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Barney Heath
Director

MEMORANDUM

DATE: October 21, 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: October 24, 2016

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

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Accessory apartments are an effective and efficient way of expanding housing options in Newton, providing small generally affordable units, and allowing households a revenue source that could make it possible for them to stay in an otherwise unaffordable home. Newton has allowed accessory apartments to a limited extent through its Zoning Ordinance for nearly 30 years. The proposed amendments would expand the availability of the opportunity to create accessory apartments to all single and two-family homeowners in the City, thereby both expanding housing options and helping to address the illegal accessory apartment issue, which is a significant public safety issue in parts of the City. Finally, the proposed amendment will also serve to incentivize the protection and restoration of carriage houses and similar historic accessory structures. Overall, accessory apartments are increasingly recognized as an important tool for addressing housing issues nationwide and, with this amendment, could help to diversify Newton's housing choices.

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 suites, 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.

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 design requirements.

Section 6.7.1.A Intent

The proposed amendments add an intent section to the Accessory Apartment Ordinance. These statements capture the ideas described above including expanding housing options while protecting neighborhood character, allowing for more affordable housing options, creating a potential source of revenue for residents hoping to stay in Newton, and protecting historic buildings.

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 on-going 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 there are 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.

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, 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 amended 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.

Next Steps

A Public Hearing for this proposed ordinance amendment is scheduled for November 14, 2016.

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 waived;
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. The Detached Accessory Apartment may be no closer to the front lot line than the front of the

principal dwelling unit on the site. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

6. The proposed Detached Accessory Apartment must be greater than 15 feet from an abutting residential dwelling.

7. [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 15 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 waived;
- ~~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 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.

~~6D. 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;*

~~c.~~ 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. The Detached Accessory Apartment may be no closer to the front lot line than the front of the principal dwelling unit on the site. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.

6. The proposed Detached Accessory Apartment must be greater than 15 feet from an abutting residential dwelling.

7. 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 15 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.