



Zoning & Planning Committee Report

City of Newton **In City Council**

Wednesday, December 21, 2016

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

Absent: Councilor Kalis

Also Present: Councilors Crossley and Norton

City Staff Present: Barney Heath (Director, Planning Dept.), James Freas (Deputy Director, Planning Dept.), John Lojek (Commissioner, Inspectional Services), Lily Reynolds (Community Outreach), Maura O'Keefe (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: Zoning & Planning Held 7-0

Note: Councilor Hess-Mahan reminded the Committee that the public hearing on this item was held and closed on November 14th by the Zoning & Planning Committee. Per Chapter 40A, the City Council has 90 days, which would be February 12, 2017 to take action on this item; if it does not act, the item will have to be re-advertised and re-heard in a new public hearing.

At the last working session, the Chair asked Committee members to submit any outstanding questions to the Law and/or Planning Department. No questions were forthcoming; however, Councilor Baker has some amendments to introduce.

The Chair noted that his ordinance has been under review in some form or another for many years. Marcia Johnson chaired a working group on accessory apartments for two years and he has worked on this for 15 years and worked to create an incentive program with others. There has been a lengthy consultation process with the Planning Department as well. This is not a new subject for the Committee or the Council.

The current ordinance, in effect, prohibits those who most need these units from creating them. The City will not be overwhelmed with new units based on the percentages of those who would be eligible, costs involved and the low number that have currently been built. People tend to have temporary situations that necessitate the creation of accessory units and while one homeowner

may build one, the next owner may re-incorporate it back into the main house. Portland, Oregon has one of the most liberal ordinances in the country, yet sees only about 1 in 200 homes taking advantage of the opportunity.

He would like to see as many illegal units come forward and be made legal and safe as possible. Most of these units are in places where they are not currently allowed with homeowners who have an economic or family need for a unit. These are smaller houses on smaller lots so there will be no new detached buildings or major extensions of an existing home. People would like to stay in their homes and continue with the life they know and be near the services they need. The goal of the proposed ordinance is to help those who need units while having little impact on the character and density of neighborhoods.

Planning & Development Board

The Planning and Development Board held and closed their public hearing on December 15th and their recommendation is attached. Councilor Crossley noted that the Planning Board report agreed with the general concept of the proposed ordinance, but denied the item with recommendations rather than approve it with recommendations, which she found unusual. Peter Doeringer, member of the Planning Board explained that now that the Planning Board has more members and is getting up to strength, it is going to produce more complete recommendations than in the past. As for this issue, it was the view of the majority of the Board that they did not want to approve by-right accessory apartments at this time. They were in favor of facilitating the creation of apartments but had some specific concerns with the existing proposal and would like to see their amendments incorporated. Councilor Crossley stated that one of the most restrictive and thwarting elements of the existing ordinance is that nearly all have to go through the time-consuming and expensive special permit process. Aside from removing the significant dimensional restrictions, removing the special permit restrictions were essential in achieving the goal of making the process easier. While the report recommended a simpler process, it was not specific as to how that would happen and who would administer it.

Committee Questions/Comments

A Committee member noted that 73 accessory apartments have been created in the past 20 years out of the 32,000 homes in Newton. The ordinance was originally put in place in 1989 and based on these low numbers, the ordinance has been a failure in helping people create apartments. There are measures in the proposed ordinance that address the concerns people have about large detached accessory units being built, which seems to be of great concern and increased density. Detached units under the current ordinance are limited to 1200 feet and that will not change. The concerns about greatly increasing density in neighborhoods seem unlikely based on past experience combined with the high costs of building both detached and internal units. Setbacks for an accessory living unit are greater than for an accessory structure such as a garage. These regulations simplify the process while keeping the character of neighborhoods intact. The evidence from all the studies consulted and experience from other communities is that the more confusing and complicated the ordinance, the less likely people will move forward with creating

units. As was heard at the public hearing, there is a population in the City for whom the ability to create units will be extremely helpful for a variety of reasons.

Barney Heath, Director of Planning, said that the decision to create an accessory apartment is a serious one and the response is not overwhelming because the homeowner will be living in close proximity to those in the unit and the costs are significant. But as mentioned, it is an important option for some to have.

The Assessor's Office has reported to James Freas, Deputy Director of Planning, that the City has recognized no difference in value on homes with or without accessory apartments. The change in value only comes if there is an increase in square footage, which is true in any circumstance, and not just because it is an accessory apartment.

A Committee member noted that when California mandated that there should be accessory apartments in every city and town, it reviewed what the barriers could be and they included special permits, parking restrictions, lot and unit size, design review and owner occupancy, among others. Newton's current ordinance has all those restrictions and they need to be reduced. Restrictions on unit size remains and there will be some design review. Commissioner of Inspectional Services, John Lojek, stated that a building permit would be required and a building plan is submitted and reviewed. All units must meet the building code and there is also a provision in the proposed ordinance for consultation with the Urban Design Commission. Unlike the garage ordinance where the Commissioner was asked to make judgements about whether to grant a waiver and it was his determination only, this ordinance allows for him to seek the advice of the UDC as to whether the accessory unit meets the design standards. The ordinance also has a very clear intent section tied to design. The Commissioner believed that very few will be built as a detached structure from the ground up as it is an extremely expensive project (\$100K and up); small additions or internal units would be most likely.

A Councilor explained that the current ordinance was created so that any accessory units were truly accessory. A smaller unit was by right and larger or detached units had to go through the special permit process. The tension is to find a way to benefit some property owners who need or want a unit without a negative impact on neighbors. The current ordinance reasonably allocates accessory units around the City, while the proposed ordinance affords that opportunity everywhere in the City. The proposed ordinance was designed to help those with other homes to preserve them rather than create new development opportunities by tearing them down. He would like to see the Planning Board amendments worked into the proposed ordinance as it takes away those safeguards. There are also other ways to assist people to stay in their homes through tax abatements, etc. He would also like to increase the opportunity to bring people inside the current framework of the law via enforcement.

A question was asked about egress points. It was noted that shared areas, such as stairwells may be accessed and considered a second means of egress, but no door that could be locked from the main unit can be considered a second means of egress.

ORDINANCE REVIEW

The Chair would like to go through each section of the redlined draft to see where there is consensus. He will take a *straw vote* on each section. The redlined draft was attached to the Planning Memo and is attached to this report for reference.

Section 6.7.1.A.1

Councilor Baker suggested adding “character” to this paragraph. He felt this would promote the intent that the single family nature of a neighborhood will be preserved as much as possible and not take on the character, look and scale of a two family neighborhood.

Councilor Crossley felt that this was leaning towards use and use is not character. Commissioner Lojek said that most of the units will be internal and the outside look of a home will very likely go unchanged.

Since “residential character” is referenced elsewhere in the ordinance, it was carried forth instead of just “character”

Paragraph amended as follows:

Diversity housing choices in the City while respecting the look, residential character and scale of existing neighborhoods.

Approved as amended 7-0

Section 6.7.1.A.5

The amendment was offered with little discussion.

Paragraph amended as follows:

5. ~~Promote the preservation of~~ Preserve historic buildings, particularly historic carriage houses and barns, wherever possible.

Approved as amended 7-0

Section 6.7.1.B

Approved as proposed. 7-0

Section 6.7.1.C.1

Approved as proposed 7-0

Section 6.7.1.C.2

Approved as proposed 5-2, Baker and Sangiolo abstaining

Section 6.7.1.C.3

Approved as proposed 7-0

Section 6.7.1.C.4

Councilor Baker would like the provision which prohibits lodgers to be retained. Mr. Freas explained that the proposal limits the number of people in the home to what is currently allowed for a single family home, which is a family and 3 unrelated people. The accessory unit does not allow a homeowner more people than that. There will be an annual certification to confirm occupancy. Because the number of people is limited in this way, prohibiting lodgers is not necessary. The language is simple and allows a homeowner to have people in either unit in whichever configuration works best for them without interfering with individual family structures.

Approved as proposed 6-0-1, Baker abstaining

Section 6.7.1.C.5

Councilor Baker felt the parking requirement was a necessary safeguard and would like it retained and is a particular problem in his area with student parking. Councilor Danberg agreed parking was an issue in Newton Centre, but the off-street parking ban helps to regulate that issue. Councilor Sangiolo said it was unclear how long the parking ban might last but she is fine with having no parking requirement. Councilor Crossley disagreed with the premise that those using a unit would necessarily have a car. Those at the public hearing advised the Committee not to require additional parking. She felt it was self-regulating matter; if a parking space is needed and a housing opportunity does not provide one then they will look elsewhere. Councilor Leary agreed with that sentiment and also those in units may very well be family members and car-sharing. Creating off-street parking requires curb cuts and takes away on-street parking as well.

Approved as proposed 5-1-1, Baker opposed, Yates abstaining

Section 6.7.1.C.6

This section is current language but it was suggested to add “or register with Land Court” which would apply to registered land.

Approved as amended 7-0

Section 6.7.1.C.7

Councilor Baker proposed adding at the end of the paragraph:

“Each owner certifying owner occupancy shall also certify that such accessory apartment is equipped with fire and smoke detectors, that a second safe means of egress is provided, that the occupancy limits in this ordinance have been complied with;”

Approved as amended 7-0

Section 6.7.1.C.8

Commissioner Lojek’s office will now be sending out a letter and if not returned, ISD will follow up. He would like the date to be determined by the Commissioner instead of by the date of issuance of the certificate of occupancy. In the last sentence, therefore, the words “from the date of the issuance of the certificate of occupancy” will be deleted.

Councilor Baker proposed adding “and may be subject to inspection” at the end of the paragraph.

Approved as amended in both instances 7-0

Section 6.7.1.D.1

Councilor Baker proposed adding language for review by the Planning Board, the Commissioner of ISD and the Historical Commission or Historic District Commission of internal accessory apartments. Since the lot and home size regulations are being taken out, this would provide safeguards.

Councilor Crossley said there is a review process even in the by right model, but she did not want to send every part of this through a lengthy, discouraging process. There are a tremendous number of applications that come through the Land Use Committee, for example, that are straightforward and really don't need that kind of attention. The new language is meant to create a pathway for by right approvals based on the specifics in the ordinance and not a separate process. By right does not mean without any review – all the provisions within the ordinance must be met.

The Chair asked that this issue be put aside for now.

Section 6.7.1.D.2

Councilor Sangiolo wondered by the internal unit is limited to 1000 square feet but a detached unit is allowed up to 1200 square feet. Councilor Baker would like to set up an outer limit allowed by special permit.

There was a question about calculating FAR and gross floor area. Councilor Crossley said the issue is interior, livable space, which would be from the inside walls. James Freas he would take a look at that.

The proposed amendment is “The City Council may grant a special permit for a larger internal accessory apartment up to 1200 square feet or up to 40 percent of the total gross floor area, whichever is less”

Approved 7-0

Next Steps

The Committee will continue to discuss the remaining sections of the ordinance at the regularly scheduled January 23, 2017 Zoning & Planning Committee meeting.

#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: Zoning & Planning Held 7-0

Note: This item and all remaining items were 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: **Zoning & Planning Held 7-0**

#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: **Zoning & Planning Held 7-0**

#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: **Zoning & Planning Held 7-0**

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair



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Director

M E M O R A N D U M

To: Newton City Council

From: Planning and Development Board

Date: December 20, 2016

Re: #343-16 Accessory Apartments Ordinance, Planning Board Recommendation

Attendees: Scott Wolf – Chair, Peter Doeringer – Vice Chair, Megan Meirav, Sonia Parisca, Barney Heath

Subject: Petition #343-16, Proposed amendments to the Newton Zoning Ordinance Chapter 30, Section 6.7.1 Accessory Apartments and Section 5.1.4 Number of Parking Stalls

The Board unanimously supports the lessening of the current requirements necessary for Newton homeowners to create an accessory unit and strongly endorses the intent of the proposed amendments to Newton's zoning ordinances. However, a number of concerns surfaced during the Board's public hearing on December 15, 2016 about the unanticipated and unintended consequences that might arise if accessory apartments were allowed "by right".

The Board recognizes that allowing accessory apartments by right would remove the current Special Permit requirement that may serve to discourage homeowners from pursuing this option. However, after substantial discussion, a majority of its member concluded that the goal of amending the current process for developing an accessory apartment would be better served by a revised proposal that removed the by-right provisions contained in Petition #343-16 while simplifying some of the procedures for reviewing and approving accessory apartments. The Board, therefore, voted 4-1-0 not to support Petition #343-16.

The Board recommends instead that the City Council amend Petition #343-16 to eliminate the by-right provision in Section 6.7.1.D.1 and replace it with a modified permitting procedure for reviewing all applications for internal accessory apartments. This modified procedure would create an expedited and simplified procedure for reviewing applications for accessory apartments that would be faster and easier than the current special permit process while still providing a review of the appropriateness and impact of design plans on the surrounding neighborhood. This review would be conducted by a committee or other body knowledgeable about building codes, exterior architectural alterations, and the residential characteristics of Newton neighborhoods.

The Board also recommends that the by-right provision of Section 6.7.1.E.1 be eliminated for detached accessory apartments and that applications for detached accessory apartments continue to

be reviewed under the standard procedure for issuing special permits. These amendments would better recognize the diversity of detached buildings in Newton while providing customary design and setback protections for abutters.

The Board also endorses the general conditions placed on accessory apartments under Sections 6.7.1.D (internal accessory apartments) and 6.7.1.E (detached accessory apartments). However, a majority of the Board is concerned that accessory apartments on the upper floors of buildings could lead to a proliferation of external access stairways and recommends that any stairway providing access to an accessory apartment above the ground floor should be enclosed within the exterior wall of the building.

While the Board applauds the new enforcement procedures for accessory apartments outlined by the Commissioner of Inspectional Services in his memo to the ZAP of December 9, 2016, we also recommend that these procedures be reinforced by the adoption of significant civil fines for the violation of zoning ordinances governing accessory apartments.

The Board would likely endorse with enthusiasm a revised petition for accessory apartments that incorporates these recommendations.

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.~~

~~D.E. 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.

December 9, 2016

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 GMR 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.~~

~~†~~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.