



Zoning & Planning Committee Report

City of Newton In City Council

Monday, March 27, 2017

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

Also Present: Councilors Brousal-Glaser, Norton, Crossley and Blazar

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Rachel Blatt (Long Range Planner), Nathan Robinson (Housing Planner), Lily Reynolds (Community Engagement Manager), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#67-17 **Mayor's appointment of Mark Chudy to Newtonville Historic District Commission**
MARK CHUDY, 34 Prescott Street, Newtonville, appointed as a member of the NEWTONVILLE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2020 (60 days 05/19/17) [03/13/17 @ 3:26PM]

Action: **Zoning & Planning Approved 8-0**

Note: Mr. Chudy joined the Committee. He explained that he has been serving on the Newtonville Historic District Commission for the past 13 years as an alternate member. This appointment will move him into a full member position.

Mr. Chudy was asked to describe his experience on the Commission. He said the experiences have been varied. There are of course the mandates of protecting the integrity of the neighborhood which can sometimes be quite difficult. There are economic considerations when imposing strict rules on a particular house. What they are trying to do is preserve the fabric of the neighborhood, and avoid the boxy houses that do not belong. He felt the Commission provides important protection for the area.

It was asked if the Commission works with homeowners to find solutions when repairs need to be made. Mr. Chudy explained that when the District was formed, homeowners had the option to be in or out; the borders were not dictated. It wasn't easy to talk people into being involved because they did not want to lose control over their homes. However, the Commission is working well. It works with the homeowners to make practical decisions, keeping the economics in mind. It was asked how many certificates of financial hardship had been awarded. Mr. Chudy said only a handful over the years. That usually happens with a window or gutter replacement because the materials are so different now and can be expensive. The Commission is generally flexible and will consider certain materials.

A Committee member asked what kinds of backgrounds would be appropriate for members of an historic district commission. Mr. Chudy felt it was more of an art than any particular professional background. His son is an architect, but he's not sure he would be interested in the preservation part of the work. The Commission requires an architect, a realtor and an attorney, but he's not sure that is necessarily needed. An interest in preservation is the most important quality and a desire for the work.

It was asked if there was a place for current, modern architecture in the City. Mr. Chudy noted that there is a pocket of mid-century homes from 1958 that are classic. Unfortunately, one has already been demolished and turned into a "McMansion". Even a split-level ranch has a place in the City because it's part of the evolution of the architecture in the City, which is why it is nearly impossible, to tear down homes in an historic district.

A Councilor asked if any of the Commissions decisions have been appealed. Mr. Chudy could not recall any appeals during his time on the Commission.

The Committee thanked Mr. Chudy for his past and continuing service. Councilor Danberg moved approval and the Committee voted in favor unanimously.

#68-17 **Mayor's appointment of Ralph Abele to Newtonville Historic District Commission**
RALPH ABELE, 15 Page Road, Newtonville, appointed as a member of the
NEWTONVILLE HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2020
(60 days 05/19/17) [03/13/17 @ 3:26PM]

Action: **Zoning & Planning Approved 8-0**

Note: Mr. Abele was not in attendance. He is also moving from an alternate to a full member position. Councilor Albright moved approval and the Committee voted in favor unanimously.

#69-17 **Mayor's appointment of Brett Catlin to Chestnut Hill Historic District Commission**
BRETT CATLIN, 121 Suffolk Road, Chestnut Hill, appointed as a member of the
CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire May 31, 2020
(60 days 05/19/17) [03/13/17 @ 3:26PM]

Action: **Zoning & Planning Held 8-0**

Note: Mr. Catlin was unable to make this meeting but has been rescheduled for the April 12th meeting. Councilor Yates moved hold and the Committee voted in favor unanimously.

#70-17 **Mayor's appointment of Ed Zielinski to Chestnut Hill Historic District Commission**
ED ZIELINSKI, 128 Gibbs Street, Newton Centre, appointed as an alternate member
of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire May 31,
2020. (60 days 05/19/17) [03/13/17 @ 3:26PM]

Action: **Zoning & Planning Approved 8-0**

Note: Mr. Zielinski was not able to attend the meeting. He is moving from the Newtonville Historic District Commission as a full member to the Chestnut Hill Historic District Commission as an alternate member. Councilor Baker moved approval and the Committee voted in favor 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) Hearing closed 02/27/17 (90 days 5/29/17)**

Action: Zoning & Planning Approved 4-0-4 (Councilors Baker, Kalis, Sangiolo and Yates abstaining)

Note: Councilor Hess-Mahan reminded the Committee that this item was heard in a public hearing in November but the 90 day timeframe expired before any action was taken. Therefore, a new public hearing was held in February. The Planning & Development Board also held two public hearings. Their first recommendation was to deny the proposal, with some suggestions for amendments. At their second public hearing they voted in favor of the revised proposal, 5-0. Overall, there have been 9 discussions of this item since October, 2016.

James Freas, Deputy Director of the Planning Department, and Rachel Blatt, Long Range Planner, provided a PowerPoint which is attached to this report. Please refer to the presentation for details.

Purpose

Mr. Freas said the main purpose of the proposed ordinance is to provide flexibility for residents. Based on the testimony that was heard over the course of the discussion, accessory apartments are an option people are in need of. Other communities that have endorsed and helped create accessory apartments have found that this flexibility has virtually no impact on the wider community. Some of these municipalities are in fact encouraging creation of more units by providing design assistance and financing support because they have seen them become an asset to the community. They can provide housing for those working within a community as well as those who would like to stay in a community.

New Detached Accessory Apartments

There has been quite a bit of discussion about the detached accessory apartment section of the ordinance. People were concerned about units being built close to property lines and intruding upon neighbors. The proposed solution to that concern is to require the same setback standards for the detached unit as the principal structure. Which means that the detached unit must fit within the same space that one would be able to do a by right addition.

The Committee had asked the Planning Department to estimate how many new detached structures could be built by right under the proposed ordinance. At the absolute maximum 7,625 lots may be able to build a new structure when looking at setbacks, FAR, minimum footprint requirements and wetlands, which is about 40% of the 1 and 2 family homes in the City. These are the same homes that would be eligible to build a by right addition of the same size. The remaining 60% of eligible homes would require a special permit.

There may be some special circumstances of topography and other issues that remove some of these sites from the equation. There were some areas that they were unable to determine if a unit could fit in the available space. There may be the square footage available, but not in a configuration that would accommodate a structure. Because of these unusual factors, even more sites would be eliminated from the estimate.

Existing Detached Buildings

It was determined that of all the existing detached structures that are on 1 and 2 family lots, 805 properties could convert to an accessory apartment by right. That is 17% of properties with existing detached buildings. These numbers may or may not include carriage houses. The computer generated report was unable to parse that out. There is a separate section in the ordinance to regulate the conversion of historic carriage houses.

Amendments

Councilor Baker had an amendments memo which is attached to this report for reference. He felt that the ordinance as proposed did not meet the standards of the Comprehensive Plan in terms of creating accessory apartments where appropriate in the context of neighborhoods. He would also like to respond to some comments from Scott Wolf and Peter Doeringer, who are members of the Planning Board, but wrote as individuals and not in their official capacity. That letter was provided in the Council's packet. They proposed making changes to allow for family members only; or for elderly residents trying to stay in their home. While Councilor Baker found those laudable, he noted that the Council tries not to make decisions based on the nature of the ownership, but the nature of the use.

Councilor Baker also provided a PowerPoint which is attached. The presentation included examples of detached garages, exterior stairways, properties that might be available for by right accessory units and how new detached units might impact lots and neighbors. Please refer to it for details.

Amendment 1: Special Permit for Detached Structures

Councilor Baker noted that the proposed ordinance does not require a special permit for detached structures, except under certain circumstances. He would like to amend that to require a special permit for all detached structures. He felt the impact of a separate unit would change the character of a number of a neighborhood. The special permit process would make sure the building works on the site and the impact on the neighbors is attended to.

Discussion

Some Committee members felt the special permit process would allow input from the neighbors which is important and that residents should be able to have some level of predictability when they move into their home. Detached units could be built up to 1200 square feet, which is as large as a house and the special permit process is necessary to protect the neighbors and neighborhood.

Another Committee member said that residents could build a by right unit just to have the rental income, not just because there is a family need. If the City wants to go with smaller lots or subdivide lots, that would be different. But adding accessory structures to existing lots and making them living units should have to go through the special permit process. To her, it was like having two houses on one lot. She supported Councilor Baker's amendment.

A Committee member felt that when an accessory structure is on a property already and meets all the setbacks, a special permit process is unnecessary. The proposed ordinance can be reviewed to determine how well it is working and amended if it is not working well. It was pointed out that neighbors, while they have a right to express their concerns and opinions, do not rule on land use. A special permit should be granted or denied based on whether the appropriate requirements have been met or not.

Councilor Crossley felt that a predictable zoning ordinance is one that is clear and provides no gray areas. This was the original goal in writing the zoning ordinance. Not every circumstance can be imagined and many detached units would fall into the special permit process due to complex sites, as mentioned earlier. Larger units would be fairly rare and very few would give up their garages for an accessory apartment. It was important to remember that many detached structures can already be built by right, so this is an argument against use, not the structure on the lot. She agreed that an across the board special permit requirement was not necessary.

Councilor Norton was satisfied that the requirements for external changes would keep the detached units looking as though they belong in the neighborhood and not be intrusive. She felt there was a need to offer more flexibility in the City to meet housing needs throughout neighborhoods in smaller ways. A detached structure is a big commitment of time and money and people would not take this on lightly. She did not support the amendment.

Mr. Freas reminded the Committee that the by right detached structures would be the same size as a by right addition to any of the eligible homes. Councilor Baker said an addition internalizes the impact while a separate structure offloads the impact to the surrounding lots.

The Chair noted that the other requirements on the detached structures keep things in proportion and in keeping with the neighborhood. A 1200 square foot detached building would require a large principal dwelling and lot, and the restrictions on external changes would preserve the character of the neighborhood. There are also setbacks and FAR to consider. Also In no case is separate ownership allowed. There are legitimate concerns about being close to a lot line, but the existing

ordinance allows, by right, a structure that would be even closer to the property line and can be used as livable space.

Vote

The Chair took a straw vote to approve this amendment. The Committee voted 4-4-0 with Councilors Baker, Sangiolo, Yates and Kalis in favor; and Councilors Hess-Mahan, Danberg, Albright and Leary opposed. The motion failed to carry.

Amendment 2: Existing Structure must be 4 years old

Councilor Baker proposed an amendment requiring that the principal dwelling be at least 4 years old in order to qualify for an accessory apartment. He does not want to encourage the idea of demolition and reconstruction. If 19,000 properties in the City are potential demolition candidates, to the extent people are going to tear down existing buildings to create rental units, that is bad public policy. There is a protection in the existing ordinance of 10 years and he would like to add a similar protection of 4 years to the proposed ordinance, which has none. If the argument has been that the City is trying to help people stay in their homes, then there should not be incentives to tear down homes to include accessory units. They should be established houses.

Discussion

There was some support in Committee for this amendment, however, some felt that it was too restrictive. Whether people have a newer house or an older house, their lives can change and often without much notice. This would allow people to keep their houses by building a unit if they need it and when they need it. There needs to be a balance.

Another Committee member said that most older people want to downsize not have bigger spaces. However, younger people might need space for their parents.

Commissioner Lojek commented that he has not seen any new house application that leaves one square foot left to build anything else. He believes there would be no issues with units being added to newer construction since they are maxed out from the start.

A friendly amendment was proposed to accept this language but to add "except by special permit" so that people would have the option for flexibility if they needed it.

Vote

The Committee voted in favor of Councilor Baker's amendment, adding the further amendment "except by special permit" 7-0-1 with Councilor Hess-Mahan abstaining.

Amendment 3: Parking and Screening Requirements

Councilor Baker proposed an amendment to retain the single space parking and screening requirements of the existing ordinance to minimize the impact on neighbors, which would be waivable by special permit. The proposed ordinance has eliminated a parking requirement. He did not want to see the streetscape cluttered with cars and felt they should be taken care of on site.

Discussion

Several Committee members were not in favor of this amendment. One of the main goals of this proposed ordinance is to eliminate, as much as possible, the special permit process and the limitations it has put on creating new accessory apartments. It was felt that people are driving less and creating more parking spaces only invites more cars. Also, requiring parking on site might create more curb cuts, which eliminates on-street parking spots.

Another Councilor noted that she is in Newton Centre and even though the neighborhood is near public transportation, people still have plenty of cars, so she will support this amendment. She also felt screening is a courtesy to neighbors and should be done.

Councilor Crossley suggested that an extra space not be required, however, if a homeowner decided to add a space then screening would be required. It was suggested that this requirement go into the parking section of the ordinance and not the accessory apartment ordinance specifically, that way it would apply to anyone adding a parking space. There was no general parking item before the Committee, so it was decided to add it to the accessory apartment section only. An item could be docketed to expand the requirement beyond accessory apartments.

Mr. Freas noted that Registry of Motor Vehicle data shows that the north side of the City has far fewer cars than the south side of the City. They anticipate seeing more accessory apartments on the north side and that speaks to the fact that those more likely to be living in accessory apartments would be less likely to have a car.

The Chair did not support this amendment. The same occupancy applies whether there is an accessory apartment or not and did not feel an extra space was necessary. If spaces are created people will bring cars. The overnight winter ban helps. He supports requiring screening if a space is voluntarily created.

Vote

A motion to approve the amendment as proposed by Councilor Baker was made. The motion to approve failed to carry 3-4-1 with Councilors Baker, Danberg and Yates in favor; Councilors Hess-Mahan, Albright, Leary and Kalis opposed; and Councilor Sangiolo abstaining.

A motion to approve the amendment to not require a parking space but to require screening should one choose to add a parking space was made. The Committee voted in favor 8-0. The Law Department will work on the exact language for this.

Amendment 4: Visual Protection of Exterior Staircases and other External Alterations

Councilor Baker explained that he would like permitted exterior alterations to be in keeping with the architectural integrity of the structure, the look, the character and scale of the surrounding neighborhood as viewed from the street and by the immediate abutters and the residential

character of the neighborhood. He would also like exterior staircases to be enclosed within the exterior walls of the building.

Discussion

Exterior alterations

It was pointed out that this amendment would include all views of the structure and not just from the street, which is the usual standard that controls historic districts. Immediate abutters' view adds a layer of discretion that seems extreme. There was also some concern about the added language of look, character, scale, etc. instead of just "architectural integrity" which is the existing language. A Committee member recalled discussing in Committee, the external look of a structure and carefully choosing words that would be appropriate to control alterations to be in keeping with the character of the neighborhood. There is a list of considerations that follow in that section with specifics regarding those criteria which would preserve architectural integrity. Further clarification seemed unnecessary and, in their view, made things more confusing. It was also pointed out that making these extra requirements for only accessory apartments seemed unfair.

Councilor Baker said the views of the neighbors should be taken into consideration and was originally Peter Doeringer's amendment suggestion. Some Committee members found the extra language clarifying.

Vote

A friendly amendment was made to remove the language referring to immediate abutters and Councilor Baker accepted that amendment. The Committee voted to approve the language as amended 5-3-0 with Councilors Baker, Danberg, Yates, Sangiolo and Kalis in favor; and Councilors Hess-Mahan, Albright and Leary opposed.

Discussion

Exterior staircases

Councilor Baker's amendment seeks to minimize the visual impact of exterior staircases on the neighborhood. Pictures were provided in the attached presentation.

A Committee member suggested that staircases be enclosed halfway up as that would be safer and was more aesthetically pleasing. She suggested bringing this back up during zoning reform.

Commissioner Lojek explained that containing a staircase within the exterior walls of a structure takes up an enormous amount of living space and can be very difficult to accomplish in many cases. Any structure over two units requires an exterior staircase to be enclosed by Building Code. Enclosing an exterior staircase and containing it within the walls of a structure are different things.

Councilor Baker said he would be amenable to changing the language to an enclosed staircase rather than containing it within the walls of the structure.

Councilor Crossley reminded the Committee that egress stairs from decks are allowed down to grade. This is not just a feature for accessory apartments. So while there is an aesthetic concern, the staircase is also something that can be controlled by the current language relative to architectural integrity to some extent to make it more attractive. These are safety features and this requirement would make any project much more expensive. She did not support this amendment.

The Chair commented that this is a life safety issue and he does not support this amendment. He is not unsympathetic but there are other ways to try to mitigate the visual impact. It is currently allowed for a two family by right.

It was asked if the Commissioner of ISD was going to make the call if a staircase is reasonable and meets the architectural integrity standard, or if he would consult the Urban Design Commission. The Commissioner said he would rather not have those decisions be made by him and he would refer them to the UDC. The ordinance currently says that that the Commissioner shall seek advice and he will.

Since there was little support for this amendment, Councilor Baker withdrew it.

Amendment 5: Distance from Detached Accessory Apartment to Principal Dwelling

Councilor Baker explained that this amendment was recommended to him because of the importance of maintaining fire safety between buildings. He is proposing changing the required distance from 6 feet to 15 feet between principal and accessory units.

A Councilor noted that adding that additional space would make many sites unavailable for an accessory apartment. Mr. Freas commented that the distance between buildings is not a safety issue. Commissioner Lojek responded that fire code requires that buildings on separate lots be at least 5 feet apart or special materials are required. The extra space is not necessary according to fire code.

Councilor Baker withdrew this amendment.

Amendment 6: Historic Carriage Houses within Historic Districts

Councilor Baker explained that the by right opportunity to convert historic carriage houses within an historic district is unnecessary because there is a review process within an historic district to prevent their demolition. This amendment would clarify that distinction. The rationale given as to why there should be a different rule for historic carriage houses was because they would be torn down if not given the opportunity for an accessory unit. However, if within an historic district, the district commission prevents demolition so the special exemption should not apply.

The Committee voted in favor of this amendment 8-0.

Amendment 7: Technical Changes; Several spelling errors, etc.

There were several spelling and numbering errors as well as some sentence structures that needed correction. It was also suggested to change the date a certificate of compliance must be filed to the first business day in January rather than January 1st, which is a holiday; changing primary to principal in all instances for consistency; and also some words/sentences that were deleted in error were restored.

Vote

The Committee voted in favor of all the technical amendments

Ordinance Vote

Councilor Albright moved approval of the amended ordinance. The Committee voted in favor 4-0-4 with Councilors Baker, Kalis, Sangiolo and Yates abstaining.

Councilor Hess-Mahan said he would like the rest of the City Council to better understand what is in the proposed ordinance. He will suggest to President Lennon that a Committee of the Whole be scheduled to explain and answer questions in advance of the City Council vote.

#109-15 Zoning amendment for inclusionary housing provisions from 15% to 20%
HIS HONOR THE MAYOR requesting consideration of changes to the inclusionary housing provisions of the Zoning Ordinance to increase the required percentage of affordable units to 20% with the additional 5% set aside for middle income households. [04/24/15 @ 2:38 PM]

Action: Zoning & Planning Held 8-0

Note: The Committee voted to hold this item as the hour was late. It will be rescheduled.

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair

Zoning and Planning Committee

1

#343-16 REVISED ACCESSORY APARTMENT ORDINANCE AMENDMENT

BRIEF BACKGROUND

2

- Amendment to the Accessory Apartment Ordinance docketed October 7, 2016 by the Mayor and Councilors Hess-Mahan, Albright, Ciccone, Crossley and Norton.
 - October 24, 2016 ZAP Discussion
 - November 14, 2016 ZAP Public Hearing
 - December 12, 2016 ZAP Discussion
 - December 15, 2016 Planning Board Public Hearing
 - December 21, 2016 ZAP Discussion
 - January 23, 2017 ZAP Discussion
 - February 27, 2017 Joint Public Hearing ZAP/Planning Board
 - March 13, 2017 Planning Board Discussion
 - March 27, 2017 ZAP Discussion

Purpose

3

- Provide flexibility for families as their needs change over time and, in particular, provide options for seniors to be able to stay in their homes and for households with disabled persons;

Detached

4

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

Zoning and Planning Committee

5

ESTIMATING POSSIBILITIES FOR NEW DETACHED ACCESSORY DWELLING UNITS

Estimating New Detached

6

- **Question #1:** How many properties in Newton could build a new detached building for an accessory apartment by-right under the proposed ordinance?
- **Limiting factors:**
 - Buildable Area – Setbacks
 - 6 ft. buffer between detached ADU and the principal structure
 - Wetlands
 - FAR

Estimating New Detached

7



■ Remaining Area CAN support a min. ADU structure
■ Remaining Area CANNOT support a min. ADU structure

**Estimated
7,625 properties
could build**

40% of all 1-2 family homes

These properties could also all build additions in the same footprint because they have space available in the FAR calculation

60% of all 1-2 Family homes would require a special permit for a detached accessory apartment

19,745 1-2 family properties as of date of analysis

Estimating Conversions of Detached Buildings

8

- **Question #2:** How many properties with existing detached buildings could *convert* them to accessory apartments under the proposed ordinance?
- **Limiting factors:**
 - Is the existing detached building in the setbacks?
 - Is the existing detached building closer than 6 ft. to the main house?

Estimating Conversions of Detached Buildings

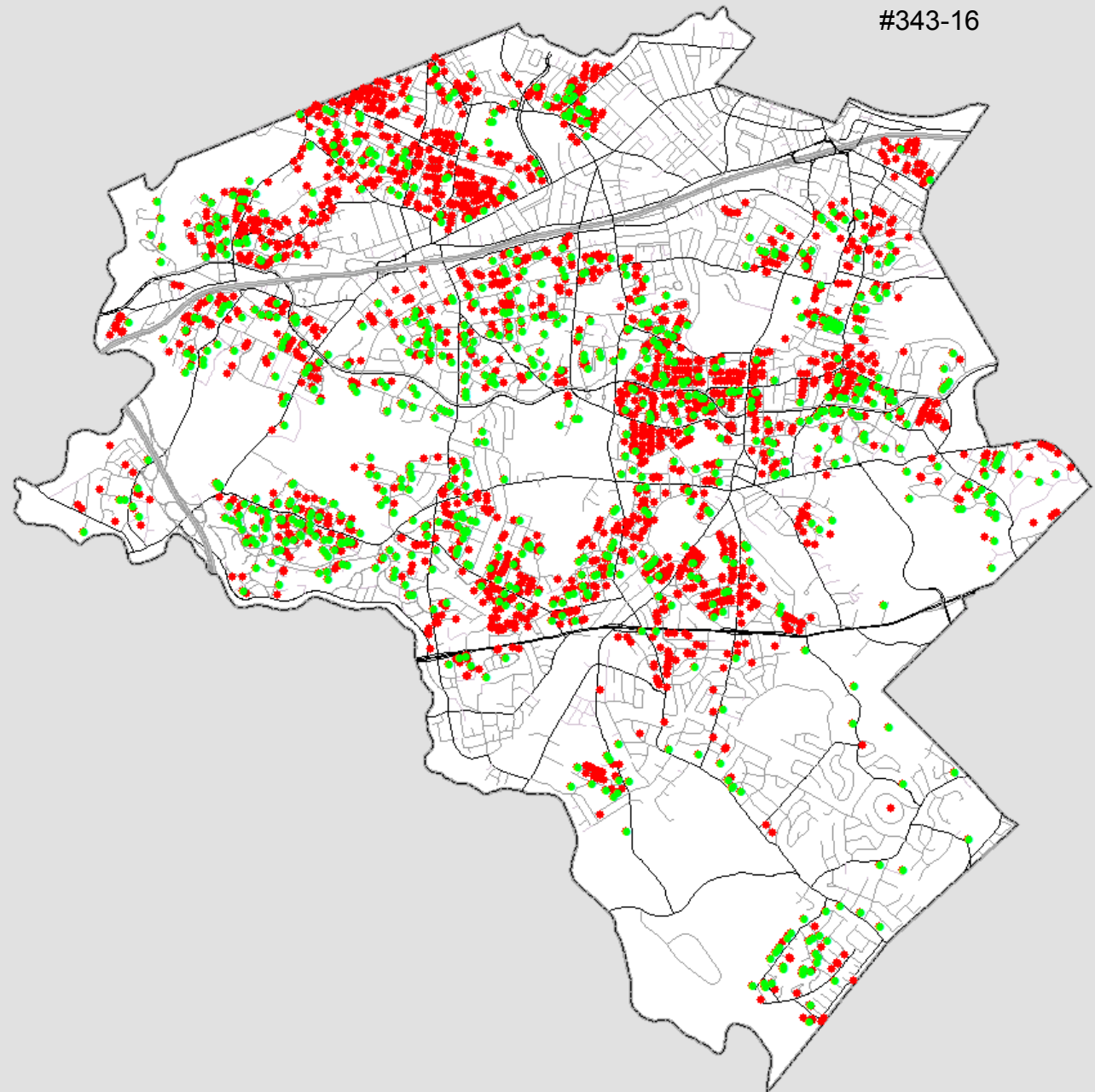
- Meets Accessory Apartment Criteria
- DOES NOT meet criteria

805 Properties

have existing detached buildings that meet the analyzed criteria for conversion:

- are located outside setbacks
- are at least 6 ft. from the principal structure

17.3% of properties with existing detached buildings



Estimating Detached Accessory Apartments



Analysis Steps

Estimating New Detached

11

- **Question #1:** How many properties in Newton could build a new detached building for an accessory apartment by-right under the proposed ordinance?
- **Limiting factors:**
 - Buildable Area – Setbacks
 - 6 ft. buffer between detached ADU and the principal structure
 - Wetlands
 - FAR

Buildable Area

12

- Analysis of Property Setbacks – Weston & Sampson



1. Buildings in Gray

2. Front and Rear Setbacks (yellow)

Buffer according to property's zoning

3. Side Setbacks (orange)

Buffer according to property's zoning

4. Buildable Area (green)

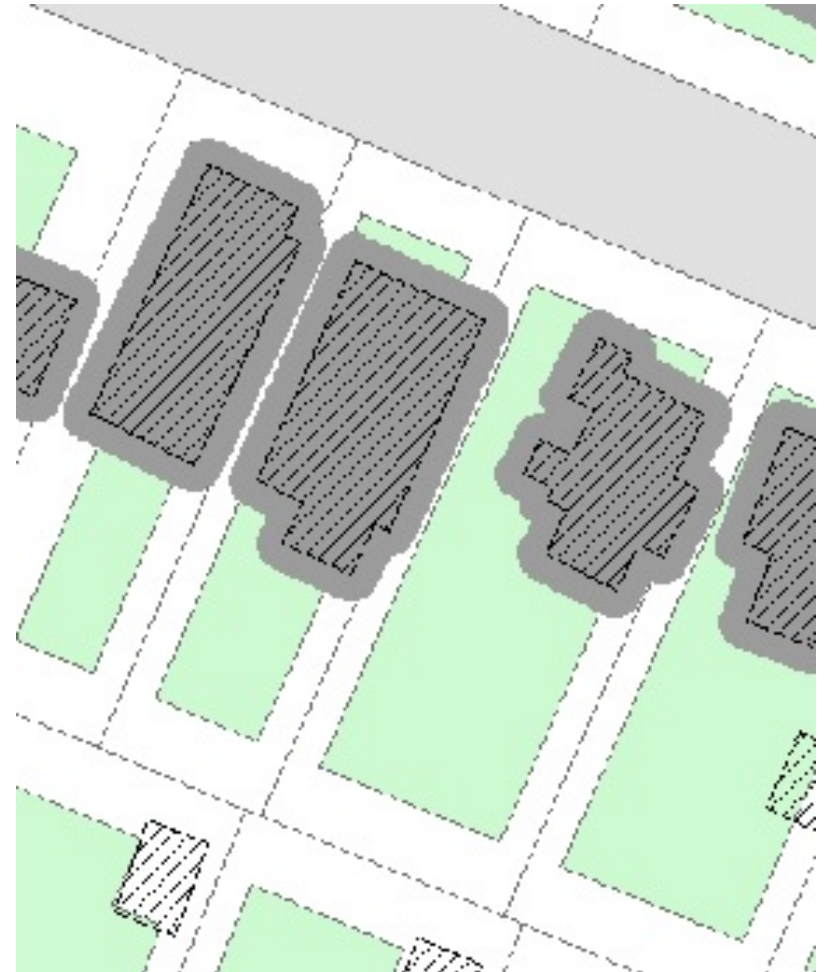
Subtract buildings and setbacks

ADU buffer from principal structure

13

- Accessory dwelling units must be 6 ft. from the principal dwelling unit on the lot, according to the proposal

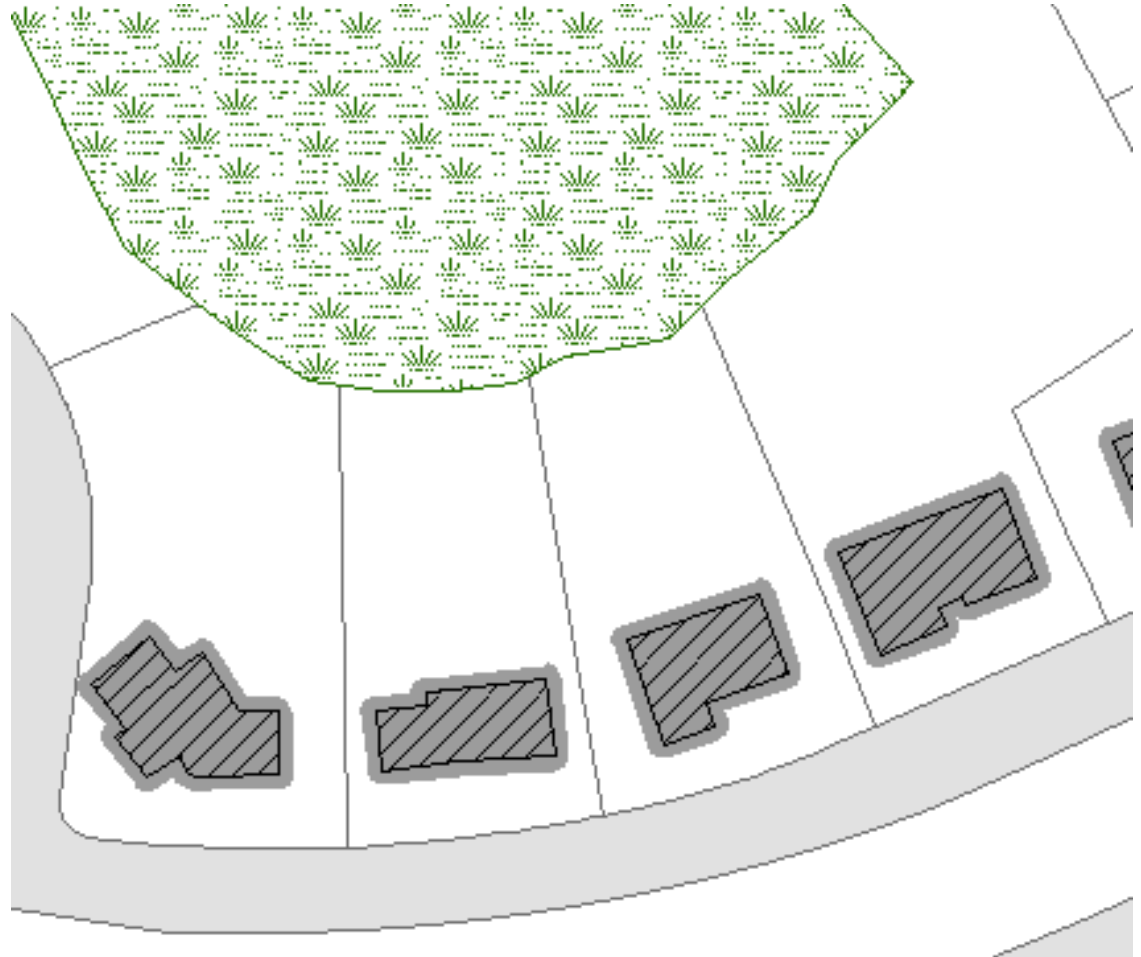
1. Buildings Hatched
2. 6 ft. Buffers in Dark Gray



Wetlands

14

- Wetlands are protected and cannot be built upon



Locations outside setbacks and wetlands

15

- These layers were merged and “erased” from the buildable area to leave areas where a new detached accessory structure could be built with administrative reviews



Erased areas (white)

FAR

16

- Properties where building a minimum size accessory dwelling unit (250 s.f.) would push the property above its maximum floor area ratio were then removed from the map



Max. FAR is exceeded (purple)

Minimum Footprint

17

- Properties were removed if they could not support the minimum footprint for a detached accessory apartment is 167 s.f. (min 250 s. f. in max. 1.5 stories).

1. Cannot support min. structure (orange)
2. Area large enough for min. structure (green)



What is not included

18

- Configuration of the remaining area
- Topography
- Reconfiguration of other site features (driveway, garage, play structure, etc.)
- Open space minimum



New Detached with Other Public Hearings

19

- **Question #1.a:** Of those properties that can physically accommodate a new construction detached accessory building for an accessory apartment, how many require public hearings at ***Conservation Commission*** or a ***Local Historic District Commission***?
- **Limiting factors:**
 - Wetlands Upland Review Areas
 - Floodplains
 - Historic Districts

New Detached with Other Public Hearings

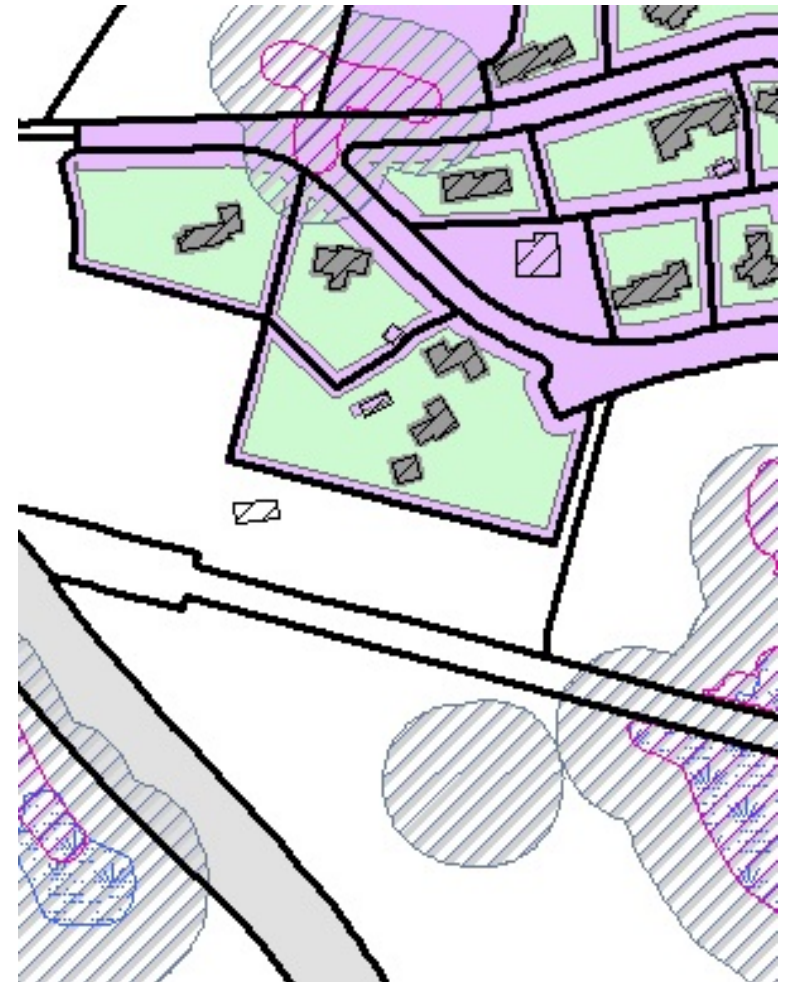
20

- **524 properties**

can accommodate a minimal detached building for an accessory apartment *but* require approvals from commissions that require a butter notice and public hearings

**1. Historic Districts
(purple)**

**2. Wetlands, Floodplain,
& Buffers (hatched)**



Possible new detached buildings for ADUs

21

7,625 properties (39%) could build a new detached building that meets the analyzed ADU requirements

...of those **524 properties** would require approval of the structure via public hearings at the Conservation Commission or a Local Historic District Commission

Converting Detached Buildings

22

- **Question #2:** How many properties with existing detached buildings could ***convert*** them to accessory apartments under the proposed ordinance?
- **Limiting factors:**
 - Is the existing detached building in the setbacks?
 - Is the existing detached building closer than 6 ft. to the main house?

Converting Detached Buildings

23

805 Properties

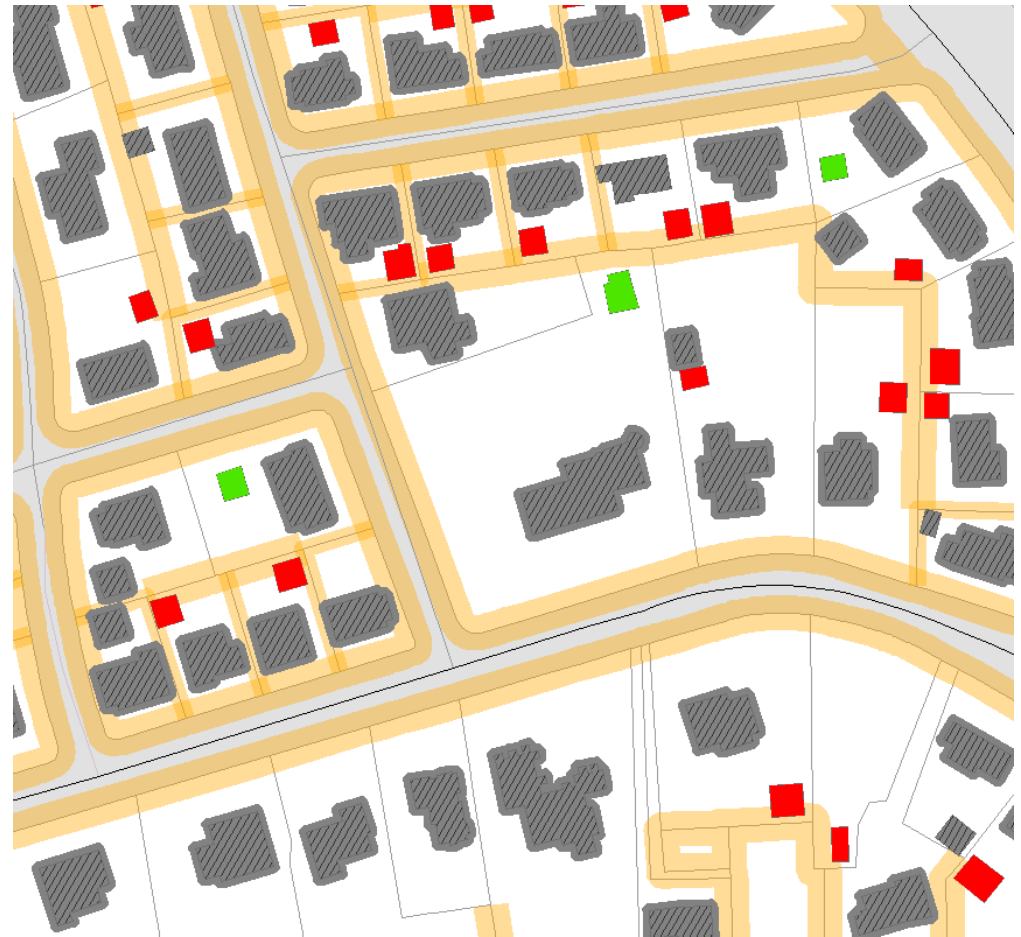
have existing detached buildings that meet the analyzed criteria for conversion:

- are located outside setbacks
- are at least 6 ft. from the principal structure

17.3% of properties with existing detached buildings

Cannot convert (red)

Can convert (green)



Below are Councilor Baker's suggested amendments #343-16 dated 03-24-17:

(Please note that the bracketed italic number below corresponds to the same numbered amendment in his memo dated March 24 to the Zoning and Planning Committee. For convenience, here are the topics of the amendments in his memo as numbered there; more explanation of the reasoning behind these proposed amendments will be provided at the Committee meeting.)

1. Provide that separate structure accessory apartments be subject to a special permit from the Council, as our existing ordinance currently provides.
2. Preserve the opportunity for accessory apartments in older homes while minimizing the risk of major redevelopment or teardowns, retaining provisions analogous to those in our current ordinance allowing new apartments in existing structures at least four years old.
3. Retain the single space parking and screening requirement of the existing ordinance for the accessory apartment to minimize impact on neighbors.
4. Provide for additional visual protection of means of egress, such as exterior staircases, and other exterior alterations, since some of the protections along these lines in the current ordinance are proposed to be removed.
5. Strengthen the spacing requirements for separate structure accessory apartments to minimize fire risk and other impacts on adjacent residences, including the primary dwelling.
6. Clarify that the rationale for making accessory apartments available as of right in historic carriage houses to preserve them from demolition does not apply within historic districts, where their demolition can be prevented.
7. Clarify certain other provisions of the proposed ordinance to make them more technically accurate or easier to administer, such as the homeowner certification process.

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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 effects on Newton's neighborhoods [7];
4. *Provide flexibility for families as their needs change over time and, in particular, provide options for seniors to be able to stay in their homes and for households with disabled persons; and*¹
4. ~~Provide an option for an income stream, particularly for low income seniors; and~~²
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;

¹ Revised by Planning Department in 3-24 memo.

² Revised by Planning Department in 3-24 memo.

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 evidenced by a certificate of occupancy for the original construction of the dwelling, or where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application. [2]

~~5. 6.~~ Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days; [7]

~~6. 7. No additional parking is required for the accessory apartment~~ **Parking shall comply with section 5.1 which requires 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. [3]³**

~~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 *within thirty days*⁴, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Chapter and ~~the~~ *with*⁵ 780 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, or upon transfer to a new owner as provided above**, and the property may be subject to inspection. [7]

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.

³ Note that with this amendment, the reference to parking for an accessory apartment would be maintained and not deleted in Section 5.1 of the zoning ordinances, but such a requirement can be waived the Council as provided in that section.

⁴ Added by Planning Department 3/24.

⁵ Corrected by the Planning Department 3/24.

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. [7] 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 **the look, character, and scale of the surrounding neighborhood as viewed from the street and by the immediate abutters** and ~~the residential character of the neighborhood~~, including, but not limited to, the following considerations [4]:

- 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.** [4]
- f. The Commissioner of Inspectional Services, **or the City Council in the case of a special permit**, 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.** [7]

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, **or within a local historic district**, any decisions of the Newton Historical Commission, or a local Historic District Commission, shall take precedence. [7]

E. Rules for Detached Accessory Apartments.

1. **Except as provided below, a [A] Detached Accessory Apartment B 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. [1]

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~~ *principal* 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, as **well as, if within a local historic district, the local Historic District Commission.** [7]

4. The Detached Accessory Apartment must be at least ~~15~~ **6** feet from the principal dwelling unit on the site. [5]

5. The Detached Accessory Apartment must meet the setback requirements of the ~~primary~~ *principal*⁶ dwelling unit, **as well as floor area and other applicable dimensional controls**, except by special permit. [7]

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. [6]

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 **and be deemed** 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~~]; [6, 7]

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; [7] 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

⁶ Change added by Planning Department 3/24.

alterations shall be subject to the jurisdiction of the Newton Historical Commission [~~or a local Historic District Commission~~]. [6]

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.

Accessory Apartments

Background on proposed
amendments

by Councilor Lisle Baker

Detached Accessory Apartments under the proposed new ordinance

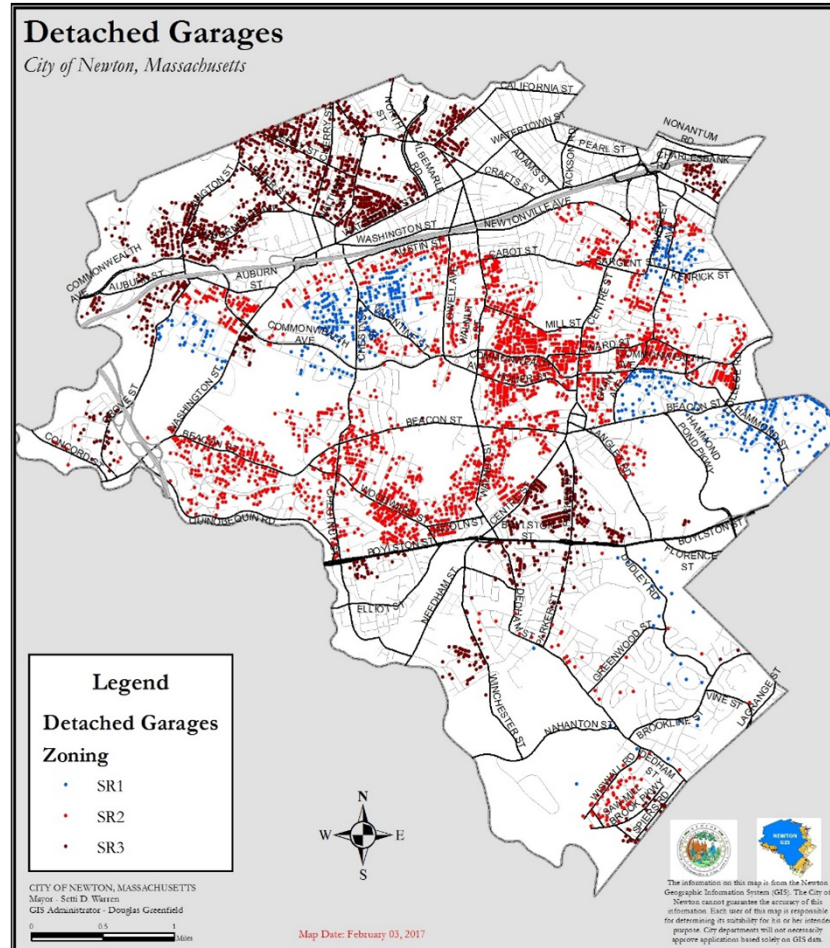
Where might Accessory Apartments be built as of right under the proposed new ordinance in existing or new detached structures?

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).

Detached garages



Single Residence District Properties with detached garages



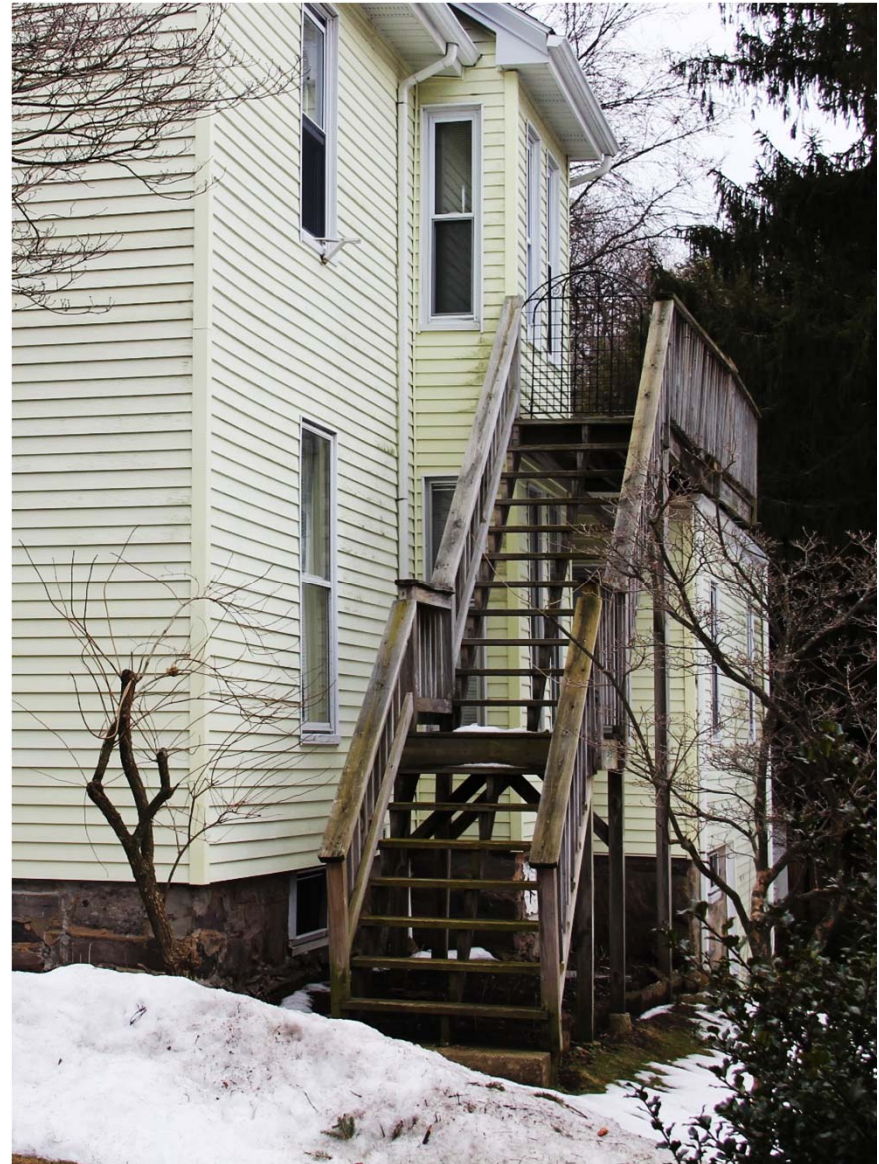
Exterior Stairways

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



Exterior Staircases



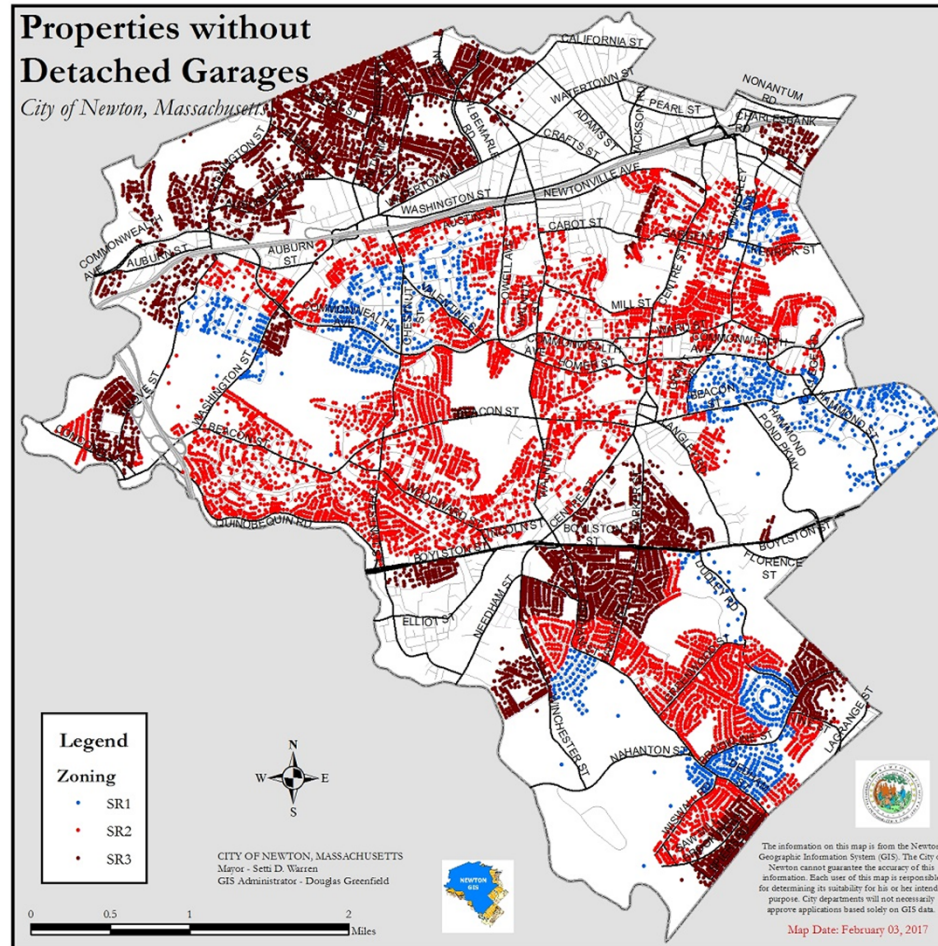




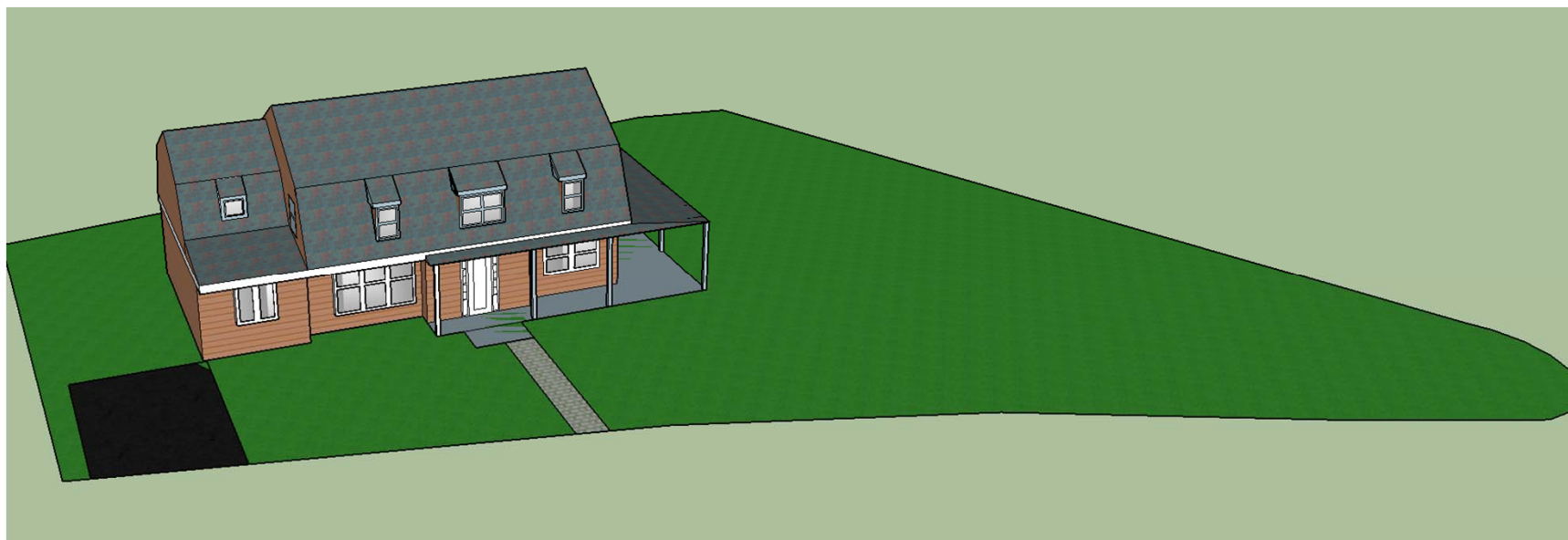




Single Residence District Properties without detached garages



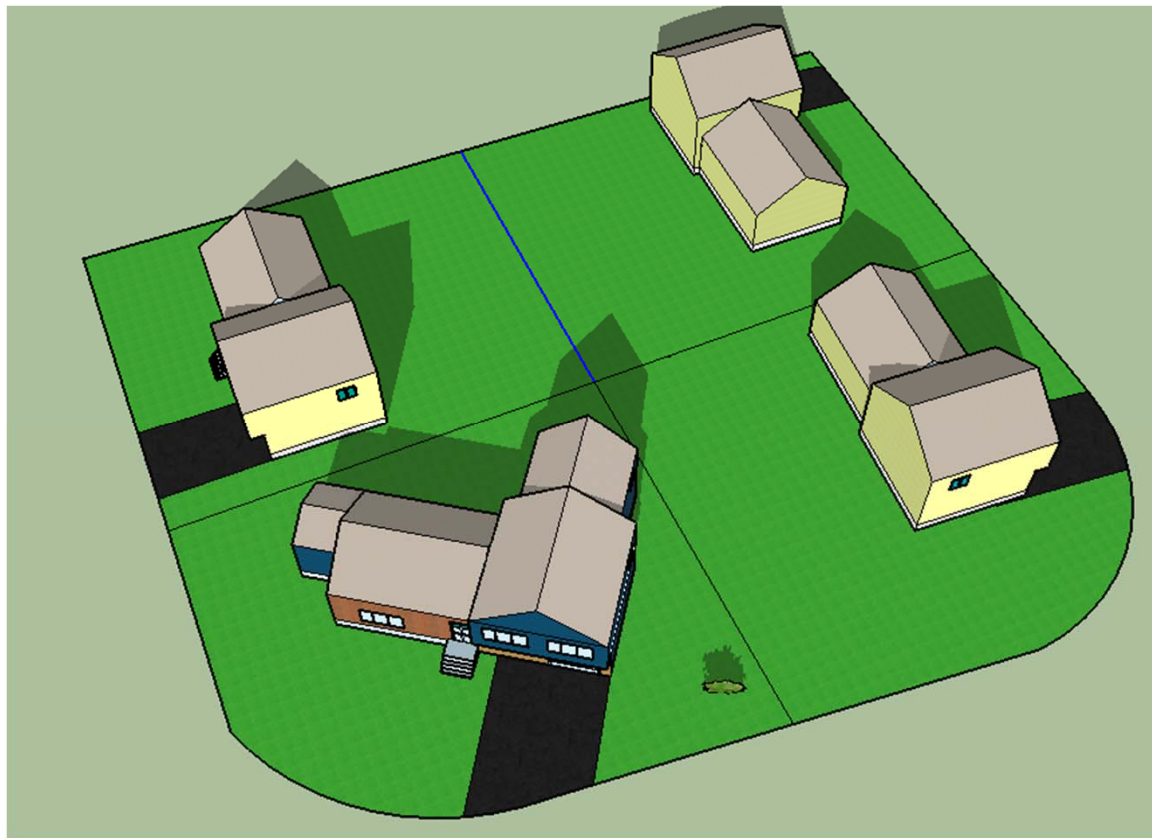
Pine Road Before



Pine Road After



Andrews Rd Before



Andrews Rd After



Andrews Rd Setbacks

