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**Barney Heath**  
Director

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**PUBLIC HEARING MEMORANDUM**

**DATE:** November 10, 2016

**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:** November 14, 2016

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

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The challenge of diversifying Newton's housing to meet the needs of the City's changing demographic profile has been a long-standing issue. Diverse housing options, including a range of home types of different sizes are needed to be consistent with the community's value of being an economically diverse community of opportunity. This need has often appeared to clash with the equally important value in the preservation of the character of the City's villages and neighborhoods. For several decades accessory apartments have been considered as one way to create more diverse and affordable units for Newton residents. Thirty years ago, Newton began allowing accessory apartments as an answer to this challenge and, incrementally since then, the City has expanded on the opportunity for homeowners to create accessory apartments. This proposed amendment completes that process by allowing, with certain conditions, all single-family and two-family homeowners the opportunity. Recent data indicates that Newton's demographic and economic profile continues to change, that there is increasing demand for this option amongst homeowners, particularly those interested in preserving historic structures, and that nationally, there is increasing recognition of accessory apartments as a low-impact, effective way to increase housing options. Based on these findings, the Planning Department recommends that the Newton City Council adopt

the proposed Accessory Apartment Ordinance, which was also one of the priority recommendations of the Newton Leads 2040 Housing Strategy.

Accessory Apartment Ordinance Intent

Accessory apartments are intended to advance the following:

1. *Diversify housing choices in the City while respecting the look 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. *Promote the preservation of historic buildings, particularly historic carriage houses.*

*What is an Accessory Apartment?*

An accessory apartment is a small dwelling unit interior to, or on the same lot as, a single family or two-family home. These units are subservient to the primary dwelling unit on the lot with significant restrictions on their size, design, occupancy, and tenure. Historically, accessory dwelling units have been referred to as Granny flats or in-law apartments, reflecting the fact that frequently these units are occupied by extended family members – the parents or children of the family occupying the primary dwelling unit.

What otherwise might only be considered a bedroom becomes an accessory apartment if there is a bathroom and facilities for cooking. These units can be flexible to a family’s changing needs and adapt over time such that one homeowner may rent out the unit while the next might treat it as just another bedroom for their family.

The above statements are drawn directly from the proposed ordinance text. In addition, another critical goal of this ordinance amendment is to help to address the illegal accessory apartment issue in the City, which presents a public safety issue and is further described below.

The Demographics and Housing Mismatch

For an existing or prospective Newton resident seeking to navigate the housing market and find an appropriate home in Newton, the options are limited. Amongst the major findings of Newton’s 2016 Housing Strategy:

- Senior households aged 64+ will grow from approximately 15% to 25% of Newton households by 2030 as the Baby Boomer generation ages;
- Household size (number of persons) has already begun its decline, from 2.77 people per household in 1980 to 2.5 people in 2010;
- 25% of all Newton households are single people, with half of these living in single-family homes;
- Average household income in 2013 was \$173,665, with declining numbers of low and middle-income households and significantly increasing numbers of very high-income households from 2000 to 2013; and
- Between 4,713 and 5,092 low and moderate income households in Newton are cost-burdened, meaning the household is paying more than 30% of its income on housing costs.

Against this demographic reality, Newton's housing supply continues to be dominated by single-family homes and have the following characteristics:

- Single-family homes make up more than half of the City housing stock and the average size has increased to 4,100 square feet;
- The median sale price of a single family home in spring of 2016 was \$1.1 million. A condo was \$500,000;
- At the time of the Housing Strategy release, there could be found only 4 rental apartments in the City affordable to an income of \$55,000 or less;
- A majority of new housing production continues to be single-family homes, making up 41% of units produced between 2005 and 2014; and
- Only 9% of Newton's subsidized affordable units are not age-restricted or reserved for those with disabilities or survivors of domestic abuse.

The data and analysis on Newton's demographic trends and housing market reveals a mismatch where the smaller units sought by down-sizing seniors and a younger workforce and the affordable units needed to balance against the rapidly increasing income disparity of the City are not available and not being produced. Right now, low-wage employees working in Newton are effectively required to leave the City at the end of their workday while access to employees is increasingly being identified as an economic development issue for the City. Whether it is the Millennial generation innovation economy workforce or people to clean offices, serve food, or work in retail stores, the strength of Newton's economy depends on these people and the City needs to provide housing options for them. Responding to the needs generated by changing demographics and workforce requires multiple strategic actions, as described in the Housing Strategy, and a robust accessory apartment policy is an important part of that.

#### Limitations of the Existing Accessory Apartment Ordinance

In 1987 the first accessory apartment ordinance was adopted in Newton. The goals and intent were much the same as those we are considering today, primarily to "provide additional housing opportunities while preserving the exterior character of larger residential structures." Unfortunately, not a single accessory apartment was built under this ordinance and the City Council moved to assemble a new sub-committee to review and improve the ordinance. In 1989 an amended ordinance was passed by the then Board of Aldermen and is largely what exists today.

The current accessory apartment ordinance has not served to add substantially to housing options in Newton because, while the intent may have been to expand the availability of accessory apartments, the function of the ordinance has been to significantly limit where and how an accessory apartment could be created. The primary mechanism of this limitation is through a set of dimensional requirements for minimum lot and house size that determine whether one is allowed to create an accessory apartment. If a property fulfills these dimensional requirements, a property owner may create an accessory apartment by-right, via the Review of Accessory Apartment Petitions (RAAP) process or by special permit. The lot and building size dimensions were selected with the idea that roughly 10% of Newton homes would qualify for the RAAP process and another 15-20% would be

able to create an accessory apartment by special permit. Therefore, up to 30% of lots might be in some way eligible to create an accessory apartment.

The control mechanism lot and house size has a significant drawback and impedes achieving the goals of the accessory apartment ordinance. Where the goal is to allow homeowners the opportunity to create an income stream that might allow them to stay in their homes, by restricting the opportunity to create accessory apartments only to larger homes on larger lots, the ordinance effectively restricts this opportunity to higher income households. Higher income households are the least likely to need or want to establish an accessory apartment, therefore the ordinance effectively restricts this right to those least likely to exercise it and therefore is less likely to result in new accessory apartments. The map in appendix C show the lots where an accessory apartment can be created by-right under the current ordinance, representing 13% of lots as shown on the accompanying table. The Community Development Block Grant (CDBG) Target neighborhoods in Newton, which represent the areas of the City with the highest percentages of low and moderate-income households, are highlighted. Since 1995 only 7 accessory apartments have been created by-right and 46 by special permit with another 20 accessory apartments legalized; those created since 2010 are shown on the map in appendix D. A total of 73 units over 20 years represent less than 4 units a year or .002% of total housing stock. The greater number created by special permit is a reflection of the fact that currently, most avenues to creating an accessory apartment require a special permit. The map in appendix E shows the locations of illegal apartment complaints received by ISD since 2004; as an indication of demand, these units are clearly concentrated largely in those areas where they are least likely to be allowed under the current ordinance. In a survey conducted following the 2006 to 2009 Accessory Apartment Incentive Program, which created zero units, the primary reason properties that sought to enter the program were found ineligible was due to not meeting minimum lot sizes (appendix F).

The maps and data referenced above demonstrate a clear pattern that the locations where accessory apartments are allowed under the current zoning ordinance are those where demand is generally the lowest. The intent and goals of the current ordinance cannot be met because the right to create an accessory apartment is based on dimensional requirements for minimum lot and house sizes, which limit this option to the areas of Newton where it is least likely to be exercised. The proposed accessory apartment ordinance introduces an alternative set of mechanisms to protect neighborhood character while effectively promoting the use of accessory apartments to increase the diversity of housing options.

#### Proposed Accessory Apartment Ordinance

The following describes the key provisions of the proposed amendments to the Accessory Apartment Ordinance. Overall, these amendments are intended to make the opportunity to create an accessory apartment more widespread in the City while ensuring that the units created are clearly subservient to the primary dwelling units and that the accessory units do not intrude on the generally single-family or two-family character of the neighborhoods where these units may be found. The ordinance accomplishes these goals through a combination of limitations on the use of accessory apartments and clear design requirements that are intended to effectively make the presence of an accessory apartment invisible to the neighborhood; requiring that the unit physically blend into the existing property.

*Section 6.7.1.A Intent*

The proposed amendments add an intent section to the Accessory Apartment Ordinance, which is provided above.

*Section 6.7.1.B Accessory Apartment Defined*

The accessory apartment definition is largely retained, including the clear distinction between internal and detached accessory apartments.

*Section 6.7.1.C Rules for All Accessory Apartments*

Many of the key provisions governing the rights and responsibilities that are related to accessory apartments are found in this section. Important rules requiring that the property owner live on the property, prohibiting condo-ization, and requiring recordation with the Registry of Deeds and annual certification of the Accessory Apartment with the Commissioner of ISD are all retained in the amended ordinance. This section also includes this important provision:

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;

The requirement above is intended to restrict the number of people who can live in an accessory apartment such that there can be no more people in a house with an accessory apartment as allowed in a house without an accessory apartment. Effectively, while this ordinance allows the creation of a new residential unit associated with a house, with limitations, it does not allow any expansion in the number of people who can live in that house under Newton's Zoning Ordinance; this rule is found primarily in Section 3.4.2 where occupancy is limited to one family and three unrelated individuals. In this way, the ordinance amendment expands options, allowing households to have greater choice in how they live while not having a significant impact on Newton's neighborhoods.

This section of the ordinance also has the proposed parking requirements for accessory apartments. In short, the proposed amendment removes the single parking space currently required for an accessory apartment but does require that the property have all other required parking spaces, which is two per unit. An exception is allowed where providing the required parking effectively removes existing on-street spaces, as in when there is a new curb cut. Such a situation effectively provides no net gain in parking available and can be a detriment to the overall street as the parking supply available to everyone is lost. Ultimately, accessory apartments represent an opportunity for people seeking a car-light lifestyle, which is possible in Newton's generally transit-rich environment.

*Section 6.7.1.D Rules for Internal Accessory Apartments*

This section provides the rules specific to Internal Accessory Apartments. The section permits internal accessory apartments by-right. While the size limitations are retained from the current ordinance (250-1000 square feet for an internal unit; 250 – 1200 square feet for a detached unit), this proposed amendment adds a number of design criteria intended to reinforce the idea that internal accessory apartments should blend into the primary home and not generally be distinguishable. These design

standards are to be administered by the Commissioner of ISD with the advice of the Planning Department and/or the Urban Design Commission. Further, decisions of the Historical Commission and Local Historic District Commissions as they relate to approving the design of a historic building are considered to be in compliance with these design standards.

#### *Section 6.7.1.E Rules for Detached Accessory Apartments*

As with Internal Accessory Apartments, Detached Accessory Apartments are allowed by-right with a number of design standards along with several minimum setback requirements in the proposed ordinance. Unit size limitations are maintained from the current ordinance. Further, the proposed ordinance has a section with special allowances for historic accessory buildings that are designed to encourage and incentivize the preservation and restoration of the City's historic carriage houses and similar structures.

#### Enforcement

Illegal accessory apartments represent a significant issue for the City, with estimates as to the number that might exist ranging from 600 to 1,000. As these units often do not meet building code requirements, they can present a public safety issue if they go uninspected. ISD has a very active inspection program; the department has trained police and fire to recognize and report suspected illegal accessory apartments and is working with the City's colleges to actively identify and report potential illegal apartments where students live. ISD is currently finding 1 to 3 of these units a month. For every accessory apartment created since 2010 there are 4.7 illegal apartment complaints investigated. The map in appendix E shows the location of these units dating back to 2004, as compared to the by-right accessory apartment lots.

#### Recommendations and Next Steps

Accessory apartments are widely recognized as a low-impact and effective way to begin to address housing shortages being experienced in metropolitan areas across the country. These units create flexibility for homeowners, allowing them to have another option that can make it easier to help a family member, afford to stay in one's home, or otherwise navigate life challenges. In a survey conducted of Newton seniors, 88% indicated a desire to stay in the City as they age. The proposed amendment appropriately balances concerns for the character of Newton's neighborhoods with an easy to follow process and clear rules that will assist and support those who choose to pursue the option of creating an accessory apartment. For these reasons, the Planning Department recommends approval of the proposed ordinance amendments. Public comment received during and following the public hearing will be taken into account as the final version of the ordinance is drafted.

Following the public hearing, the Zoning and Planning Committee will meet in one or more work sessions to develop a final recommendation and ordinance to forward to the City Council. The City Council will then need to vote with the ordinance requiring a 2/3 majority to pass and become part of the Newton Zoning Ordinance.

Attachments

A – Proposed Accessory Apartment Ordinance text

B - Proposed Accessory Apartment Ordinance text, redline version

C – Map: Accessory Apartment Analysis, Lots with possible By-Right Units and accompanying table

D – Map: Accessory Apartment Analysis, Lots with possible By-Right Units and Approved Accessory Units, 2010-2016

E – Map: Accessory Apartment Analysis, Lots with possible By-Right Units and Illegal Unit Complaints from 2004-2016

F – Table: Barriers Identified in AAIP Program

## 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 look 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. Promote the preservation of historic buildings, particularly historic carriage houses.

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 residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.

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

### C. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner must occupy either the principal dwelling unit or the accessory apartment;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
5. No additional parking is required for the accessory apartment. Off-street parking required under Sec. 5.1 for the principal dwelling unit must be provided. Where providing such parking will, in the opinion of the Commissioner of ISD, result in the loss of an equivalent or greater number of on-street parking spaces (e.g. because of a new curb cut), the parking requirement may be reduced by one;
6. The property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the decision or of the determination from the Commissioner of Inspectional Services granting the accessory apartment and certified copies shall be filed with the Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the Assessing Department;
7. When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Chapter and the 780 CMR; and
8. The property owner shall file with the Commissioner of Inspectional Services a



certification attesting to the continued residence of the owner on the subject property. Such certification shall be filed annually from the date of the issuance of the certificate of occupancy.

#### 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 gross floor area, as defined in Sec. 1.5.5, in the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment.

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 must be the same or visually match in type, size, and placement, the exterior finish material of the remainder of the building;

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

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

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

e. The Commissioner of Inspectional Services may seek advice and council 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 be considered to be in compliance with this section 6.7.1.D.3.

#### E. Rules for Detached Accessory Apartments.

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

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

3. If the creation of a Detached Accessory Apartment involves exterior alterations to an existing building or construction of a new building, the following standards shall apply. The exterior finish material must 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 may seek advice and council 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. A Detached Accessory Apartment is subject to the requirements of section 3.4.3. For the purposes

of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

**6. Historic Carriage Houses and Other Historic Accessory Buildings.** Under the following

conditions, a Detached Accessory Apartment in a historic accessory building may be allowed by-right without requiring a special permit, and only subject to the rules in this section E.7, provided that exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a Local Historic District Commission:

a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must either (a) have been designated as a Newton Local Landmark, or (b) be located within a local historic district, or (c) qualify as “historically significant” under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance;

b. The proposed Detached Accessory Apartment will be greater than 12.5 feet from an abutting residential dwelling, except by special permit; and

c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve its historic character and integrity.

d. The Commissioner of Inspectional Services may seek advice and counsel from the Director of Planning and Development and/or the Newton Historical Commission or the Local Historic District Commission in the application of the above rules.

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

## Sec. 6.7. Accessory Uses

### 6.7.1. Accessory Apartments

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

Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the look 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. Promote the preservation of historic buildings, particularly historic carriage houses.

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 residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.

1. Internal Accessory Apartments. An accessory apartment located within a single- or two-family dwelling ~~and the owner of the dwelling occupies either the principal dwelling unit or the accessory apartment;~~
2. Detached Accessory Apartments. An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building

~~structure, and the owner of the dwelling unit occupies either the principal dwelling unit or the Detached Accessory Apartment.~~

### BC. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit;
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner must occupy either the principal dwelling unit or the accessory apartment;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
5. No additional parking is required for the accessory apartment. Off-street parking required under Sec. 5.1 for the principal dwelling unit must be provided. Where providing such parking will, in the opinion of the Commissioner of ISD, result in the loss of an equivalent or greater number of on-street parking spaces (e.g. Because of a new curb cut), the parking requirement may be reduced by one;
- ~~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;~~
36. The property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the decision or of the

November 10, 2016

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;

~~47.~~ When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with ~~the decision;~~ this Chapter and the 780 CMR; and ~~58.~~ The ~~owner of the subject~~ property owner shall file with the Commissioner of Inspectional Services an affidavit certification attesting to the continued residence of the owner on the subject property. Such affidavit certification shall be filed annually 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 gross floor area, as defined in Sec. 1.5.5, in the principal dwelling, whichever is less;\* The City Council may grant a special permit for a larger Internal Accessory Apartment

~~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 must be the same or visually match in type, size, and placement, the exterior finish material of the remainder of the building;

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

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

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

e. The Commissioner of Inspectional Services may seek advice and council 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 be considered to be in compliance with this section 6.7.1.D.3.

~~B. There shall be no more than 2 exterior landings which may be covered which do not exceed 50 square feet in area, and are not within the setback area;\*~~

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

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

- e. ~~No more than 1 accessory apartment shall be allowed per lot;~~
- f. ~~There shall be no lodgers in either the original dwelling unit or the accessory apartment;~~
- g. ~~Parking shall comply with Sec. 5.1; and~~
- h. ~~There shall be screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination.~~

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

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

1. ~~By Special Permit. The Board of Aldermen may grant a special permit for an A Detached Accessory Apartment is allowed by right as a use accessory to an owner-occupied Single-Family, Detached Building dwelling in a single-residence district, a nonconforming or a Two-Family, Detached Building, dwelling in a single-residence district, or a single or two family dwelling in a Multi-Residence 1 or 2 district, or a detached structure, provided that the building and lot size provisions of Sec. 6.7.1.F are met, except as amended below:~~
- A2. ~~In a single-residence district the A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, or 33 percent of the total building size of the dwelling, whichever is more; The City Council may grant a special permit for a larger Detached Accessory Apartment.~~
3. ~~If the creation of a Detached Accessory Apartment involves exterior alterations to an existing building or construction of a new building, the following standards shall apply. The exterior finish material must 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 may seek advice and council 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. A Detached Accessory Apartment is subject to the requirements of section 3.4.3. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

6. Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in a historic accessory building may be allowed by-right without requiring a special permit, and only subject to the rules in this section E.7, provided that exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission or a Local Historic District Commission:

a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must either (a) have been designated as a Newton Local Landmark, or (b) be located within a local historic district, or (c) qualify as "historically significant" under Section 22-50 of the City of Newton Ordinances, the Demolition Review Ordinance;

b. The proposed Detached Accessory Apartment will be greater than 12.5 feet from an abutting residential dwelling, except by special permit; and

~~c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve its historic character and integrity.~~

~~d. The Commissioner of Inspectional Services may seek advice and counsel from the Director of Planning and Development and/or the Newton Historical Commission or the Local Historic District Commission in the application of the above rules.~~

~~b. In a Multi-Residence 1 and 2 district the accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet;~~  
~~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	15,000*	3,200
Overlay District B		
By Right	16,000	3,600
Special Permit	10,000*	2,600
Overlay District C		
By Right	10,000	3,100
Special Permit	7,000*	1,800
Overlay District D		
By Right	30,000	4,000
Special Permit	15,000*	3,200

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

G. Building Size

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

1. Gross floor area on ground floor, upper floors, finished attic and living area in basement used for living, sleeping, eating or cooking purposes, including closets and hallways, as determined by the Assessing Department unless otherwise indicated on floor plans prepared by a registered professional architect;
2. Existing unfinished space in basements and attics which would be finished for use as an accessory apartment shall be considered in the building size;
3. Existing space on porches shall not be included except as follows: If the accessory apartment is to be located in space previously used for a porch, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment on the porch;
4. Existing space in attached or detached garages shall not be included except as follows: if the accessory apartment is to be located in a detached structure, the building size shall include that in the primary dwelling structure plus that space to be used for the accessory apartment in the detached structure; and
5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet 780 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, 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.

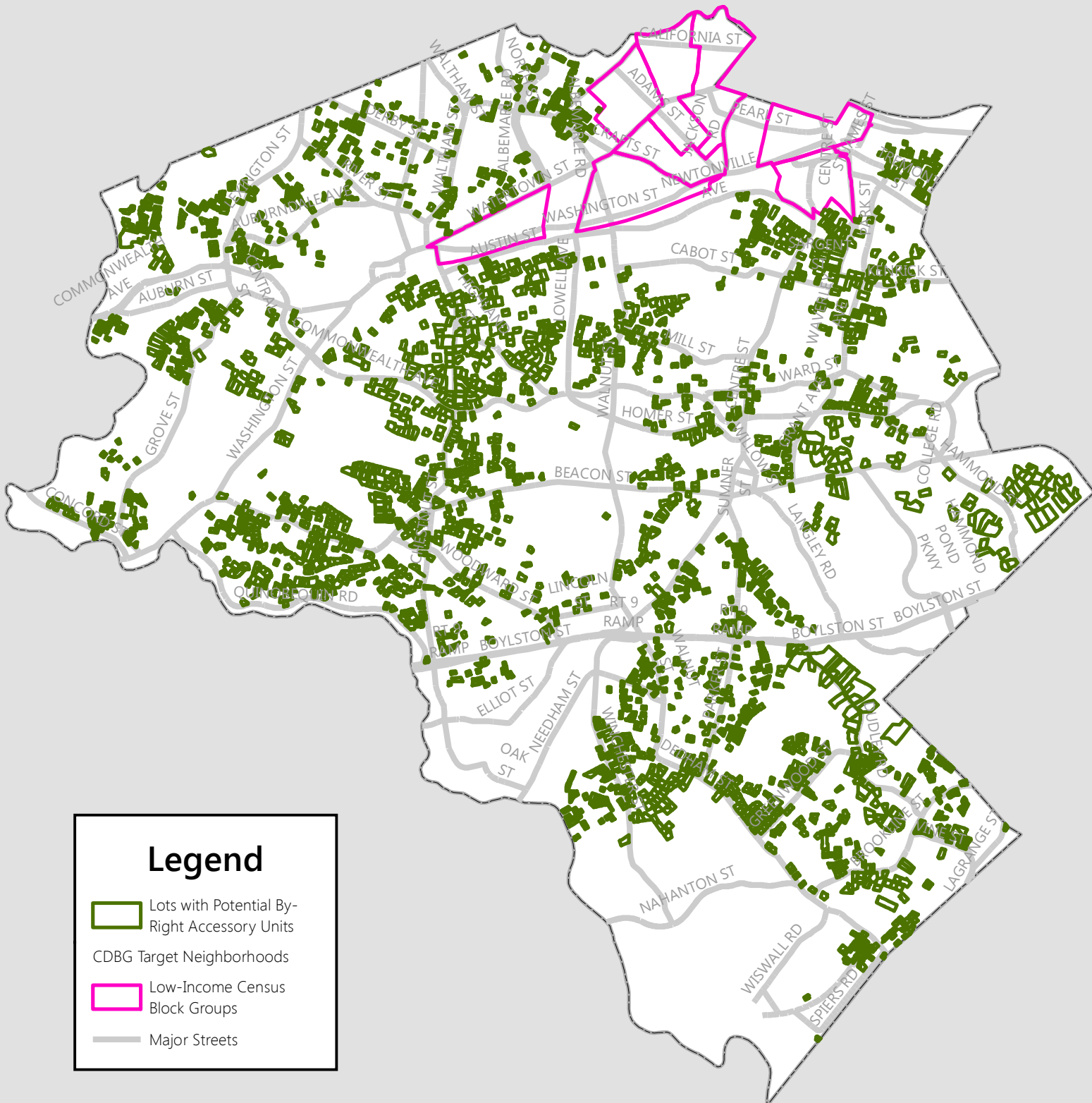
~~a. Conflicting Evidence. If the documentary evidence available is conflicting, the Commissioner of Inspectional Services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1999 and forward from that date is supported by a preponderance of evidence.~~

~~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.~~

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





**Legend**

-  Lots with Potential By-Right Accessory Units
-  CDBG Target Neighborhoods
-  Low-Income Census Block Groups
-  Major Streets

# Accessory Apartments Analysis

## Lots with possible By-Right Units

*City of Newton, Massachusetts*

CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas Greenfield



Map Date: November 08, 2016



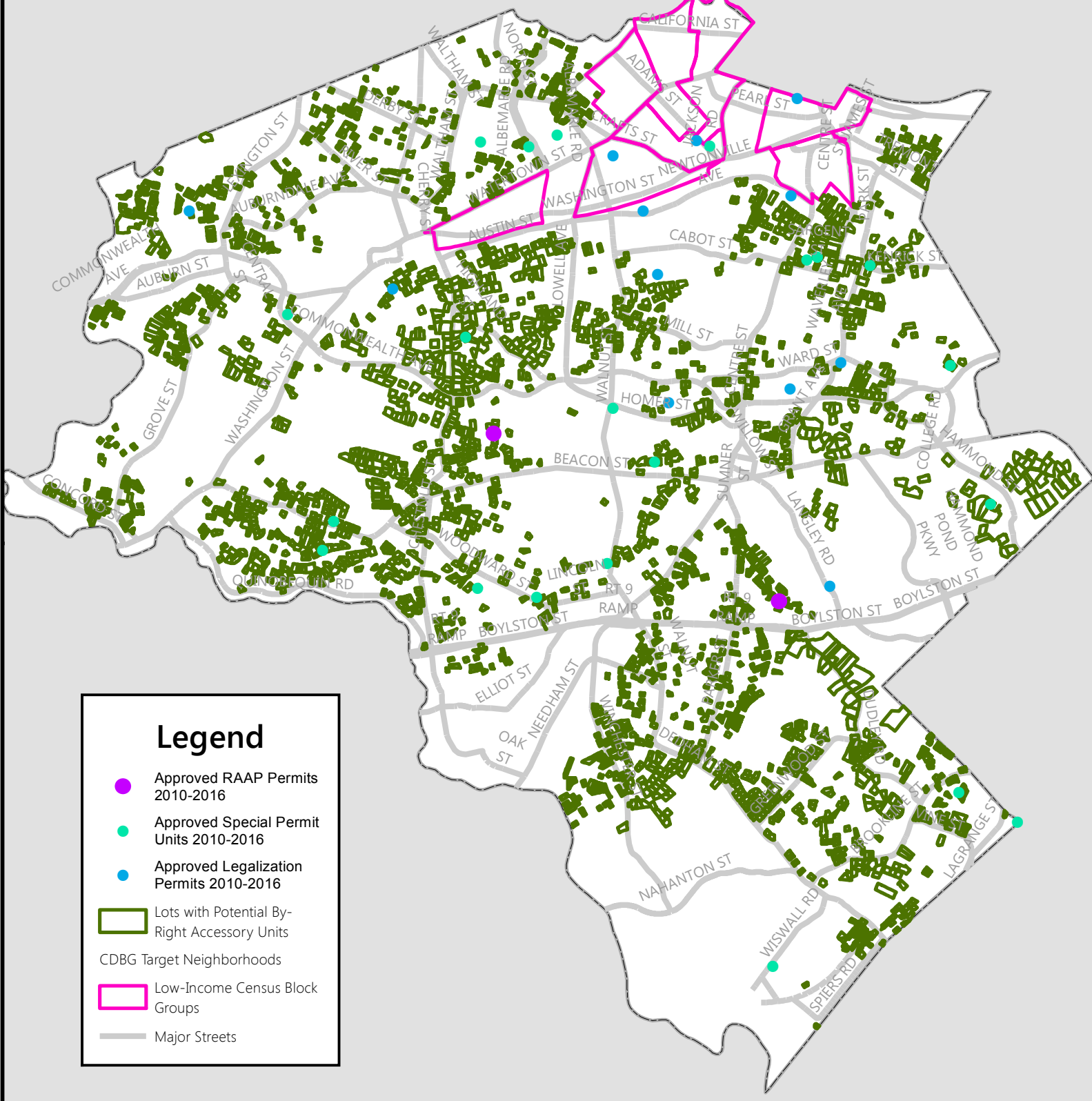
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

## Special Permit Accessory Dwelling Unit Analysis

	<b>SR-1</b> (15000 < lot < 25,000; 3200 < building < 4,000)	<b>SR-2</b> (10000 < lot < 15,000; 2600 < building < 3,100)	<b>SR-3</b> (7000 < lot < 10,000; 1800 < building < 2,500)	<b>MR-1 &amp; MR-2</b> (min lot = 8000; min building = 2600)	<b>ADU Overlay A</b> (15000 < lot < 43,500; 3200 < building < 4,400)	<b>ADU Overlay B</b> (10000 < lot < 16,000; 2600 < building < 3,600)	<b>ADU Overlay C</b> (7000 < lot < 10,000, 1800 < building < 3,100)	<b>ADU Overlay D</b> (15000 < lot < 30,000; 3200 < building < 4,000)	<b>TOTAL</b>
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%

## By-Right Accessory Dwelling Units Analysis

	<b>SR-1</b> (min. lot = 25,000; min. building = 4,000)	<b>SR-2</b> (min. lot = 15,000, min. building = 3,100)	<b>SR-3</b> (min. lot = 10,000, min. building = 2,500)	<b>ADU Overlay A</b> (min. lot = 43,500, min. building = 4,400)	<b>ADU Overlay B</b> (min. lot = 16,000, min. building = 3,600)	<b>ADU Overlay C</b> (min. lot = 10,000, min. building = 3,100)	<b>ADU Overlay D</b> (min. lot = 30,000, min. building = 4,000)	<b>TOTAL</b>
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%



### Legend

- Approved RAAP Permits 2010-2016
- Approved Special Permit Units 2010-2016
- Approved Legalization Permits 2010-2016
- Lots with Potential By-Right Accessory Units
- CDBG Target Neighborhoods
- Low-Income Census Block Groups
- Major Streets

# Accessory Apartments Analysis

## Lots with Possible By-Right Units and Approved Accessory Units 2010-2016

*City of Newton, Massachusetts*

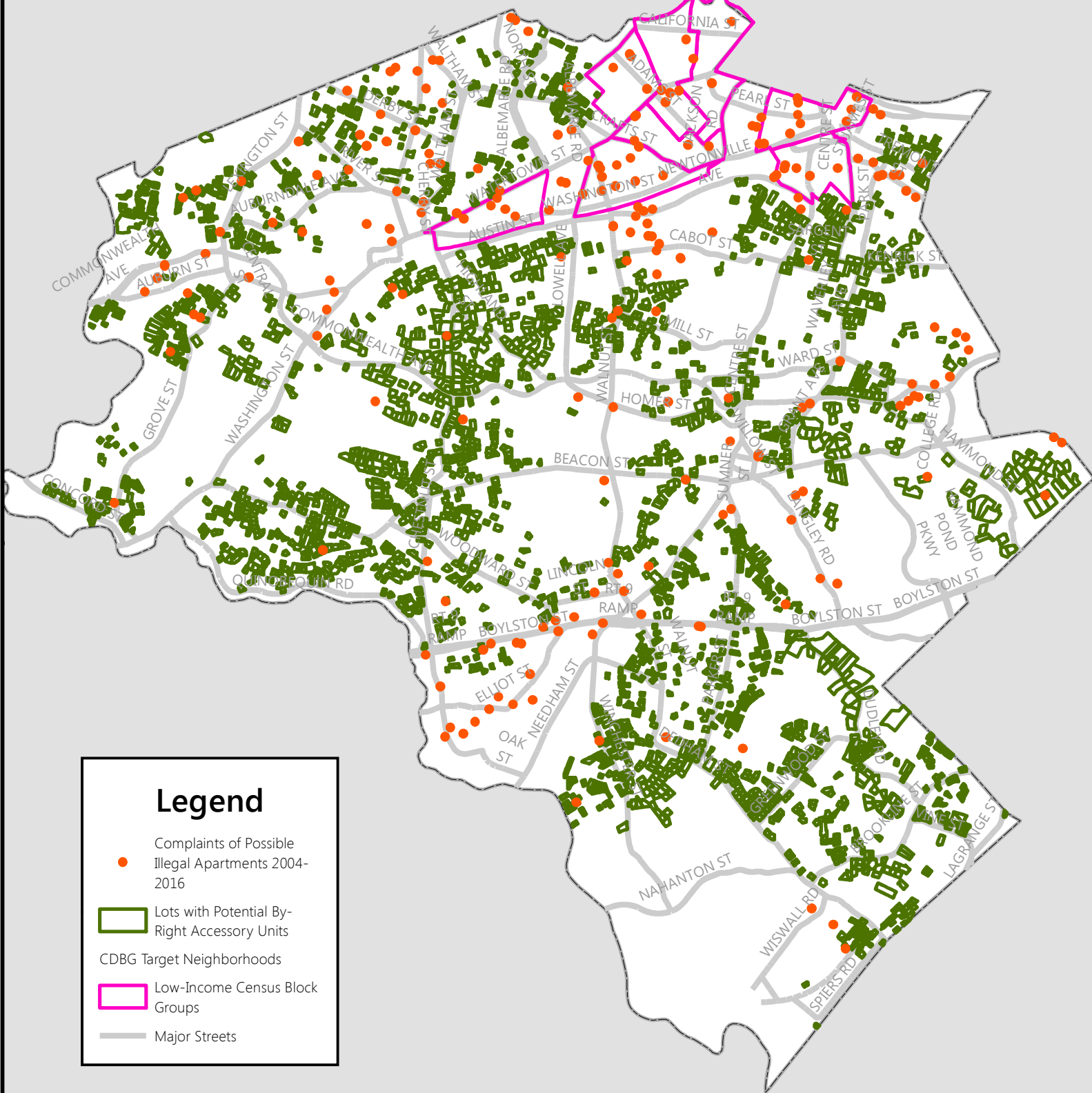
CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: November 10, 2016



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**Legend**

- Complaints of Possible Illegal Apartments 2004-2016
- Lots with Potential By-Right Accessory Units
- CDBG Target Neighborhoods
- Low-Income Census Block Groups
- Major Streets

# Accessory Apartments Analysis

## Lots with Possible By-Right Units and Illegal Unit Complaints from 2004-2016

*City of Newton, Massachusetts*

CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas Greenfield



Map Date: November 10, 2016



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Barriers Identified in AAIP Program	#
<i>Property ineligible for the AAIP program:</i>	<b>104</b>
Lots did not meet minimum lot sizes in Table 30-8	63
Involved single-family home in a Multi-Residence zone	29
Involved houses built after 1989	3
Involved homes that were not owner-occupied	9
<i>Property eligible, but owner decided not to apply for AAIP program:</i>	<b>74</b>
Owner perceived deed restriction of AAIP program as too restrictive	38
Owner wanted to live in accessory apt. and rent primary residence	6
Owner wanted to do more new construction than was allowed	7
Owner could not resolve building code or space issues	7