not be able to discern which home in a given neighborhood has an accessory apartment. The proposed accessory apartment ordinance has clear design and review requirements that ensure enforcement of this idea.

With regards to the issue of neighborhood density, the proposed ordinance does not allow occupancy of a principal dwelling unit and accessory unit combined to exceed the number of residents allowed in the principle dwelling unit alone. Put another way, a home in Newton can currently be occupied by a family and up to three lodgers and the same limit applies with the addition of an accessory apartment. From the perspective of zoning, there is no change in allowed density. From a practical perspective, there is no difference between renting an accessory apartment to someone who works in the shopping center down the street or having one's adult children living in the basement; the density implications are exactly the same and therefore there is no change in community character as a result of allowing accessory apartments.

² See the Newton Council on Aging statement of support for the proposed Accessory Apartment Ordinance online at www.newtonma.gov/accessoryapartments.

Housing Costs – In response to the concern that allowing accessory apartments would drive up housing costs, the Planning Department consulted with the Assessor’s Office. Their findings are that there is no difference in price between otherwise similar homes with or without an accessory apartment.

Another version of this same concern is the idea that allowing accessory apartments will somehow encourage developers to tear down existing homes in order to build new homes with accessory apartments. Again, there is no data to support this idea. Newton’s very high value housing market provides more than enough incentive to tear down existing homes. As has been discussed above, the market of people seeking an accessory apartment is so small, and, since there is no additional value connected to having an accessory apartment, it is a logical conclusion that there is no further incentive provided to developers to tear down a home by virtue of allowing accessory apartments.

Demand for City Services – The concern that accessory apartments would somehow drive up city service costs is effectively a restatement of the density concern outlined above. Again, with or without an accessory apartment, the same numbers of people are allowed to live in a home and therefore the cost of city services on average would be the same.

Student Housing – Issues associated with a proliferation of college student housing in a neighborhood can be a real problem. These issues generally are of two types; disruptive behavior and overcrowding leading to health and safety issues. The proposed accessory apartment ordinance addresses both of these. First, the ordinance retains the requirement that the property owner live on site. Disruptive behavior is far less likely where the owner lives on the property and the evidence shows that problem properties are generally owned by absentee landlords. Second, as has already been noted, there are limits on home occupancy. Overall, with these requirements in place, allowing accessory apartments should not lead to a greater risk of student housing related problems.

Development of the Proposed Ordinance

While work leading up to the development of the proposed ordinance has been ongoing for several years, the Zoning and Planning Committee made significant advancements on this ordinance since the first public hearing in November 2016. Perhaps the most important of these changes was an amendment to address concerns raised by detached accessory apartments that might be located close to neighboring homes. Rather than simply creating more costs and barriers for homeowners through another special permit requirement, the proposed ordinance tackles the issue up front with the following requirement:

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

This amendment effectively narrows the potential location where a detached accessory apartment can go to the same area where any by-right new construction or addition may be located on a property. Effectively, this means there would be no difference between a detached accessory apartment and the primary dwelling unit on the site in terms of setbacks and relationship to abutting

properties. Appropriately, where a homeowner wishes to place an accessory apartment closer than the allowed setback, a more extensive conversation will be necessary with consideration of possible mitigation measures.

Another important change made to the proposed ordinance was to explicitly include exterior staircases in the design standards aspect of the ordinance. The purpose of the design standards within the ordinance is to ensure the basic design principle of the ordinance so that accessory apartments are invisible from the street. Therefore by including staircases in the proposed design standards, potential visual impacts are mitigated.

Next Steps

Following the Public Hearing, the Planning Board and Zoning and Planning Committees will both vote on the proposed accessory apartment ordinance. The results of these votes are forwarded to the full City Council for a final vote to adopt the ordinance.

3.4.2. Accessory Uses Allowed

- A. By Right in All Residence Districts.** Such accessory purposes as are proper and usual with detached single-family dwellings or detached two-family dwellings, including but not limited to:
1. Housing of resident domestic employees;
 2. Renting of rooms for not more than 3 lodgers;
 3. Parking or storage of recreational trailers or vehicles, provided that if not parked or stored within a garage or other enclosed structure, such trailer or vehicle shall not be parked or stored within the area between any front line of the principal building and the street line, or stored within the side or rear setback, and further provided that such trailer or vehicle may be parked in the side or rear setback for a period not to exceed 7 days;
 4. Parking or storing of not more than 1 commercial vehicle per lot, subject to Sec. 6.7.2;
 5. Home businesses subject to Sec. 6.7.3; and
 6. ~~Internal~~ Accessory apartments ~~in single-residence districts~~, subject to Sec. 6.7.1.

B. By Special Permit in All Residence Districts.

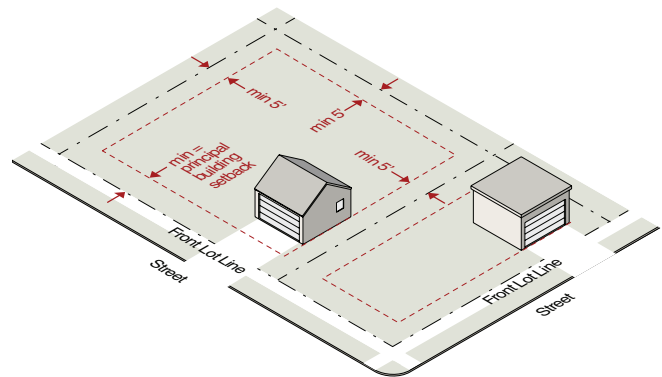
The text of section 3.4.2.C is in effect until April 1, 2017. After that date refer to section 3.4.4.

1. A private garage with provision for more than 3 automobiles, or a private garage of more than 700 square feet in area, or more than 1 private garage per single-family dwelling;
2. Internal and detached accessory apartments subject to provisions of Sec. 6.7.1;
3. Home businesses subject to the provisions of Sec. 6.7.3; and
4. Accessory purposes as are proper and usual with the preceding special permit uses and are not injurious to a neighborhood as a place for single-family residences.

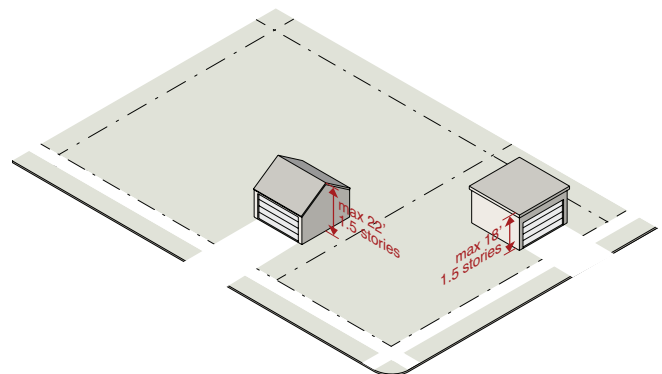
(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99; Ord. No. A-78, 06/20/16)

3.4.3. Accessory Buildings

- A.** Except as provided in Sec. 6.9, accessory buildings shall conform to the following requirements:
1. An accessory building shall be no nearer to any side or rear lot line than 5 feet, and no nearer to any front lot line than the distance prescribed for the principal building.



2. An accessory building with a sloping roof shall have a maximum height of 22 feet. An accessory building with a flat roof shall have a maximum height of 18 feet. An accessory building shall have no more than 1½ stories.



3. The ground floor area of an accessory building shall not exceed 700 square feet.

The text of section 3.4.3.A.4 is in effect until April 1, 2017. After that date refer to section 3.4.4.

4. If the accessory building is a garage, unless a special permit is granted, for each dwelling unit there shall be:
 - a. No more than 1 garage, whether or not it is located in an accessory building;

5.1.4. Number of Parking Stalls

A. The minimum number of parking stalls to be supplied for each type of building or land use shall be in accordance with the following requirements. Where the computation results in a fractional number, the fraction shall be counted as one stall.

Use	Parking Stalls Required	Allowed by Special Permit
Residential		
Single-family dwelling, Two-family dwelling	2 per unit	
Accessory apartment	1 per unit	
Association of persons	1 per adult occupant in unit	
Single-family attached dwelling, Multi-family dwelling	2 per unit	1.25 per unit, except multi-family housing for low-income or elderly persons built under state or federal housing programs: 1 per 2 units in a low income unit plus 1 per 4 elderly units
Boarding house, rooming house, lodging house, tourist house, congregate living facility	1 per sleeping room plus 1 per 3 employees	
Convalescent or rest home or other institution devoted to the board, care or treatment of humans	1 per every 4 beds plus 1 per every 3 employees	
Elderly housing with services facility, residential care facility, elderly congregate living facility	1 per every 2 dwelling units 1 per every 4 nursing beds plus 1 per 3 employees	.25 per dwelling unit where adequate transportation services are available
Civic/Institutional		
Dormitory	1 per 5 occupants	
Religious Institutions	1 per 3 seats, permanent or otherwise; 1 per 3 employees; plus 1 per 45 sf used for meeting function purposes when such space is customarily used concurrently with the seating space	
School serving children under 14 years of age	1 per employee not residing on premises	
Commercial		
Bank	1 per 300 sf plus 1 per every 3 employees	
Family child care home, large family child care home, day care center	1 per employee not residing on premises plus 1 per every 5 children	
Funeral home	1 per 40 sf; 30 spaces min.	
Health club, similar establishment	1 per 150 sf plus 1 per every 3 employees	
Hospital, sanitarium	1 per every 3 beds plus 1 per every 3 employees	
Hotel, motel	1 per sleeping room plus 1 per every 3 employees	
Medical office on or abutting hospital property	1 per 400 sf plus 1 per every 3 employees in any lab or pharmacy in bldg	

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.

1. **Internal.** An accessory apartment located within a single- or two-family dwelling.
2. **Detached.** 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. Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
6. No additional parking is required for the accessory apartment.
7. 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;
8. 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
9. 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 and all applicable public safety codes. 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 visually consistent in type, size, and placement, as 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 should 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 facade 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. 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 or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.
3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the primary dwelling on the lot and the residential character of the neighborhood. 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 dimensional requirements of Section 3.4.3, Accessory Buildings. 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 an historic accessory building may be allowed by right without requiring a special permit, and only subject to the rules in this subsection E.7.
 - 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 Ordinances, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission of the Chair of the local Historic District Commission, whichever has jurisdiction;

- b. The proposed Detached Accessory Apartment will be greater than 15 feet from a residential dwelling on an abutting property, except by special permit; and
- c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a local Historic District Commission.

F. 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.

(Ord. No. T-114, 11/19/90; Ord. No. T-247, 10/05/92; Ord. No. T-306, 11/01/93; Ord. No. Z-95, 10/03/11; Ord. No. A-43, 06/02/14; Ord. No. A-55, 01/20/15))

6.7.2. Commercial Vehicle Parking

A. Defined: The parking of any vehicle, conveyance or piece of mechanized equipment in a residence district which is used to further any business, trade, profession or employment, and which meets any 1 or more of the following criteria:

- 1. There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment;
- 2. It is used to store in a manner or place that is visible from outside of the vehicles any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment;

- 3. It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge;
- 4. Its length is more than 18 feet;
- 5. Its width is more than 7 feet;
- 6. It has a mechanized dumping capability;
- 7. It has a plow blade or plow blade frame or other device attached, or a plow blade or other device is stored on the premises.

B. Standards: In a residence district commercial vehicles shall not:

- 1. Exceed 18 feet in length or 7 feet in width;
- 2. Contain more than 4 square feet of advertising on any one side; and
- 3. Be stored between any front line of the principal building and the street line, or in the side or rear setback unless stored within a garage or other enclosure.

Ord. No. V-288, 03/20/00)

6.7.3. Home Business

A. Defined. Any commercial activity conducted within a dwelling unit by the residents thereof as an accessory use to the residential use of the dwelling unit, provided that no sale of merchandise, whether retail or wholesale, takes place on the premises, except as expressly permitted by the provisions of Sec. 6.7.3.B.1.e. The term home business shall include, but is not limited to:

- 1. The studio of an artist, musician, photographer or writer;
- 2. Small group or individual instruction or tutoring;
- 3. Tailoring;
- 4. Millinery;
- 5. Crafts;
- 6. Word processing;
- 7. Computer software development;
- 8. Telephone solicitation;
- 9. A manicurist;

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.

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. Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
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 and all applicable public safety codes. ~~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;* 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, as 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 should 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. 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.

~~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;*~~

~~e. 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 40% of the total Habitable Space of the principal dwelling, whichever is less, 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 up to 1,500 square feet.

3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the primary dwelling on the lot and the residential character of the neighborhood. 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 dimensional requirements of section 3.4.3, Accessory Buildings. 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 an historic accessory building may be allowed by-right without requiring a special permit, and only subject to the rules in this subsection E.7.

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 as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission or Chair of the Local Historic District Commission, whichever has jurisdiction;

b. The proposed Detached Accessory Apartment will be greater than 15 feet from a residential dwelling on an abutting property, except by special permit; and

c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a Local Historic District Commission.

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.~~

~~**IF. 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.~~