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Barney Heath
Director

MEMORANDUM

DATE: March 24, 2017

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

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

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

MEETING DATE: March 27, 2017

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

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The attached document is the most current version of the proposed accessory apartment ordinance, including several small highlighted changes reflecting public comment provided during and after the Public Hearing. The most substantial of these changes is in the intent section and is designed to reinforce the value of more widespread availability of accessory apartments to both seniors and to families looking for ways to support independent adult family members with disabilities. These changes once again reinforce one of the primary objectives of the proposed ordinance amendment; to provide Newton families with flexibility in meeting their changing lifestyle needs over time with no discernable impact on the Newton community as a whole.

At a previous meeting, the Committee requested that staff provide an analysis related to the availability of lots on which a detached accessory apartment might be located. Given the number of factors that play into such an analysis, there was a great deal of time and effort that went into mapping this potential and staff looks forward to presenting the results and methodology. A summary of the findings is below.

Based on some of the previous comments offered, the concern around detached accessory apartments was related to the minimal side setback requirement for detached accessory buildings. Generally, these detached accessory buildings have a reduced setback requirement (5 ft. from the side or rear lot line) and there appeared to be concerns that allowing accessory apartments in these buildings would place living space close to the property line. Leaving aside that there is currently no prohibition on putting living space in accessory structures, the proposed ordinance has been amended to include the following provision:

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

By requiring an accessory apartment in a detached structure to meet the same setback requirements as the principal dwelling on the site, an accessory apartment is essentially allowed in the same footprint as a by-right addition to the house. This requirement does significantly increase the number of lots in the City where a detached accessory apartment would require a special permit, as noted below.

Total Single & Two Family Properties	Number that could fit new accessory structure with accessory apartment	Percent of total	Number of these subject to Conservation Commission or Local Historic District	Number of existing accessory structures that could add an accessory apartment
19,745	7,625	39%	524	805 (17% of existing structures)

Recommendation

The Planning Department recommends that the Zoning and Planning Committee forward the proposed accessory apartment ordinance to the City Council with a positive vote to approve and adopt the ordinance. The Planning Board recommended approval of the proposed ordinance by a unanimous vote. The proposed ordinance is strongly supported in the community. The concerns raised amongst the Committee have been addressed. The proposed ordinance gives families rights and flexibility in their own homes to address their personal needs, whether that is to accommodate a family member, mitigate potential social isolation, and/or create an extra income stream that could, for example, allow them to stay in their home or restore a historic building. The ordinance also creates a simpler pathway to legalization for existing accessory apartments that need to be brought up to building code safety standards. The evidence from other communities indicates that, given the cost and inherent challenges to creating accessory apartments, the number of units permitted can be expected to be relatively small, but for those that make use of this option, likely invaluable.

3.4.2. Accessory Uses Allowed

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

B. By Special Permit in All Residence Districts.

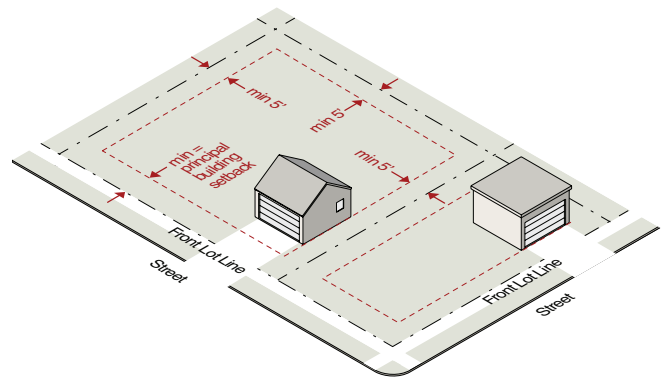
The text of section 3.4.2.C is in effect until April 1, 2017. After that date refer to section 3.4.4.

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

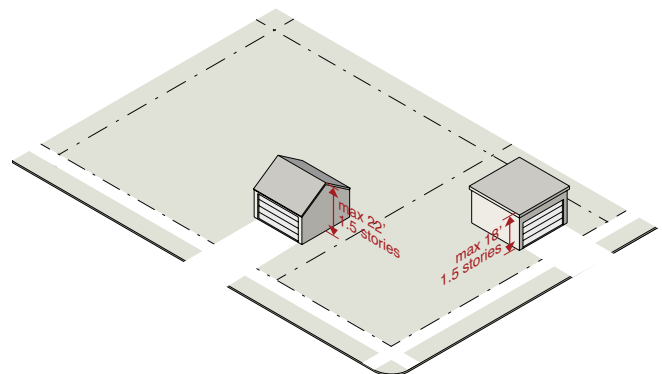
(Ord. No. S-260, 08/03/87; Ord.No. S-322, 07/11/88; Ord. No. T-114, 11/19/90; Ord. No. V-274, 12/06/99; Ord. No. A-78, 06/20/16)

3.4.3. Accessory Buildings

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



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



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

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

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

5.1.4. Number of Parking Stalls

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

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

Sec. 6.7. Accessory Uses

6.7.1. Accessory Apartments

A. Intent. Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section.

Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the residential character and scale of existing neighborhoods;
2. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
3. Create more housing units with minimal adverse affects on Newton's neighborhoods;
4. Provide 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
5. Preserve historic buildings, particularly historic carriage houses and barns.

B. Accessory Apartment Defined. A separate dwelling unit located in a Single-Family, Detached or a Two-Family, Detached building or in a detached building located on the same lot as a Single-Family, Detached or a Two-Family, Detached building, as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this [Sec. 6.7.1.](#)

1. **Internal.** An accessory apartment located within a single- or two-family dwelling.
2. **Detached.** An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building.

C. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/ dwelling unit;

2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner must occupy either the principal dwelling unit or the accessory apartment;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
5. Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
6. No additional parking is required for the accessory apartment.
7. Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;
8. When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Chapter and with 780 CMR; and
9. The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this section 6.7.1 and all applicable public safety codes. Such certification shall be filed annually and the property may be subject to inspection.

D. Rules for Internal Accessory Apartments

1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building.

- 2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space, as defined in Sec. 8.3, in the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40 % of the total Habitable Space, whichever is less.
- 3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood, including, but not limited to, the following considerations:
 - a. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
 - b. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
 - c. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
 - d. Windows should be consistent with those of the remainder of the building in proportion and orientation;
 - e. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
 - f. The Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above rules.
- 4. Only one entrance may be located on the facade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created, except by special permit.
- 5. Where a building is determined to be of historic significance and therefore subject to procedures required under Section 22-50(C)(4) of the City of Newton Ordinances, any decisions of the Newton Historical Commission, or a

local Historic District Commission, shall take precedence.

E. Rules for Detached Accessory Apartments.

- 1. A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached building or a Two-Family, Detached building.
- 2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.
- 3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the 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 Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement.
- 4. The Detached Accessory Apartment must be at least 6 feet from the principal dwelling unit on the site.
- 5. The Detached Accessory Apartment must meet the setback requirements of the principal dwelling unit, except by special permit.
- 6. Except as required above, a Detached Accessory Apartment is subject to the dimensional requirements of Section 3.4.3, Accessory Buildings. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.
- 7. **Historic Carriage Houses and Other Historic Accessory Buildings.** Under the following conditions, a Detached Accessory Apartment in an historic accessory building may be allowed

by right without requiring a special permit, and only subject to the rules in this subsection E.7.

- a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must qualify as "historically significant" under Section 22-50 of the City of Newton Ordinances, The Demolition Review Ordinances, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission of the Chair of the local Historic District Commission, whichever has jurisdiction;
- b. The proposed Detached Accessory Apartment will be greater than 15 feet from a residential dwelling on an abutting property, except by special permit; and
- c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a local Historic District Commission.

F. Invalidity Clause. If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.

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

6.7.2. Commercial Vehicle Parking

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

- 1. There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment;

- 2. It is used to store in a manner or place that is visible from outside of the vehicles any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment;
- 3. It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge;
- 4. Its length is more than 18 feet;
- 5. Its width is more than 7 feet;
- 6. It has a mechanized dumping capability;
- 7. It has a plow blade or plow blade frame or other device attached, or a plow blade or other device is stored on the premises.

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

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

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

6.7.3. Home Business

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

- 1. The studio of an artist, musician, photographer or writer;
- 2. Small group or individual instruction or tutoring;
- 3. Tailoring;
- 4. Millinery;
- 5. Crafts;
- 6. Word processing;

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Sec. 6.7. Accessory Uses

6.7.1. Accessory Apartments

A. Intent. Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section. Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the residential character and scale of existing neighborhoods;
2. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
3. Create more housing units with minimal adverse affects on Newton's neighborhoods;
4. Provide 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
5. Preserve historic buildings, particularly historic carriage houses and barns.

AB. Accessory Apartment Defined. A separate dwelling unit located in a Single-Family Detached or a Two-Family Detached building single-or-two-family dwelling or in a detached building located on the same lot as a Single-Family Detached or a Two-Family Detached building single-or-two-family dwelling, as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.1.

1. Internal Accessory Apartments. An accessory apartment located within a single- or two-family dwelling ~~and the owner of the dwelling occupies either the principal dwelling unit or the accessory apartment;~~

2. Detached Accessory Apartments. An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building structure, and the owner of the dwelling unit occupies either the principal dwelling unit or the Detached Accessory Apartment.

BC. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner must occupy either the principal dwelling unit or the accessory apartment;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
5. Where the accessory apartment is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
6. No additional parking is required for the accessory apartment;
- ~~2. The dwelling unit must have been constructed 10 or more years prior to the date of application for permit to construct an accessory apartment under this Sec. 6.7.1, as evidenced by a certificate of occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing dwelling on or before a date at least 10 years prior to the date of application;~~
37. Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, a certified copy of the decision or of the

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determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;

~~48.~~ When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with ~~the decision~~, this Chapter and the with 780 CMR; and

~~59.~~ The ~~owner of the subject~~ property owner shall file with the Commissioner of Inspectional Services an affidavit sworn certification attesting to continued compliance with the requirements of this section 6.7.1 and all applicable public safety codes. ~~the continued residence of the owner on the subject property.~~ Such affidavit certification shall be filed annually and the property may be subject to inspection from the date of the issuance of the certificate of occupancy.

GD. Accessory Apartments Allowed By Right Rules for Internal Accessory Apartments

~~1. Standards:~~ An Internal Accessory Apartment is allowed by right as a use accessory to ~~an owner occupied~~ Single-Family Detached dwelling, building and a Two-Family Detached building; ~~subject to Sec. 6.7.1.F,~~ provided that:

~~A2.~~ The An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total building size Habitable Space, as defined in Sec. 8.3, in the principal dwelling, whichever is less;* The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40% of the total Habitable Space, whichever is less.

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

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

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

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

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

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

f. The Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above rules.

4. Only one entrance may be located on the façade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created*, except by special permit.

5. Where a building is determined to be of historic significance and therefore subject to procedures required under Section 22-50(C)(4) of the City of Newton Ordinances, any decisions of the Newton Historical Commission, or a local Historic District Commission, shall take precedence.

~~B. There shall be no more than 2 exterior landings which may be covered which do not exceed 50~~

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~~square feet in area, and are not within the setback area;*~~

~~e. Stairs shall not be located within the setback;*~~

~~d. Additions and exterior alterations to the structure made within 4 years prior to application may not be applied towards meeting the requirements of Sec. 6.7.1.F.;~~*

~~e. No more than 1 accessory apartment shall be allowed per lot;~~

~~f. There shall be no lodgers in either the original dwelling unit or the accessory apartment;~~

~~g. Parking shall comply with Sec. 5.1; and~~

~~h. There shall be screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination.~~

~~* Requirements marked with an asterisk may be altered by special permit.~~

~~DE. Accessory Apartments Allowed by Special Permit Rules for Detached Accessory Apartments.~~

~~1. By Special Permit: The Board of Aldermen may grant a special permit for an A Detached Accessory Apartment is allowed by right as a use accessory to an owner-occupied Single-Family, Detached Building dwelling in a single-residence district, a nonconforming or a Two-Family, Detached Building, dwelling in a single-residence district, or a single or two family dwelling in a Multi-Residence 1 or 2 district, or a detached structure, provided that the building and lot size provisions of Sec. 6.7.1.F are met, except as amended below.~~

~~A2. In a single-residence district the A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less., or 33 percent of the~~

total building size of the dwelling, whichever is more;. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet.

3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the 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 Commissioner of Inspectional Services shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement.

4. The Detached Accessory Apartment must be at least 6 feet from the principal dwelling unit on the site.

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

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

7. Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in an historic accessory building may be allowed by-right without requiring a special permit, and only subject to the rules in this subsection E.7.

a. The proposed Detached Accessory Apartment will be located in a historic carriage house building

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or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must qualify as “historically significant” under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission or Chair of the Local Historic District Commission, whichever has jurisdiction;

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

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

b. In a Multi-Residence 1 and 2 district the accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet;
c. Exterior alterations required to meet applicable Building, Fire or Health codes are permitted provided they are in keeping with the architectural integrity of the structure and the residential character of the neighborhood.

d. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single-family dwelling or a nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in

area or 25 percent of the final gross floor area of the accessory apartment as provided in this Sec. 6.7.1, whichever is greater.

E. No additions or exterior alterations beyond those in the final grant of a application may be proposed to enlarge the accessory apartment within 2 years of receipt of a special permit hereunder this subsection from the Board of Aldermen.

E. Accessory Apartment Overlay Districts

1. An accessory apartment is allowed in an Overlay District according to the provisions of this 6.7.1 and Sec. 6.7.1.F.

2. District Boundaries. The following land, as noted on the Official Zoning Map, is placed in an Accessory Apartment Overlay District as specified:

a. Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.

b. Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.

c. Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.

d. Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

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

By Right	43,500	4,400
Special Permit	45,000*	3,200
Overlay District B		
By Right	46,000	3,600
Special Permit	40,000*	2,600
Overlay District C		
By Right	40,000	3,400
Special Permit	7,000*	4,800
Overlay District D		
By Right	30,000	4,000
Special Permit	45,000*	3,200

* If constructed on lot created prior to 12/7/1953

G. Building Size

In determining the building size with regard to accessory apartments, the building size shall be determined as follows:

1. Gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the Assessing Department unless otherwise indicated on floor plans prepared by a registered professional architect;
2. Existing unfinished space in basements and attics which would be finished for use as an accessory apartment shall be considered in the building size;
3. Existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment on the porch;
4. Existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be

used for the accessory apartment in the detached structure; and

5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet 780 CMR requirements for floor to ceiling height as specified in Section R305.

H. Pre-Existing Units. A pre-existing accessory apartment in a single or two family dwelling unit or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional standards above provided the following criteria are fulfilled:

1. Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described here shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1999 and ongoing from that date forward by submission of probative documentary evidence to the Commissioner of Inspectional Services. Records including, but not limited to the following, may be submitted:
 - a. A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or
 - b. Assessing Department records for the premises indicating the existence of the second dwelling unit; or
 - c. Records of Internal Revenue Service tax returns for the owners of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or
 - d. Permits from the Department of Inspectional Services, other than the actual building alteration permit which provided for construction of the dwelling unit, such as other building permits;

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~~plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the second dwelling unit; or~~

~~e. Sworn affidavits by former or present tenants of the second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or~~

~~f. Any other documentary evidence which is material and relevant and demonstrates the existence of the second dwelling unit as of December 31, 1999 and forward.~~

~~2. Standard of Proof.~~

~~a. Conflicting Evidence. If the documentary evidence available is conflicting, the Commissioner of Inspectional Services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1999 and forward from that date is supported by a preponderance of evidence.~~

~~b. If no Department of Inspectional Services records or Assessing Department records are available for a given premises, then sworn, notarized affidavits as provided above shall be presumed to be reliable, unless there is substantial evidence to the contrary.~~

~~3. Requirements. The requirements of Sec. 6.7.1. G.1.a., b., c., d., e., f., g., and h. must be satisfied.~~

IF. Invalidation Clause. If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.