



Zoning & Planning Committee Agenda

City of Newton In City Council

Wednesday, December 21, 2016

**7:00 PM – Note Early Start
Room 205**

Items Scheduled for Discussion:

- #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)**
- #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]
- #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.
- #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.
- #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.

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Not Scheduled for Discussion at this meeting:

Public Hearing assigned for January 9, 2017:

- #53-16(2) Zoning ordinance technical amendments**
DIRECTOR OF PLANNING requesting technical amendments to the Newton Zoning Ordinance, **Chapter 30**, in order to address edits related to missing or incorrectly transcribed ordinance provisions. [12/13/16 @ 11:15 AM]
- #415-16 Zoning amendment to conform with M.G.L. changes to special permit requirement**
COUNCILOR HESS-MAHAN requesting to amend Chapter 30, Section 7.3.2.E. to conform with recent amendments to M.G.L. Chapter 40A, Section 9 relative to period of time in which to exercise a special permit. [11/28/16 @ 1:28 PM]
- #222-13(8) Zoning amendment to delay effective date of Garage Ordinance for further study**
COUNCILOR HESS-MAHAN requesting amendments to Ordinance A-78, which amends Chapter 30, Section 3.4.4 of Revised Ordinances, to implement a deferred effective date for the Ordinance of December 31, 2017 or such other appropriate date, for the purpose of allowing the Planning Department to complete a comprehensive study thereof. [11/28/16 @ 5:45PM]
- #222-13(5) Zoning amendment to Garage Ordinance**
COUNCILOR HESS-MAHAN proposing to amend Chapter 30, Section 3.4.4. of Revised Ordinances as amended by Ordinance A-78, as follows: (1) allow front facing garages that are no closer to the front lot line than the longest front facing wall, or a front porch at least 6 feet wide, to be the greater of up to 12 feet wide or 50% of the total length of the building parallel to the street; (2) allow front-facing garages that are closer to the front setback than the rest of the building and at least 24 feet from the front lot line to be up to 40% of the total length of the building parallel to the street; (3) delete Sec. 3.4.4.F "Exemptions"; and (4) add a provision grandfathering permits requested or construction begun on or after the date of the notice of public hearing on Ordinance A-78 [08/01/16 @ 4:58 PM]
Public Hearing Closed on 9/26/16; 90 Days: 12/26/16
- #222-13(7) Additional zoning amendment to Garage Ordinance**
COUNCILORS ALBRIGHT, LENNON, CROSSLEY, DANBERG, LIPOF, FULLER AND COTE proposing to amend Chapter 30, Section 3.4.4. of the Revised Ordinances as amended by Ordinance A-78, as follows: (1) limit the application of a maximum (45%) proportional width of garage to total building to all lots in MR districts; and/or (2) limit the application of a maximum (45%) proportional width of garage to total building to lots in SR districts having a maximum frontage of 70 feet; and/or (3) use the special permit process to determine exceptions providing clear and specific guiding criteria, such as preservation of historic properties, topography, odd lot

configurations, preservation of certain natural features, etc., where such features may prohibit otherwise safe access to or parking on a site. [10/31/16 @ 3:51 PM]

#222-13(3) Review of Garage Ordinance

COUNCILOR LENNON, LIPOF, ALBRIGHT, CROSSLEY, LAPPIN, LAREDO, GENTILE AND CICCONE requesting a review of Ordinance A-78, which amends Chapter 30, Section 3.4.4 of the Revised Ordinances, for the purpose of amending, clarifying, and/or interpreting the Ordinance. [08/01/16 @ 4:53 PM]

#109-15 Zoning amendment for inclusionary housing provisions from 15% to 20%

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

#22-15 Zoning amendment to allow rental voucher program re: inclusionary zoning

ALD. YATES requesting that utilization of the Massachusetts Rental Voucher Program be added as an allowable means of complying with the inclusionary zoning provision in Phase II of Zoning Reform. [01/05/15 @ 9:53 PM]

#220-16 Discussion relative to regulating Airbnb-type companies

COUNCILORS FULLER, HESS-MAHAN, LAPPIN, COTE AND NORTON requesting a discussion with the Planning, Inspectional Services and Fire Departments regarding appropriate regulations, permits, licensing and/or taxes for residential owners who host short-term guests through house-sharing companies such as Airbnb. [06/06/16 @ 2:19 PM]

#291-16 Zoning Amendment relative to nonconforming single- and two-family dwellings

COUNCILOR SANGIOLLO proposing to amend Chapter 30, Section 7.8.2.A.1.a. regarding nonconforming buildings, structures and uses, to also require that if an existing nonconforming single- or two-family structure is demolished, and the lot on which that structure existed does not meet current lot area or lot frontage requirements, then a special permit or variance would be required for any alteration, reconstruction, extensions or structural changes from the original structure. [08/22/16 @ 2:08 PM]

#169-15 Zoning amendment to require new lot standards after demolition

ALD. SANGIOLLO requesting a zoning amendment which would require any residential structures in Single Residence or Multi Residence zoning districts built after the demolition of an existing structure conform to new lot standards. [07/02/15 @ 3:20 PM]

#447-14 Proposing an ordinance to require building plans with demolition applications

ALD. SANGIOLO proposing an ordinance requiring the submission of building plans with applications for full or partial demolitions. [11/13/14 @ 2:03 PM]

Referred to Finance and Appropriate Committees

#359-16

Submittal of the FY 2018 to FY 2021 Capital Improvement Plan

HIS HONOR THE MAYOR submitting the Fiscal Years 2018 to 2022 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/11/16 @ 11:28 AM]

#34-16

Zoning amendment for large house review process

COUNCILORS SANGIOLO, KALIS AND DANBERG proposing an amendment to Chapter 30 for a large house review ordinance requiring design review and approval of by-right single and multi-residence residential structures exceeding certain dimensional limits. [01/19/16 @ 2:35 PM]

#238-14

Request for development of Housing Production Plan

ALD. SANGIOLO requesting the Executive Department and Planning Department work with the Board of Aldermen to develop a Housing Production Plan in accordance with 760 CMR 56.03(4) and guidelines adopted by the Department of Housing and Community Development as soon as possible. [06/09/14 @ 11:55 AM]

#238-16

Zoning amendment for exempt lots definition

COUNCILOR HESS-MAHAN proposing to amend Chapter 30: Zoning Ordinance, Section 7.8.4.C by amending the definition of "exempt lots" to include lots changed in size or shape as a result of an adverse possession claim. [06/30/16 @ 4:12 PM]

#264-13

Zoning amendment to develop residential districts for small lots

ALD. YATES requesting that the Zoning Reform Group or its successor consider amending City of Newton Zoning Ordinances **Chapter 30** to develop additional residential districts reflecting the small lots in older sections of the City and map changes to bring the zones of more residential sections of the City into conformity with the existing land uses. [08/15/13 @ 12:28 PM]

#265-14

Request to increase several time periods for demolition delays

ALD. BLAZAR, YATES AND DANBERG requesting:

1. to amend Section 22-50 to increase the time period for determinations of historical significance to 30 days, and to increase the time period for hearings, rulings and written notice on appeals from historical significance determinations to 60 days;
2. to amend Section 22-50 to increase the time period to hold a public hearing as to whether or not a historically significant building or structure is preferably preserved to 60 days;

3. to amend Section 22-50 to increase the demolition delay period for buildings and structures on or eligible for listing in the National Register of Historic Places to 30 months;
4. and to amend Section 22-50 to increase the demolition delay period for all other preferably preserved buildings or structures to 24 months. [7/07/14 @ 12:35 PM]

#54-16

Zoning ordinance amendment relative to Health Club use

ACTING DIRECTOR OF PLANNING proposing amendments to the Newton Zoning Ordinance to allow the “Health Club” use in Business 1, Business 2 and Business 4 districts; and to clarify the definition of “Personal Service” as it relates to health and fitness uses. [02/09/16 @ 4:24 PM]

ITEM SPLIT INTO PART A AND PART B:

PART A – To allow Health Club use in BU1, BU2 and BU4;

PART B – To clarify the definition of Personal Services as it relates to health and fitness issues.

Approved Part A 6-0

Held Part B 6-0

#35-16

Creation of policy to require posting of materials of boards/commissions

COUNCILOR SANGIOLO requesting a discussion with the Planning Department relative to creating a policy to require audio recordings of all meetings of boards and commissions and posting of same to the City’s website, as well as posting of all documentation that is reviewed by boards and commissions and/or by their designated City staff member. [01/19/16 @ 2:35 PM]

#80-13

Updates on the zoning reform project

THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]

#170-15

Discussion of HUD settlement relative to creating 9-12 affordable units

ALD. HESS-MAHAN, JOHNSON, CROSSLEY AND ALBRIGHT requesting a discussion relative to the HUD Settlement with Supporters of Engine 6, the Fair Housing Center of Greater Boston and the Disability Law Center in conjunction with the Law and Planning Departments, to explain the settlement and possible implications for the Zoning Board of Appeals and the Board of Aldermen in terms of the City’s obligation to identify sites and facilitate the creation of, and issue permits for, affordable housing for 9-12 chronically homeless persons in Newton. [07/06/15 @ 4:18 PM]

#110-15

Discussion of the Smart Growth Zoning Overlay District Act in Newton

HIS HONOR THE MAYOR requesting discussion of The Smart Growth Zoning Overlay District Act M.G.L. Chapter 40R and its potential application in Newton. [04/24/15 @ 2:38 PM]

- #323-14** **Zoning amendment to require front-facing front doors in residential zones**
ALD. YATES, NORTON, COTE AND SANGIOLO proposing to amend **Chapter 30** to require that the front doors of single-family homes, two-family homes and other residential structures face the street on which their lots are located. [08/25/14 @ 11:42 AM]
- #142-09(7)** **Resolution to reconvene Floor Area Ratio working group**
ALD. HESS-MAHAN AND JOHNSON proposing a Resolution to request that the Director of Planning and Development and the Commissioner of Inspectional Services reconvene a Floor Area Ratio working group to review and analyze the definition of "*Floor area, gross*" for residential structures as it is used in the definition and calculation of "*Floor area ratio*" in **Section 30-1** with respect to actual usage, and, if necessary, make recommendations for amendments thereto and in the dimensional regulations contained in **Section 30-15(u)** and *Table A* of **Section 30-15(u)**, the purpose of which is to regulate the size, density and intensity of use in the construction or renovation of, or additions to a residential structure, to more accurately reflect and be compatible with neighborhood character, and to ensure that a proposed residential structure is consistent with and not in derogation of the size, scale and design of other existing structures in the neighborhood, and is not inconsistent with the City's Comprehensive Plan.

Referred to Zoning & Planning, Land Use and Finance Committees

- #104-15** **Qualification of affordable units on Comm Ave, Pearl and Eddy Streets**
ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department with the following information: How many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify to be included on the State's Subsidized Housing Inventory List. If a property is not currently on the list, what can be done to make it eligible. [04/09/15 @ 12:00 PM]
- #107-15** **Discussion of middle income housing supportive of City employees**
HIS HONOR THE MAYOR requesting discussion of approaches to create middle income housing as a means of allowing City of Newton employees the opportunity to live in the community in which they work. [04/24/15 @ 2:38 PM]
- #81-13** **Request for naturally affordable compact housing opportunities**
DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]
- #86-15** **Discussion and review of CDBG fund expenditures and citywide goals**
ALD. CROSSLEY, ALBRIGHT, HESS-MAHAN, & JOHNSON requesting a review and discussion of Community Development Block Grant expenditures and past years' accounting to assess progress in meeting citywide program goals as adopted in the

consolidated plan, including creating and sustaining affordable housing, as well as facilities improvements in approved neighborhood districts. [03/30/15 @ 6:02 PM]

- #427-13** **Discussion of CDBG, HOME and ESG funds and fair housing**
ALD. HESS-MAHAN requesting discussion and periodic updates of steps the City of Newton is taking to ensure that its implementation of the Consolidated Plan, Annual Action Plan and Citizen Participation Plan and use of CDBG, HOME and ESG funds comply with federal and state fair housing and anti-discrimination laws and regulations, and its duty to affirmatively further fair housing. [12/06/13 @ 9:51 AM]
- #308-12** **Discussion of policies relative to CDBG fund expenditures**
ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @ 3:59 PM]
- Referred to Zoning & Planning and Finance Committees**
- #315-14** **Ordinance amendment for procurement requirements for non-profits**
ALD. HESS-MAHAN, ALBRIGHT, CROSSLEY AND DANBERG proposing an amendment to Chapter 2 of the City of Newton Ordinances setting forth requirements for procurement of materials and services by non-governmental recipients of federal, state or local funds administered by the City, such as CDBG and CPA funds. In order to encourage non-profit and other private organizations to participate in affordable housing, cultural and other public-private collaborations, such procurement requirements should accommodate the needs of non-governmental recipients for flexibility given the multiple public and private sources of funds necessary for any project by not placing undue or unreasonable burdens on them.
[08/04/14 @ 5:08 PM] Finance voted NAN
- #446-14** **Discussion with Commission on Disability regarding the City's ADA compliance**
ALD. SANGIOLLO requesting a discussion with the Commission on Disability regarding the status of City compliance with ADA regulations. [11/13/14 @ 2:03 PM]
- #140-14** **Zoning amendment for lodging house ordinance**
ALD. CROSSLEY AND HESS-MAHAN requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to include a "lodging house" ordinance to promulgate rules requiring annual fire, safety and health inspections and licensing of buildings providing single room occupancy and/or congregate living arrangements.
[04/04/14 @ 6:29 PM]
- #429-13** **Zoning amendment for Congregate Living Facility parking requirements**
ALD. HESS-MAHAN requesting repeal and/or amendment of Zoning Ordinances **Section 30-1**, Definitions, 30-8(b)(2), Special Permits in Single Family Residential

Districts, and 30-10(d)(4), Number of Parking Stalls, concerning “Congregate Living Facility”, as required by federal and state anti-discrimination and fair housing laws and regulations. [12/06/13 @ 9:51 AM]

- #129-13** **Zoning amendment for special permits for attached dwellings**
ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for “attached dwellings” in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**. [05/25/13 @ 5:14 PM]
- #65-13** **Zoning amendment to require special permit for major topographic changes**
ALD. YATES, FISCHMAN, KALIS requesting that **Chapter 30** be amended to require a special permit for major topographic changes.]
- #139-14** **Zoning amendment to clarify rules for retaining walls**
ALD. ALBRIGHT requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to clarify rules relative to retaining walls.
- #391-09** **Zoning amendment to allow payments-in-lieu of parking spaces: special permits**
ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to **§30-19** to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
[09/09/09 @ 3:53 PM]
- #152-10** **Zoning amendment to clarify parking requirements for colleges and universities**
ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities.
- #153-11** **Zoning amendment for Retail Overlay Districts around village centers**
ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that **Chapter 30** be amended by adding a new **Sec. 30-14** creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts.
- #168-15** **Discussion of Metropolitan Area Planning Council’s Wells Avenue Market Study**
THE NEWTON-NEEDHAM CHAMBER OF COMMERCE requesting a discussion of the Metropolitan Area Planning Council’s 2015 Wells Avenue Market Study.

[07/06/15 @ 5:34 PM]

- #95-15** **Discussion to consider mix of uses at Wells Avenue Office Park**
ALD. CROSSLEY, JOHNSON, LEARY, HESS-MAHAN, DANBERG, ALBRIGHT AND BLAZAR
 requesting a discussion with the Planning Department to consider the mix of uses in the Wells Avenue Office Park, with and without a second egress to the site, pursuant to the recent MAPC study recommending a strategic introduction of retail and restaurant uses to attract and sustain healthy commercial uses, and some number of residential units sufficient to support an economically viable and vibrant mixed use environment. [04/13/15 @ 2:46 PM]

Referred to Zoning & Planning, Land Use and Finance Committees

- #273-12** **Request to restructure and increase of fees for various permits**
ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer. [09/10/12 @ 1:17 PM]
Finance and Land Use voted NAN

Referred to Finance and Appropriate Committees

- #257-12** **Review of fees in Chapter 17 and Chapter 20**
RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9, 2001, which allows certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates. Finance voted NAN
- #195-15(3)** **Request to acquire land at 300 Hammond Pond Parkway**
ALD. ALBRIGHT, BAKER, BLAZAR, BROUSAL-GLASER, CICCONE, COTE, CROSSLEY, DANBERG, FULLER, GENTILE, HESS-MAHAN, JOHNSON, KALIS, LAPPIN, LEARY, LAREDO, LENNON, LIPOF, NORTON, RICE, SANGIOLO, SCHWARTZ, AND YATES
 requesting that, in order to preserve the conservation and recreation values of the land, and to protect existing adjacent public open spaces, the Board of Aldermen vote to acquire for the City of Newton either the undeveloped portion of the land at 300 Hammond Pond Parkway or a conservation restriction on such land.
 [10/23/15 @ 2:55 PM]
- #404-13** **Request for rezoning in Newton Centre**
NATASHA STALLER et al. requesting a revision to the zoning District boundary Lines so as to transfer from Multi-Residence 1 District to a Single Residence 3 District the following properties:

Assessors' parcels SBL nos. 61-037-0004 through 61-037-0013; 61-042-0007 through 61-042-0023; 65-019-0001; 65-019-0007 through 65-019-0012; 65-019-0014 through 65-019-0022; 65-019-0009A; 65-019-0017B and 65-019-0022A. Also requesting transfer from a Single Residence 2 District to a Single Residence 3 District SBL no. 65-019-0015A.

Respectfully Submitted,

Ted Hess-Mahan, Chair

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;
- ~~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.

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;*~~

~~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. 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.
C.1.a., b., c., d., e., f., g., and h. must be satisfied.~~

§. **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.

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;
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.