



# Zoning & Planning Committee Report

## City of Newton In City Council

**Monday, December 12, 2016**

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

Absent: Councilor Sangiolo

Also Present: Councilors Fuller and Crossley

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), Rachel Blatt (Urban Designer), Lily Reynolds (Community Engagement), John Lojek (Commissioner, Inspectional Services), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

**#343-16      Zoning amendment relative to accessory apartments**

HIS HONOR THE MAYOR, COUNCILOR HESS-MAHAN, ALBRIGHT, CICCONE, CROSSLEY, AND NORTON proposing to amend Chapter 30 Section 6.7.1 Accessory Apartments and Section 5.1.4 Number of Parking Stalls in order to create a new accessory apartment ordinance that expands the availability of accessory apartments. [10/07/16 @ 10:03 AM]

**Hearing closed 11/14/16 (90 days 2/12/17)**

**Action:      Held 7-0**

**Note:** Councilor Hess-Mahan explained that at the November 14<sup>th</sup> Zoning & Planning meeting, the Planning & Development Board joined the Committee in the public hearing on this item. The Planning Board had three members present and believed that constituted a quorum of its membership. They therefore heard the item and voted to close their public hearing. However, it was later clarified that four members of the Planning Board are needed to constitute a quorum; therefore, the Planning Board has scheduled a public hearing on this item for December 15<sup>th</sup> as they did not have enough members to hold their public hearing on November 14<sup>th</sup>.

The Chair further explained that the City Council has 90 days from the close of their public hearing to act on this item, which would be February 12, 2017. If the City Council does not act within 90 days, the item must be re-advertised and a re-heard in a new public hearing. The Planning Board has 21 days from the close of their public hearing to provide a recommendation to the City Council. If they do not provide the recommendation within that timeframe, the City Council may act without it.

### Impact of Accessory Apartments

James Freas, Deputy Director of the Planning Dept. stated that the intent of the Planning Memo, which was provided to the Committee, was to look at the impact of accessory apartments going forward. Staff spoke to other communities with similar demographics to Newton and reviewed a number of reports on accessory apartments. Many communities are moving towards ordinances similar to what Newton is proposing and a number of agencies are recommending them to do so. These conversations and reports have provided data and examples to draw from in order to draft an appropriate ordinance for Newton.

Overall, according to these other communities, there is no significant impact to allowing more accessory apartments. Steps are taken within ordinances to reduce the visual impact, and the number of individuals allowed to live in the units is within what is normally allowed in a single family home. Often tenants are family or friends and units are not rented out to large numbers of people because of their size. Also, very few have actually been created because they are expensive to build.

Portland, Oregon allows internal and detached units by right, there is no owner-occupancy or parking requirements; and it is one of the most liberal ordinances in the country. Nevertheless, less than half a percent of all those eligible to create a unit, have done so. A survey done in Portland showed that the median cost of creating an internal unit was \$45K and a detached was \$90K and costs are likely higher in the Boston area than they are in Portland. Lexington, Massachusetts adopted an ordinance this past spring that allows accessory apartments of all types, by right, on all residential lots and they have seen 5 applications this year. They expect to see 5-10 going forward on an annual basis.

Arlington, Virginia's ordinance is more restrictive than the proposed Newton ordinance and they are taking action to make it easier for more single family lots to be eligible. Santa Cruz, California has a program to encourage accessory apartments and has created a financing mechanism and provides designs to help people move forward more quickly.

There have been 8-20 requests a year in Newton to create accessory apartments and not all moved forward. Based on all the data from other communities and what has been seen so far in Newton, staff does not predict a large number of units being built. But for residents who might want or need to address family issues or realize an extra source of income, the proposed ordinance would be of great benefit.

### Enforcement

John Lojek, Commissioner of Inspectional Services provided a memo detailing enforcement, which was attached to the agenda. Mr. Freas noted that permitting the apartments makes it easy to track them and certify owner occupancy and compliance with other requirements of the ordinance on an annual basis. The City can go back and look at all the tax bills of those homeowners with accessory apartments, and if the tax bill is being sent to an address other than the house, that would be

flagged for inspection since owner occupancy is required. Thirty-six accessory apartments have been created since 2010 and 4 showed up with a difference in address. They will be investigated.

The Assessor's Department has indicated that when an accessory apartment is created, they will make it part of the assessor's database going forward and it will be public information. This allows people to go online to find out if a unit on their street is legal or not and follow up with the City.

Commissioner Lojek said the Police Department assists in finding illegal units. His department has done in-service training with the Police Department on how to detect an illegal unit when on a call for a medical emergency or any other reason they might be in a home. This training elicited some reports immediately after, but has trailed off a bit. This training will continue with the Fire Department as they have the opportunity to see some suspicious living arrangements as well. He has also met with people from Boston College and Lasell College about how they list and track where their students live. They have a very high interest in keeping their students safe so these are beneficial relationships to have. The primary goal of the City is to be sure that people are living in safe conditions.

Mr. Freas added that a common theme from other communities and in the reports they have reviewed on accessory apartments is the more a municipality does to make it easier to create units, the easier it is to handle issues of enforcement and bring them up to fire and safety codes.

#### Committee Questions

It was asked what the impact might be of construction of new detached structures, or additions to existing homes. Mr. Freas explained that the dimensional requirements stay in place. This ordinance simply makes the use legal. If a house needed to increase in size in order to accommodate the apartment, FAR regulations would still apply and/or any other building or construction that would normally need a special permit, would still need a special permit. Under the current ordinance, accessory apartments are allowed in detached structures by special permit.

It was asked why the special permit has been excluded in the proposed ordinance for detached structures because that process allows for review to insure that the structure is appropriately situated as to not be too close to a neighbor's lot line. A couple of Councilors would like to see that maintained in the new ordinance. Mr. Freas explained that any accessory detached structure for an accessory apartment still maintains the overall limit of number of residents on the property, so there would not be a change in density and, as mentioned, the setbacks and dimensional requirements would still be in place. In addition, there are not many new structures being built in other communities and he anticipates the same trend in Newton. The other communities they looked at do not require a special permit for detached structures.

It was asked how many lots in Newton would be eligible to build a new detached structure to accommodate an accessory apartment, by right, under the proposed ordinance. One of the goals of zoning reform is to preserve the built environment and the creation of new buildings would change the character and massing of the built environment. Loosening the requirements would

encourage building of detached structures where they otherwise would not have been built. Mr. Freas said that currently, approximately 30% of all single and two family lots meet or exceed FAR so they would be excluded. To do the analysis to determine the number of eligible lots would be extremely time-consuming. The conclusion from the other communities that staff has analyzed, has been that very few are actually being produced.

A Councilor explained that a new detached structure for an accessory apartment would have the same impact as building a garage, which is also a detached accessory structure. An accessory structure can be no larger than 700 square feet and its height limited to 22 feet. The existing ordinance allows garages to be built 5 feet from the property line and that includes garages that have habitable space in them. The current ordinance allows habitable space in a garage, the only thing not allowed is a cooking facility. The Councilor felt it shouldn't matter how many lots could do this. The goal of the ordinance is to house people and give them options. The stories from the public hearing were emotional and compelling and clearly showed the need for this type of housing. This ordinance will make that easier, but unfortunately, a large amount of units will not be generated. The costs alone can be prohibitive for a newly built detached structure. The Committee asked the Commissioner to provide the number of accessory structures that have been built and detail whether they are garages, or other types of structures.

Existing carriage houses can be within 12.5 feet by right, from another residential building. The less stringent requirement is meant to encourage preservation of those structures. Mr. Freas said he would prefer to see setback requirements for new structures and non-historic structures, however.

A Committee member asked Commissioner Lojek about the impact of not having a parking space requirement. He explained that most people have not inquired about needing a parking space. Many in accessory units do not have cars; often it is a relative such as an in-law that may not drive or someone that is using public transportation. Other communities generally do not have a parking requirement. California just passed a state law mandating that all municipalities allow accessory apartments by right, and that they not include a parking requirement. A state wide accessory apartment bill was introduced this summer in Boston as part of the housing bill, but it did not go forward. Mr. Freas anticipates it will be introduced again. If passed, municipalities would still have controls over accessory apartments; they just would not be allowed to prohibit them.

A Councilor asked if the units needed to be certified every year and suggested maybe three years instead. Commissioner Lojek felt it was very important that the certification be done annually. It will remind owners that the City is being watchful.

It was asked how many legal accessory apartments are in Newton. Mr. Freas indicated that 13% of all single and two family properties in the City are eligible for by right creation of an accessory apartment. Over the past 20 years, 73 have been created: 7 by right under administrative review (RAAP); 46 by special permit; and 24 existing units were legalized. Mr. Freas felt that Commissioner Lojek's data may show more units being legalized as he has more detailed data on that process. In

the past 3 years, 49 Development Review inquiries have been made but that does not mean that 49 units were created as some may not have been eligible or the cost may have been too prohibitive.

As for the many illegal apartments that already exist in Newton, this process will hopefully bring many of those into compliance and legalize them. The ones that could not possibly be brought into compliance would be shut down. An “amnesty” program does not exist in the City right now but has been discussed. There is currently a penalty if an illegal unit is discovered of \$300 a day under the zoning ordinance and \$1000 a day under the building code and the City does levy those fines.

A Committee member asked if the proposed ordinance provides a greater incentive to report an existing illegal apartment in one’s house. Mr. Freas said people are always weighing the cost and risk of getting caught against the cost of going through the legal process. If the legal process is made easier, it should incentivize people to come forward. The Councilor would like the Planning Department to create a really simple and straightforward pamphlet for residents to follow the process. Charlottesville, Virginia has a detailed and very helpful pamphlet that should be modeled. Charlottesville offers financing options and programs within the City such as a tax abatement program, or refund of fees if certain requirements are met, among other things.

It was asked how the City will control the problem that might arise with renting out the units on AirBnB. Mr. Freas noted that there is a docket item to deal with AirBnB type rentals and that will be dealt with in a different ordinance.

There was also a concern that builders and homeowners would be building accessory apartments into new houses, a practice which is currently prohibited, and thereby changing the housing pricing structure in the City. Mr. Freas said it was easier and less expensive to incorporate units into new homes and the point of the ordinance is to create more accessory units which will be a benefit to the City.

There was a concern that the overlay districts currently protect certain areas of the City from overdevelopment of accessory apartments and they will be deleted from the new ordinance.

A Committee member asked about the Accessory Apartment Incentive Program which the City launched about 10 years ago. Mr. Freas explained that the process identified that the greatest barrier to creating an accessory apartment was that lots did not meet the minimum lot size and other dimensional requirements. Another reason was an affordability deed restriction was required and that did not appeal to most applicants.

A Councilor suggested that the Committee consider a requirement that does not allow a homeowner to create an accessory apartment until they have lived in the home for 5 years. She has seen that adopted in another community.

Councilor Baker presented zoning maps of the City showing lots that contain single family homes and possibly two family homes (the MR zones contain homes with more than 2 units as well). He

wanted to demonstrate that the eligible lots are distributed across the City. He would prefer to see accessory apartments in existing housing stock and not in new homes or new construction of accessory structures. The Chair asked that pdfs of the maps be sent to the Committee.

He noted that the Assessing Department does not count rental income from an accessory apartment in the valuation of a house. It was noted that the Department of Revenue does not allow rental income in determining value. An accessory apartment is a rental producing entity and it will add to the challenges. The current ordinance does not allow new construction to add an accessory apartment. This might encourage developers to tear down existing houses to build new ones with accessory units. The Planning Department has stated that the goal of the ordinance is to increase the number of accessory apartments in the City, but he does not believe that should be achieved by tearing down houses.

He also wondered if there should be another overlay district in the areas where people want accessory units and there is a demonstrated demand such as in Nonantum, parts of West Newton and Newton Corner, rather than make a citywide change that will affect everyone in the same way. He has spoken to Marie Lawlor to see if there is some more moderate measure that might be taken that would still address the safety and enforcement issues. The Chair noted that drawing districts for implementation will not happen within the current item. That will take a fair amount of time to do a study. If the Committee would like to explore that, it can be addressed in another docket item.

#### Public Comment

*Ken Lyons*, President of the Chestnut Hill Association, noted that Councilor Baker invited him to the meeting to share the opinion of the Chestnut Hill Association. They believe that the current ordinance has served the City well and do not wish to see any changes. Their proximity to Boston College could create a demand for a large number of apartments; AirBnB rentals are of concern and could affect the character of the neighborhood; and they would prefer less density rather than more and believe the proposed ordinance would encourage newly built accessory structures. He went on to say that there are not that many requests for accessory apartment and the special permit process is proper. It allows a layer of protection for the City to review the appropriateness of a request. Also, the process allows neighbors an opportunity to offer their opinions on a project in their neighborhood. Separately, he is not sure the City should be encouraging more accessory apartments and the change in the ordinance would be a policy position to encourage just that. He believes the Inspectional Services Department can adequately enforce the current ordinance and make safe the illegal units in the City under the current ordinance.

*Rena Getz*, Pine Ridge Road said she could put a detached garage on her lot and the only restriction would be FAR. Many houses are around 4K square feet but advertised at over 6K square feet. Commissioner Lojek said ads are often exaggerated and there is nothing the City can do about that. The calculations are done before the building is built and the exaggeration is not reality. She felt there were real reasons why the special permit processes were in place and that is all going away and there will not be enough oversight. She has no problem with the accessory units in existing

spaces as they can allow people to stay in their homes. But new building is a concern of hers. Newton is a built out community.

*Linda Brennan*, 28 Orchard Avenue said she had a special permit denied for an accessory apartment. She said that she understands the issues of density and all the other concerns, however, they need to listen to the people who really need this housing. At the public hearing, several people spoke of their needs and they were personal stories. Her issue was with parking which has been resolved. She was asking for a detached unit for her daughter and family to live in because of a financial issue. This is a family and Newton keeps talking about diversity and having people who grew up here be able to live here. If someone is a social worker or a city worker, they cannot afford to live here. So if there is another car on the street or a few more people on the street, why is that a problem? They have a right to be here. The City says it is liberal and cares about people but is doing absurd things. The Mayor has been talking about it since he took office and it is time for people to look at their souls and help. And if nobody wants to do it, it is unfair to have people sit through these meetings and look for hope. There was a couple who came to the last meeting wondering if they should put their house on the market or try to hold on until some action was taken. These are real people with real issues. If this passes they can keep their home that they have owned many, many years.

#### Next Steps

The Chair explained that the Committee is very serious about completing their work on this issue. He asked that Committee members submit any questions or comments to Mr. Freas and Ms. Dean. Please also forward any proposed amendments so they can be distributed with the agenda prior to the meeting.

The Committee voted to hold this item and will take it up at a special meeting on December 21<sup>st</sup>.

**#108-15      Zoning amendment for accessory apartments supportive of seniors**  
HIS HONOR THE MAYOR requesting consideration of changes to the Zoning Ordinance that would facilitate the creation of accessory apartment units, supportive of Newton's seniors. [04/24/15 @ 2:38 PM]

**Action:      Held 7-0**

**Note:** This item was held without discussion.

**#64-13      Permitting for conversion of historic barns/carriage houses to accessory apts**  
HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation.

**Action:      Held 7-0**

**Note:** This item was held without discussion.

**#61-10**      **Discussion relative to bringing existing accessory apartment into compliance**  
ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of **Chapter 30** into compliance.

**Action:**      **Held 7-0**

**Note:** This item was held without discussion.

**#164-09(2)**      **Request for amendments to dimensional requirements for accessory apartments**  
ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan.

**Action:**      **Held 7-0**

**Note:** This item was held without discussion.

Meeting adjourned.

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**