



Zoning & Planning Committee Report

City of Newton In City Council

Monday, February 27, 2017

Present: Councilors Hess-Mahan (Chair), Danberg, Albright, Baker, Leary, Yates and Kalis

Absent: Councilor Sangiolo

Also present: Councilors Lappin, Fuller, Brousal-Glaser, Norton and Crossley

Planning & Development Board: Scott Wolf (Chair) Megan Meirav, Peter Doeringer, Sonia Parisca, and Jonathan Yeo

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Lily Reynolds (Community Engagement Manager), Rachel Blatt (Long Range Planner), Marie Lawlor (Assistant City Solicitor), Maura O'Keefe (Assistant City Solicitor), John Lojek (Commissioner, Inspectional Services), Katy Holmes (Historic Planner), Alice Ingerson (Community Preservation Manager), Michael Gleba (Senior Planner), Karyn Dean (Committee Clerk)

#21-17 **Mayor's appointment of Dan Brody to the Community Preservation Committee**
DAN BRODY, 15 Brewster Road, Newton Highlands, appointed as a member of the COMMUNITY PRESERVATION COMMITTEE for a term to February 1, 2020 (60 days 04/07/17) [01/26/17 @ 2:03PM]

Action: **Zoning & Planning Approved 7-0**

Note: Mr. Brody joined the Committee. He explained that he has been on the Board of the Newton Conservators for the last 13 years and manages their webpage. He has been involved in several open space projects where the Conservators have played a role. The projects that have impressed him the most involved Community Preservation Act (CPA) money, namely Angino Farm and the addition of the land at Dolan Pond. That experience emphasized the importance of what the CPA does. The frustration of the Conservators is that they are many great ideas for projects but no money at all. The opportunity to be involved in how funds can be used will be very rewarding. He has a Master's degree in city planning and has worked in state government and nonprofit financial management so he is good with numbers and feels he could make a contribution.

A Committee member noted that City money for conservation lands is very limited. Mr. Brody said he would like to see more money allocated to the maintenance of parks and conservation lands. He has walked through some of the areas and cleaned up trash himself. In his opinion, the real need for money is for efforts to protect conservation lands that are threatened with development such as Webster Woods.

Committee members stated that they wholeheartedly support Mr. Brody and found the diversity of his professional and volunteer background impressive and relevant to the appointment. The Committee thanked him for his willingness to serve.

The Committee voted in favor to appoint Mr. Brody to the Community Preservation Committee unanimously.

#23-17 **Mayor's appointment of John Sisson to the Newton Historical Commission**
JOHN SISSON, 45 Greenlawn Avenue, Newton, appointed as a member of the
NEWTON HISTORICAL COMMISSION for a term to expire February 1, 2020 (60 days
04/07/17) [01/26/17 @ 2:03PM]

Action: **Zoning & Planning Approved 5-2-0 (Councilors Kalis and Yates opposed)**

Note: Mr. Sisson joined the Committee. He explained that has been active in the community for the past 10 years starting by working with Traffic Council on traffic calming on his street. During the recent recession he was concerned with the vacancies in the village centers and how citizens could get involved to make good things happen. He works for the Town of Dedham doing economic development work, which runs on a very lean staff. They do some affordable housing and he does some economic development. He is currently working on some historic preservation for a historic architectural engineering record nomination to the National Register for the Mother Brook, which is a hand-dug canal created in 1638 by settlers from Watertown. It is a mile long and still intact.

He is interested in Newton's neighborhoods and architecture. He is currently in a home restoration and they worked through the Historical Commission to make sure the renovations tried into the neighborhood and the existing home. He would like to continue his involvement in the community and help to make Newton a great place to live.

Katy Holmes, staff for the Newton Historical Commission explained that she contacted Mr. Sisson to fill a vacancy on the Commission. The membership requirements include architects and realtors, there are also lawyers on the Commission, a representative from Historic Newton and a CPC representative. They were looking for someone to fill the at-large position. She has known Mr. Sisson since 2006 and she finds him a very thoughtful person, someone who can see all sides of an issue and reasonably discuss them. When the vacancy opened, she thought he would be a great fit. He was actively involved in the Newton Magazine, worked on the JPAG for the Newton Centre Library and has worked not only on trying to help Newton grow and evolve but also preserve what makes it a great City and a great place to live. She feels he would be a very thoughtful member to the Commission.

Some Committee members mentioned that the Committee received a few emails relative to his appointment citing a conflict between smart growth and historic preservation. Mr. Sisson said it is suitable to look at Newton to see what areas could benefit from development or re-development and what areas should be preserved. He felt the Comprehensive Plan does a good job of providing

a road map for that. The smaller neighborhoods should not be encroached upon and the village centers are the places that make sense to develop and historic buildings within those centers should be carefully looked at for preservation or adaptive re-use, similar to the Newton Centre Library.

The maintenance on the library building was deferred so long, the result is really unfortunate. He chaired the JPAG on the library and the report was submitted in 2012. The recommendation was that the City should try to find a re-use for that building, with perhaps housing as an option. There were concerns with parking so it was unclear if that could be possible. They also looked at restaurant and a boutique hotel options and all options included preserving at the very least, the front half of the building as it was more historic than the back. One particular recommendation was not made but it would be beneficial to acquire the property next door and then there would be more room to work with.

Smart growth is about making a community more livable. The World Health Organization has developed livability domains and simplified the concepts of smart growth and how to make a city more walkable, make it better for the old and the young because then everyone across the entire spectrum benefits from that. Zoning and historic preservation are different tools and depending on the objective, they are used appropriately. Village centers would be the places where development makes sense because the infrastructure is there. He does not support "McMansion-ing" in neighborhoods and is not sure which tool would be best to combat that.

Some Committee member was concerned that Mr. Sisson's background was not strong enough in historic preservation because of his economic development background. Mr. Sisson noted that economic development for him is about jobs and helping the economy; it is not about tearing something down to build something new. He does not see his experience as an obstacle and feels confident he can objectively look at the value of historic preservation and work effectively on the Commission and support its goals.

Several Committee members were very complimentary of Mr. Sisson's experience and his good judgment. Other Councilors joined the Committee and echoed their support for Mr. Sisson. They explained that there are places reserved on the Historic Commission as well as the Local Historic District Commissions for "at-large" members; those not affiliated necessarily with any particular profession, but those who have integrity, are smart, honest, thoughtful, concerned people who care about historic preservation and Mr. Sisson fits that role. The Massachusetts Historic Commission's membership is also very has a membership with diverse experiences and backgrounds. Mr. Sisson has done a lot of deep study on what this community is about. References to the work done by the JPAG and criticisms, they felt, were unfair. The JPAG's work was to make a recommendation to the City Council and then the Council to the Mayor. The Real Property Reuse Committee had requested that the City put at least as much money into the building as was necessary to stop the damage done by years of neglect and that was not done. To blame anyone else for it is wrong.

Councilor Kalis explained that he understood that Mr. Sisson balances issues and knows he looks at things carefully, but he is concerned that there are not many tools available to the City to reign in development in neighborhoods. The Historical Commission is one of the tools he sees in terms of demolition delays.

Councilor Danberg moved approval and the Committee voted to approve Mr. Sisson's appointment to the Newton Historical Commission with Councilors Yates and Kalis opposed.

#220-16 Discussion relative to regulating Airbnb-type companies

COUNCILORS FULLER, HESS-MAHAN, LAPPIN, COTE AND NORTON requesting a discussion with the Planning, Inspectional Services and Fire Departments regarding appropriate regulations, permits, licensing and/or taxes for residential owners who host short-term guests through house-sharing companies such as Airbnb.[06/06/16 @ 2:19 PM]

Action: Zoning & Planning Held 7-0

Note: Michael Gleba, Senior Planner, explained that he will be providing an introduction to this item. He provided a PowerPoint presentation, which is attached to this report. Please refer to the presentation for details.

Committee Questions/Comments

It was asked what the initial recommendations of the Planning Department would be. James Freas, Deputy Director, Planning Dept. explained that there seem to be a very limited number of these short-term rentals so far and that the City should see what happens at the state level, which will hopefully provide taxing authority, continue to monitor other what other communities are doing and continue to enforce when complaints arise. In the meantime, they will be looking into the policy implications of the use.

A Councilor noted that she has had only two calls about this issue and Inspectional Services responded well. John Lojek, Commissioner of Inspectional Services, stated that there have only been three complaints in the last two years. One was outrageous and the police responded to that and the activity has subsided. Another was in reference to a large house in Chestnut Hill. The owner was in Hong Kong for a year's sabbatical. He was contacted that there were issues and he discontinued allowing that use in his home. The Commissioner received a complaint just this evening.

A Committee member noted that this is a relatively new issue and wondered if there were any regulations. Mr. Gleba said they are currently trying to fit this new use into existing uses such as lodging or boarding house, depending on the number of people occupying the dwelling. Three or fewer inhabitants are considered lodgers and that is allowed. If there are four or more inhabitants, it is considered a boarding house and the zoning ordinance controls where they are allowed.

Some Councilors stated that they would like to get ahead of the state in regulating short-term rentals and did not want to wait to see what they would do before moving forward. A Councilor noted that her interest was in being able to tax these rentals, but said she would love to look at the by-law from Brookline which has some robust regulations.

The Committee thanked the Planning Department for a very helpful presentation and voted to hold this item unanimously.

#343-16 Zoning amendment relative to accessory apartments

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. [10/07/16 @ 10:03 AM] **Hearing closed 11/14/16 (90 days 2/12/17)**
Recommitted to Zoning & Planning Committee on 2/6/17

Action: Public Hearing Closed; Zoning & Planning Held 7-0

Note: Councilor Hess-Mahan explained that this item had been heard in a previous public hearing. The 90 day limit within which to act, per M.G.L. Chapter 40A, was going to be expiring and there were still some questions, so the item was referred back to Committee and another public hearing assigned for this evening. The proposal has changed somewhat from the first hearing by incorporating some of the recommendations from the Planning Board's report and from other meetings of the Committee. The Planning Board is also hearing this again and will have 21 days within which to provide their recommendation to the Committee. Councilor Hess-Mahan opened the public hearing.

James Freas, Deputy Director of the Planning Department joined the Committee. By way of background, he noted that accessory apartments as a use have existed in American cities and towns for over 100 years. In the middle of the 20th century began to tighten up their zoning regulations and outlaw their use and that is when Newton eliminated them as well. By the late 80s and 90s communities began to reintroduce the idea and Newton created an accessory apartment ordinance in 1989. They provide benefits for housing diversity, accommodating changing household needs and preserving older homes.

There is more data now about the impact of accessory apartments and more communities are passing regulations to make them easier to create by right. California allows them by right statewide and was one of the key recommendations of Newton's Housing Strategy for diversifying housing choices in the City.

He provided a PowerPoint presentation, which is attached to this report. Please refer to it and the Planning Memo which was provided prior to the meeting for more details of the proposed changes.

The Planning Board asked about the number of people that would be allowed in an accessory apartment and main dwelling, combined. Mr. Freas explained that the interpretation from Inspectional Services is that there is a maximum of three unrelated adults allowed in addition to the family. The three unrelated individuals would be unrelated to the owner of the property.

Public Comment:

The following residents spoke in favor of the proposed accessory apartment ordinance. Their comments included that the current ordinance has created only about 73 apartments in the last 30 years; more diversity in housing options in Newton; increasing housing stock without extensive increases in building; allowing residents to stay in their homes by providing needed extra income to pay mortgages and taxes; the ability to have a loved one who needs care or to be close by while providing some level of independence as well; a sense of security for seniors to have someone in their home in case of emergency or just for needed company to combat isolation; a tool to preserve historic carriage houses and barns as their restoration could be very expensive otherwise; and embodies sound planning principles.

Residents speaking in favor also expressed that the proposed ordinance does an excellent job of protecting neighbors and neighborhood character by regulating exterior alterations and requiring that setbacks and other dimensional requirements of detached structures stay intact. There are sufficient reviews by appropriate bodies to make the apartments as “invisible” as possible to the streetscape. They were also in favor of eliminating as much as possible a lengthy, expensive special permit process and allowing the opportunity for more properties to be eligible for accessory apartments.

Those speaking in favor: Jim Purdy, Patricia Missiuro, Bonnie Carter, Doris Ann Sweet, Henry Finch, Jerry Reilly, Laurance Lee, Linda Brennan, Holly Gunner, Sheila Decter, Mike Brown, Andreae Downs, Marian Knapp, Jay Walter, Constance Kantar, Lynn Weissberg, Tamara bliss, Andrea Kelley, Jonathan Kantar, Deb Pierson and Steve Vona

The following residents spoke in opposition to the proposed accessory apartment ordinance. Their comments included concerns about detached dwellings being built which would result in loss of green space and privacy; concerns that no notice would be given to neighbors; belief that the current ordinance has been effective in the creation of accessory apartments; residents should be able to expect that when they buy a home that the zoning around them will not change; the special permit process is not as arduous as has been described; residents can currently have lodgers live with them to help with finances or to help elderly relatives; licensing could replace the special permit process in some circumstances.

Those speaking in opposition: Ken Lyons, John Grandin, Chris Pitts, Sallee Lipshutz, Rena Getz, Julia Malakie and Kathleen Kouril Grieser.

Any written statements that were provided are attached to this report.

The Chair asked anyone who has any comments or questions, or wants to provide any further information please forward those to the Committee Clerk.

Zoning & Planning Committee and the Planning & Development Board both voted to close their public hearings. The Committee voted to hold this item unanimously.

Councilor Baker made a presentation of his proposed amendments to the accessory apartment ordinance. His presentation and amendments are attached to this report. He would like to know in more detail from the Planning Department how much of an impact this ordinance could have and not just hope it will have a limited impact if passed as proposed.

222-13(8) Zoning amendment to delay effective date of Garage Ordinance for further study
COUNCILOR HESS-MAHAN requesting amendments to Ordinance A-78, which amends Chapter 30, Section 3.4.4 of Revised Ordinances, to implement a deferred effective date for the Ordinance of December 31, 2017 or such other appropriate date, for the purpose of allowing the Planning Department to complete a comprehensive study thereof. [11/28/16 @ 5:45PM]

Action: Public Hearing Closed; Zoning & Planning Motion to Approve failed to carry 3-3-1 (Councilors Hess-Mahan, Baker and Yates opposed; Councilor Leary abstaining)

Note: Councilor Hess-Mahan explained that there was a protracted discussion of the garage ordinance and amendments. Zoning Redesign will require review this fall as well as two or three possible Local Historic Districts which will require public hearings and discussion. He felt that it did not make sense to have the Planning Department use its limited resources to continue to study this item and the Committee continue to haggle over proposed amendments. He proposed an amendment to change the effective date to April 1, 2018. He will not take it up before the end of this term. He said he will not be voting in favor of this.

Public Comment

Kathleen Kouril Grieser said she hopes the Committee does not vote to delay the effective date of this ordinance. The residents of the City can be very divided on development but everyone, on all sides of the debate agrees - they hate protruding garages. There are perhaps 10-15 builders who build snout houses and they are holding this up. She felt Councilor Hess-Mahan's leadership in this was outstanding as asked that he not give up on it.

Julia Malakie said she agreed with the previous speaker and it was great to see the leadership on this ordinance. It was a bright spot in a morass of inaction on a long list of docket items that were promised as an alternative to the demolition moratorium. It was passed so why not let it go into effect on April 1, 2017. Postponing everything for zoning reform is not desirable, so please don't backtrack.

The Zoning & Planning Committee and the Planning & Development Board both voted to close their public hearings.

The Planning & Development Board voted to approve the extension to April 1, 2018 5-0-1 with Peter Doeringer abstaining.

Councilor Albright moved approval of this item as amended to April 1, 2018. She believes more work needs to be done on the ordinance and make it part of the zoning redesign process.

Councilor Hess-Mahan said he would be voting against this as he believes the ordinance that was passed was proper.

The motion to approve failed to carry 3-3-1 with Councilors Hess-Mahan, Baker and Yates opposed and Councilor Leary abstaining.

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair

Department of Planning and Development

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Discussion relative to regulating Airbnb-type companies

COUNCILORS FULLER, HESS-MAHAN, LAPPIN, COTE AND NORTON requesting a discussion with the Planning, Inspectional Services and Fire Departments regarding appropriate regulations, permits, licensing and/or taxes for residential owners who host short-term guests through house-sharing companies such as Airbnb.[06/06/16 @ 2:19 PM]

FEBRUARY 27, 2017

Short Term Rentals (STRs)

2

1. STRs are commonly defined as residential rentals of less than 30 days in duration
2. Distinctions may be made between:
 - rental of entire units, portions thereof (i.e., one or more rooms), and even single bed/couch;
 - different levels of property owner presence/involvement
 - can be reasonably expected that on-site owners will be positioned to monitor and regulate renter behaviors
3. Can be seen as taking on aspects of a commercial use not dissimilar to a bed & breakfast or other tourist/transient uses.

Issues

3

1. Appropriateness in residential districts; concerns *re* parking, behavior (noise, trash, etc.), presence of a “transient” population, etc.
2. Enhancement as destination for visitors
3. Impacts on hotel/occupancy tax revenue
4. Whether local property tax assessments should reflect STRs as a “quasi-commercial” use (especially when not used primarily as a residential unit)
5. Whether STRs could help current residents to remain in their homes
6. Maintaining integrity of zoning and building codes
7. How STR regulation costs/staff demands would be managed and funded

Current Approach in Newton

4

- Apply existing boarding and lodging house zoning provisions
 - up to three persons not members of the housekeeping unit may occupy space (not including cooking facilities) for living and sleeping purposes, including in exchange for rent.
 - A dwelling with four or more such persons would be considered a “boarding house”
 - allowed in any residential district only by special permit.
 - are allowed in most Business or Mixed Use districts, either by right or by special permit, as a “residential use” on or above a ground floor.
- Enforcement is complaint-driven
 - violations relating to STR activity are often resolved in response to contact from ISD staff informing property owners of the concerns/complaints.

Existing Approaches to STRs (examples)

5

1. Ban types of STR-related activity:
 - rentals of an entire residence for less than 30 days; advertisement of apt. rentals of less than 30 days
1. Create/modify new zoning ordinance definitions:
 - “accessory short term rental” use category; STR unit owner must be a “natural person” (not a commercial entity); include/exclude STRs in “dwelling unit” definition
3. Limit scope of STR activity:
 - maximum number of STRs located in one building; days per year a unit can be used as an STR
 - minimum days per year STR’s “permanent resident” must occupy the unit
4. Require STRs to be registered and obtain licenses/permits
5. Adopt “good neighbor” regulations to limit negative impacts
 - noise ordinances (incl. evening quiet hours); parking regulations; trash disposal guidelines

TITLE

6

Zoning and Planning Committee

1

ACCESSORY APARTMENT ORDINANCE PUBLIC HEARING

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.

1989 Newton Accessory Apartment Report

3

- (1) allow more diversity of housing opportunity for City residents;
- (2) allow under utilized housing to continue to be occupied by current owners who might otherwise be unable to remain in their homes.

Keys Aspects of the Ordinance

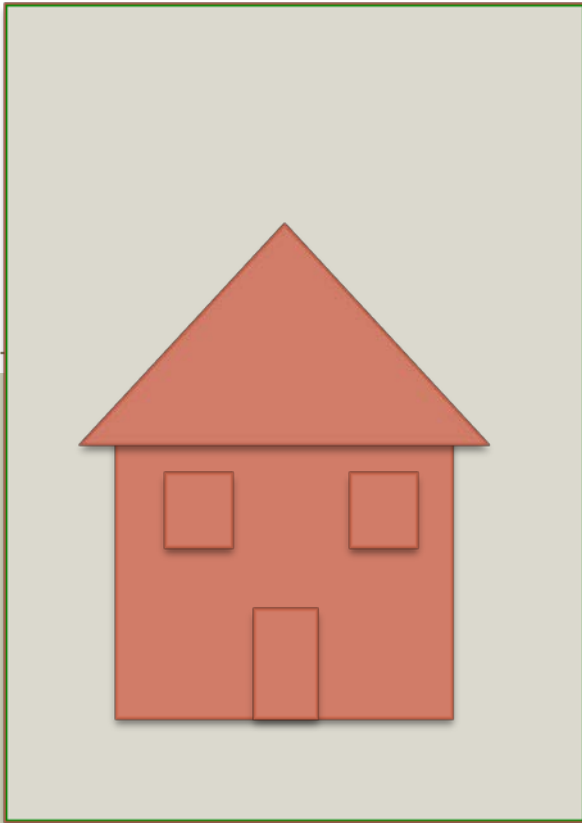
4

- Interior and detached accessory apartments are allowed by right with single and two-family homes.
- No additional parking required.

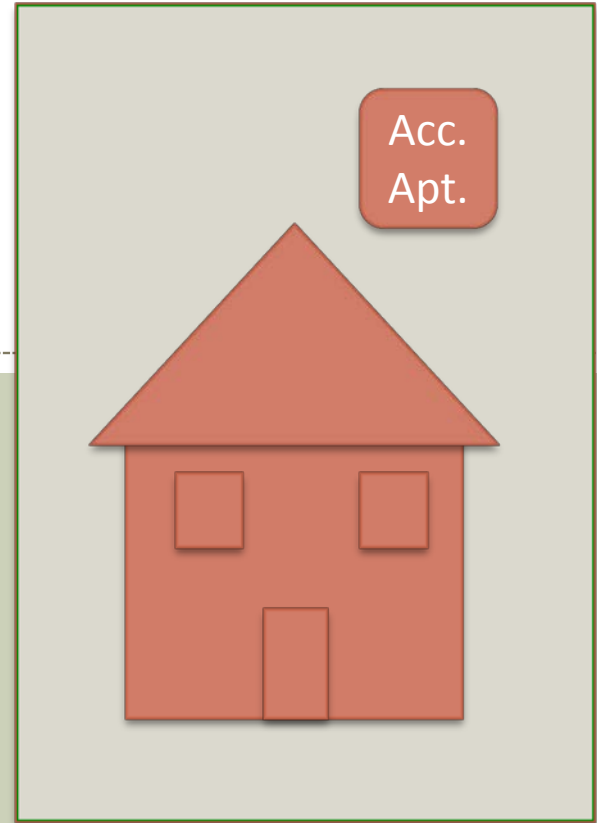
Keys Aspects of the Ordinance

5

- Acc Apts are “Invisible from the Street”
- Clear review process ensures standards are met.
- No increase in allowed density of people.



1 Family &
up to 3
unrelated
individuals



1 Family &
up to 3
unrelated
individuals



Keys Aspects of the Ordinance

7

- Owner must live on-site.
- No separate ownership.
- Accessory Apartment is registered with the deed.

Keys Aspects of the Ordinance

8

- Streamlining review for historic accessory structures.
- Priority given to Historic Commission and Local Historic Districts

New Provision

9

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

- Questions?

Accessory Apartment Support Statement (Edited): February 27, 2017; Zoning & Planning Committee

My name is Marian Knapp. I live at 250 Hammond Pond Pkwy, Chestnut Hill. First I want to thank the City Councilors for all of the hard, dedicated work they do.

I am an active advocate for Newton's seniors. I speak to you tonight from my two arenas of responsibility. The first is in my role as Chair of the Newton Council on Aging. This part is simple. I am here to reinforce the statement that the NCOA submitted to you in support of the new Accessory Apartment ordinance.

My second arena of responsibility comes from my role as a private citizen, from the understanding I have as an actual senior, from my experience as a caregiver of multiple very old people, and from some knowledge that I have gained from formal study and learning about issues of aging.

I urge you to vote in favor of this ordinance. You have all of the data on aging and I am happy to provide more. You know that seniors are a growing demographic. You know the percentages of older people in Newton compared to people of other ages. You also know the perspectives and opinions of seniors from valid data. There isn't much else that I can say to you about the facts, except for a few personal comments.

One of the truly significant issues that the NCOA and NDSS are hearing through its Listening Sessions and Key Interviews is that of isolation and loneliness and the fear that this engenders. This is turning out to be a daunting and frightening concern for a lot of people. Although a simplified accessory apartments ordinance isn't the total answer, it is a piece of a larger effort to reduce that debilitating sense of being alone.

- **Nine percent of seniors age 60 and over say they have no one to assist them when they need help. (In 2010, that would have been 1,677 people).**

Another issue and one that is rarely talked about, is the need for people, regardless of age, to have control over the decisions that impact their lives. Many people want to stay in their homes as they age. This is a clear statement about independence and control. A simple process for Accessory Apartments with the potential for income and companionship is a significant way for people to maintain control over their decisions and destiny.

Newton has just decided to become a welcoming community. I supported this initiative. We seniors are a part of that commitment. The city must have ways to continue to welcome, support, and respect those of us who want to live here regardless of ethnicity, countries of origin, religious belief, and, simply, age.

The Accessory Apartment Ordinance,

- has the potential to help seniors and those who care about them – in many different ways,
- is a piece – a small but important piece – to address the city's housing crisis,
- offers lower cost housing options,
- helps preserve older, beautiful homes, and
- helps preserve the character of neighborhoods.

For those in opposition, the concern seems to be mostly around the threat of students in great numbers and mainly in one ward. It is important to remind opponents that the ordinance is a good thing overall. The benefit to the community at large, especially for older people, far outweighs concerns about students. Opponents can have a positive impact by helping to plan and implement solutions to help address the student issue.

Comments on Accessory Apartment Ordinance
Public hearing 2/27/17

Jay Walter
83 Pembroke Street Newton Corner.

There are two issues I would like to address:

first:

It has been said by some that this ordinance will make the entire city a two family zone with the implication that it will destroy the existing character of our existing neighborhoods. I believe this to be hyperbole and intended to exaggerate the impact of the ordinance.

The fact is there is no evidence that enacting this ordinance will bring about massive change to our neighborhoods. Quite the contrary. This ordinance allows us to increase density without extensive new building. It protects our existing housing stock. Furthermore, based on the statistics from the planning department there is absolutely no reason to believe there will be a run on the building department to grant these units.

It is still not easy to get an accessory apartment approved. From my experience as a residential architect working in Newton over the last twenty years most houses just can't accommodate what accessory apartments require.

Second:

As an architect I am in favor of the new accessory apartment ordinance for all the sound planning principles it embodies.

However at a previous ZAP public hearing I was struck by just how family friendly this proposal is. The majority of citizens who spoke that night supported the proposal because it helped them deal with very real family issues.

A woman wanted to invite her Russian mother-in-law to live with her family but knew she needed a separate living space to make it work.

Similarly a dad said it was important to his family to have a separate space for his adult children to live.

Another couple wants to stay in Newton but needs the added income to keep the home they have lived in for over twenty years.

Finally an elderly woman said she would be much more comfortable in her home if she could have a separate unit so that she knew there would always be someone in the house.

The proposed accessory apartment ordinance is a great strategy to strengthen our neighborhoods by allowing them to adopt to the more diverse demands of modern families.

This proposal protects our older housing stock by allowing it to adopt to our current needs. We should support the revised accessory apartment amendment to help Newton continue to be a family friendly place to live.

William G. Kantar, M.D. & Constance G. Kantar
382 Kenrick Street
Newton, MA 02458
Tel: 617-332-7495
E: kantar@massmed.org

February 27, 2017

In Support of the Proposed New Ordinance for an Accessory Apartment

I am speaking for myself and on behalf of my husband, Dr. William Kantar, to support the new proposed ordinance for an Accessory Apartment.

We have lived in Newton since grade school, and have raised our children here in a wonderful home that dates back to 1905. My husband has his office in space attached to our home. Although he is still practicing, he and I can imagine a time when we might want to renovate that space to accommodate other individuals. It already has a separate entrance and plumbing!

We would find it much easier to do this under the new proposed Ordinance.

1. ^{huge expense} Allowing an internal Accessory Apartment, by right, would eliminate the need for a special Permit, which necessitates ^{huge expense} ~~the~~ and ~~probably~~ the assistance of a lawyer. Because of the costs of permits and going before the Zoning Board, and the possible long wait for a positive go-ahead, very few (and probably only the wealthy) have applied for such a variance over the last ten years.
2. With the clear design specifications and the fact that it is an INTERNAL renovation, the Accessory Apartment would effectively be indistinguishable from the plot plan of the house.
3. It would be possible to rent this space, raising some helpful funds for the homeowner, but also, providing less costly residence within the City of Newton, where housing and rental prices are skyrocketing, and making it less possible for an economically and culturally diverse population to live here.

"Landmark research from Harvard University a couple of years ago shows a subsidized apartment in a well-off community provides the best ladder of opportunity for the poor." (Boston Globe editorial Jan. 29, 2017). We think we all understand that there is a great imbalance in our society between wealthy and poor, and we think the opportunities afforded by Accessory Apartments would be very helpful in addressing this situation.

We urge the Zoning and Planning Committee of the Council to make a positive decision on the Proposed Accessory Apartment Ordinance, and send the proposed ordinance docket item to the full City Council with a positive recommendation.

Constance & William G. Kantar, M..D.

Constance & William G. Kantar

Dear Committee,

Several years ago, my husband and I bought a house in Newton described as a 3-family. It consists of 3 floors: 1st and 2nd floor apartments, as well as 3rd floor in-law apartment. The in-law apartment has 2 separate entrances aka means of egress, own kitchen and bathroom, however it is on same electric and gas meter as the 2nd floor.

We were very excited to be able to afford living in Newton – the plan is that our family can reside there, while renting out one unit would significantly help our mortgage payments. Our reasons for moving to Newton are to be in a family friendly neighborhood with great schools (we have 3 children).

In addition, my mother in-law has always expressed her desire to move to live close to us as soon as she retires. She is originally from Russia, and my husband is her only child whom she raised as a single mother. Her greatest wish is to be close to him and her grandchildren. Living with her and sharing a kitchen (which we did try for a couple weeks when she stayed with us before), is extremely challenging, both for us and for her. She is very wonderful and loving but definitely has strong opinions. We thought that having this 'accessory unit' is the perfect solution – she can live close to us, but not with us, have her own small place with a kitchen and be able to see her son and grandchildren at any time. This is absolutely the best solution, because otherwise we would have to rent a place for her and also drive her to our house, since she doesn't drive.

Just recently, while attempting to refinance, we discovered that the in-law unit was never formally legalized as 'accessory', and immediately did everything possible to make it safe and legal. However, the current law has many requirements, such as lot size etc that we **do not meet** and we would have to go through a lengthy special permit process with uncertain outcome. This is both a huge burden and an uncertainty for our family and we really hope that you consider this proposal for the sake of families like ours.

We believe that update in legislature is a win-win for families like ours who would like to have their retired parents living with them; it's a way for our neighborhoods to become more diverse, more affordable, and families to stay together.

Mazura

Julia Malakie
50 Murray Rd, WN

2/27/17

I am opposed to the liberalized Accessory Apartment ordinance as written, and thank the Planning Board for not approving it.

I doubt that one in 100 people in Newton are aware that a de-facto rezoning of much of Newton is being contemplated.

The vast majority of residents have not read the proposed ordinance. If they did, they would have trouble deciphering even what it would enable their next door neighbors to build, let alone what the large-scale implications would be for traffic, parking, and the cost of city services. **They will not realize what has passed until the additions and detached dwellings start going up with no notice, resulting in loss of trees, green space, and privacy.**

The idea of accessory apartments has primarily been sold to the general public as a way to help Newton seniors in oversized houses to stay in their homes, and preserve historic carriage houses. But the idea has been hijacked to enable all sorts of other construction. If this were truly about helping seniors stay in their homes, the requirement that the primary unit must have existed for ten years would not have been eliminated. Nor would the provision for new detached units have been added. This docket item has become a gift to developers and would-be developers.

I've read that over 15,000 properties would be eligible for an accessory apartment. Which properties, specifically? If this was a truly transparent process, a searchable list of those properties would be provided. The GIS department would provide a map of those properties, and ideally a map of properties eligible for detached accessory apartments as well. There would be plain-English explanation of how one might determine what could be built by-right on a particular property: how big a footprint, how tall, how close to the property line, how close to an abutter's house, how many detached structures.

If you can't tell the abutters to a property what a smart developer and his/her lawyers might figure out they can build on it, you should be voting No on Docket Item #343-16.

Good evening Councilors. My name is Sallee Lipshutz and I reside at 24 Radcliff Road in Waban. Thank you for the opportunity to address you this evening.

I would like to convey my thoughts on the imprudence of passage of #343-16 to amend the Newton Zoning Ordinance with regard to accessory apartments and detached accessory buildings. *as it has been proposed.*

I believe this ordinance mixes apples and oranges. Many homeowners have testified to the positive economic advantage of being able to add an accessory apartment, whether by reorganizing the square footage already within the home's walls or to add a modest number of square feet within set-backs that respect their own and their neighbors' privacy. While I believe that the current Inspectional Services permitting process has been streamlined and is not an exorbitant expense as currently administered, I would not holler if this half of the apple-orange mix were debated and possibly voted to passage by this Council.

On the other hand, the oranges, to continue my metaphor, deserve to be peeled back and divided into sections that require deeper thinking than this proposal provides. The oranges of which I speak are the accessory buildings that could be placed anywhere on one's property within the proposed constraints of size and set-backs. But an accessory building could be a far greater risk to a neighbor's enjoyment of his or her own property than a small addition to a house. The abutters to a property on which an accessory building is to be constructed deserve to be notified. They deserve to be brought to the table to discuss unforeseen weaknesses or unpredicted faults that a given positioning of an accessory building might have on an abutter. I believe that the Special Permitting process that is required now should be maintained and this ordinance should be returned for further consideration and revision.

Accessory Apartments

Background on proposed
amendments

by Councilor Lisle Baker

Possible Amendments to Proposed New AA Ordinance (text provided separately)

- Provide that accessory apartments are available as of right if the structure is at least four years old to discourage demolition, echoing the current ordinance.
- Require parking and parking screening as current ordinance provides.
- Provide that accessory structures in a detached unit require a special permit. except for historic detached structures (outside historic districts, which have demolition controls), echoing current ordinance.
- Other provisions, such as outside stair enclosure.
- Note that our existing AA ordinance has many opportunities now, as the following slides indicate.

By right accessory apartment analysis under current ordinance – 2600 possible (source: Newton Planning Department)

By-Right Accessory Dwelling Units Analysis								
	SR-1 (min. lot = 25,000; min. building = 4,000)	SR-2 (min. lot = 15,000, min. building = 3,100)	SR-3 (min. lot = 10,000, min. building = 2,500)	ADU Overlay A (min. lot = 43,500, min. building = 4,400)	ADU Overlay B (min. lot = 16,000, min. building = 3,600)	ADU Overlay C (min. lot = 10,000, min. building = 3,100)	ADU Overlay D (min. lot = 30,000, min. building = 4,000)	TOTAL
Total 1-2 Family Houses	1614	7817	6248	261	371	157	173	19793
Total 1-2 Family House Lots that meet the Min Lot Size	371	1567	1574	43	93	60	26	3734
Total Lots that meet Min. Lot Size and Min. Building Area	309	1267	1016	40	83	42	25	2782
Total Lots that meet all By-Right ADU Criteria: Min. Lot Size, Min. Building Area, and construction 2006 or earlier	289	1196	946	40	77	42	25	2615
% Lots that meet all criteria	18%	15%	15%	15%	21%	27%	14%	13%

Special Permit Dwelling Analysis under existing ordinance: Additional 2900 (Source: Newton Planning Department)

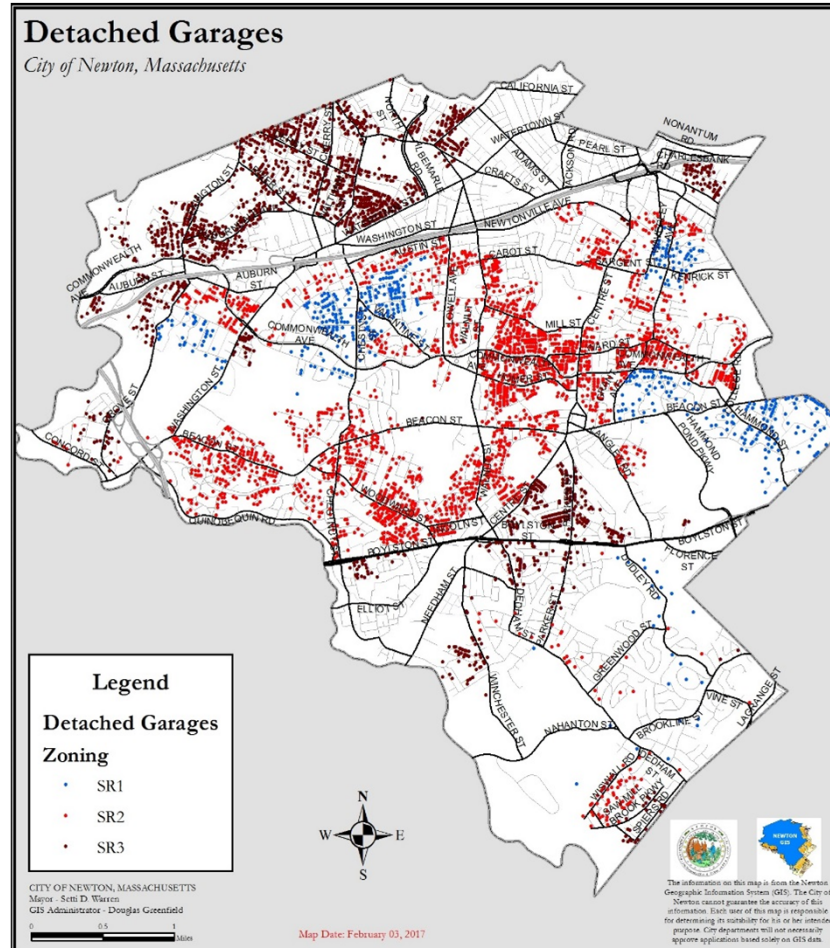
Special Permit Accessory Dwelling Unit Analysis									
	SR-1 (15000 < lot < 25,000; 3200 < building < 4,000)	SR-2 (10000 < lot < 15,000; 2600 < building < 3,100)	SR-3 (7000 < lot < 10,000; 1800 < building < 2,500)	MR-1 & MR-2 (min lot = 8000; min building = 2600)	ADU Overlay A (15000 < lot < 43,500; 3200 < building < 4,400)	ADU Overlay B (10000 < lot < 16,000; 2600 < building < 3,600)	ADU Overlay C (7000 < lot < 10,000; 1800 < building < 3,100)	ADU Overlay D (15000 < lot < 30,000; 3200 < building < 4,000)	TOTAL
Total 1-2 Family Houses	1614	7817	6248	3929	261	371	157	173	19793
Total 1-2 Family House Lots that meet the Lot Size Criteria	538	3174	2048	1462	137	188	48	90	7685
Total Lots that meet Min. Lot Size and Min. Building Area	119	577	1045	1171	21	55	10	12	3010
Total Lots that meet all By-Right ADU Criteria: Min. Lot Size, Min. Building Area, and construction 2006 or earlier	119	577	1044	1148	21	55	10	12	2986
% Lots that meet all criteria	7%	7%	17%	29%	8%	15%	6%	7%	15%

Detached Accessory Apartments under the proposed new ordinance

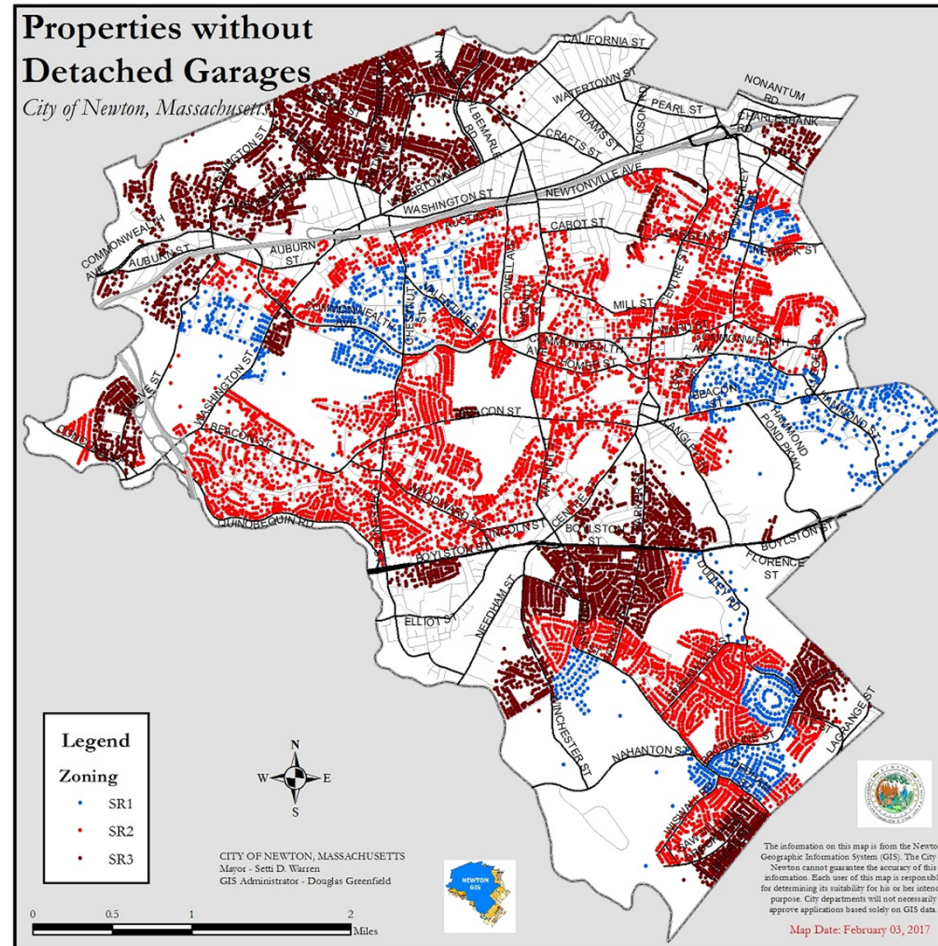
Where might Accessory Apartments be built as of right under the proposed new ordinance in existing or new detached structures?

The following two slides shows properties in single residence districts with and without detached garages, according to assessing data (understanding that zoning setback and dimensional limits are not yet included).

Single Residence District Properties with detached garages



Single Residence District Properties without detached garages



Example: 85 Homer Street

- This is a parcel proposed for supporting as of right accessory units.
- It is apparent from Assessing data that the main house meets the size threshold for including an accessory apartment within it as of right today under the current AA ordinance, and the rear garage structure could also qualify for a special permit, as has been approved by the Council elsewhere.
- Under the proposed new ordinance, with my amendments, an accessory apartment could still be built as of right in the main house, and also by special permit in the rear garage, and, if it were historic, as of right.

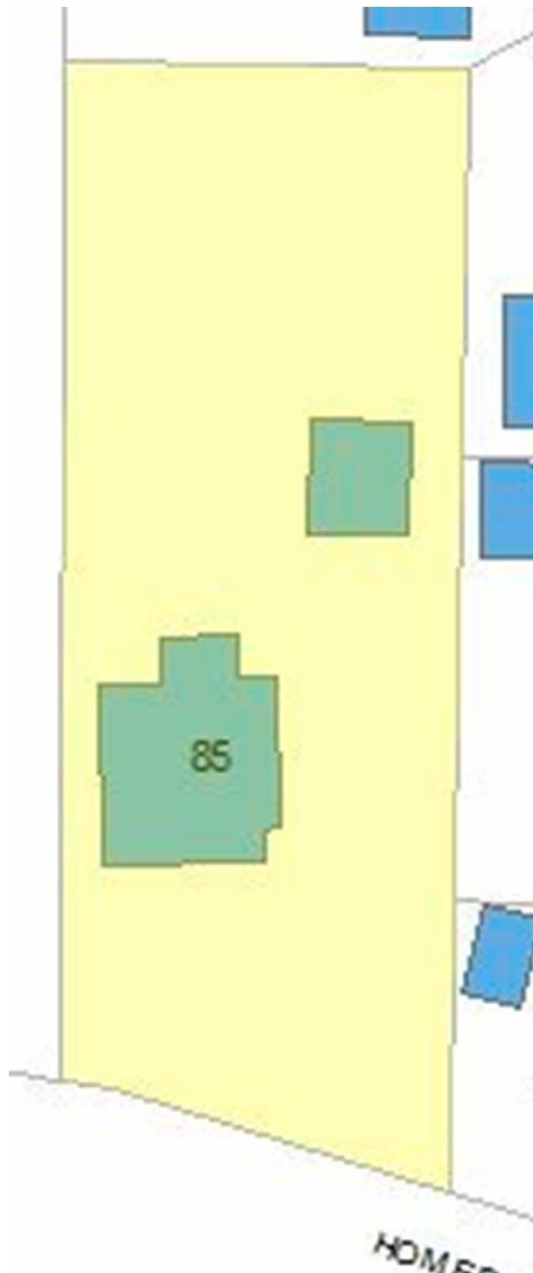
85 Homer

Zoning SR2

Lot Size 21,430 sq ft

House Size 3,234 sq ft

Basement Area 1,320 sq ft



Exterior Stairways

The next photos show the exterior stairway required to provide a second safe means of egress, which is a building code feature for accessory apartments. One of my proposed amendments would mitigate the visual impact on neighbors.

#343-16







Councilor Baker's suggested amendments #343-16

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

, 2017

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 30 ZONING as follows:

1. Delete Sec. 6.7.1 Accessory Apartments in its entirety and insert in place thereof the following language:

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. The primary dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidence by a certificate of occupancy for the original construction of the dwelling, or where, no certificate is available, provided that there is other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application.**
5. 6. Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
- ~~6. 7. No additional parking is required for the accessory apartment~~ **Parking shall comply with section 5.1 requiring one parking space per accessory apartment, and 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.**
7. 8. 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. 9. 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. 10. 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 **on January first** 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 **in the principal dwelling**, 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; **stairways above the ground floor to an apartment located above the ground floor of the building shall be enclosed within the exterior walls of the 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 **criteria 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. **Except as provided below**, A Detached Accessory Apartment **may be allowed by special permit from the City Council** ~~is allowed by right~~ as a use accessory to a Single Family, Detached building or a Two-Family, Detached building.
2. 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 City Council may** ~~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 **15 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, **as well as floor area and other applicable dimensional controls**, 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 **located outside of an historic district** 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 the Chair of the local Historic District Commission, whichever has jurisdiction;

b. The proposed Detached Accessory Apartment will be greater than 15 feet from an **existing** 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.