

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, FEBRUARY 9, 2015

7:45 PM
Room 205

ITEMS SCHEDULED FOR DISCUSSION:

- #338-14 ALD. HESS-MAHAN, KALIS, SANGIOLO AND DANBERG proposing a Large House Review ordinance requiring design review and approval of by-right single and multi-residence residential structures exceeding certain dimensional limits to be determined, to expire by December 31, 2015. [09/05/14 @ 9:39AM]
- #222-13 ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, DANBERG, FISCHMAN & JOHNSON proposing to amend the definitions of "Common roof connector", "Common wall connector", and "Dwelling, two-family" in **Chapter 30, Section 30-1** of the City of Newton Zoning Ordinances. [06/07/13 @ 1:31 PM]
- #278-14 ALD. YATES proposing to amend Chapter 30 of the City of Newton Ordinances to restrict the two-unit structures allowed by-right in the multi-residence districts to structures with the two units side-by-side in a single structure, or one above the other as in double-deckers. [07/31/14 @ 12:03PM]
- #80-13 THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #376-14 PLANNING & DEVELOPMENT DEPARTMENT requesting that **Chapter 30 ZONING** be deleted in its entirety and replaced with the Zoning Reform Phase 1 Zoning Ordinance. [10/22/14 @ 7:48PM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, please contact John Lojek, at least two days in advance of the meeting: jlojek@newtonma.gov, or 617-796-1064. For Telecommunications Relay Service dial 711.

ITEMS NOT SCHEDULED FOR DISCUSSION:

- #23-15 ACTING DIRECTOR OF PLANNING & DEVELOPMENT requesting amendments to the official zoning map in order to correct discrepancies between Board of Aldermen actions and the boundaries of zoning districts as shown on the map and to better align zoning district boundaries with property lines and other features to reduce the number of split lots and other map anomalies. [01/09/15 @ 10:09AM]
- #22-15 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 @ 9:53PM]
- #21-15 ALD. YATES requesting that priority be given to completing the Intent and Purposes of the Zoning Ordinance in Phase II of Zoning Reform. [01/05/15 @ 9:53PM]
- #6-15 ALD. BAKER, HESS-MAHAN, ALBRIGHT requesting a discussion by the Zoning and Planning Committee with the Acting Director of Planning and Development of how Phase 2 of Zoning Reform might be undertaken, including the contents of the proposed Village and Master Planning and Zoning Reform Request for Proposals, including the planning process and ordinance revision process the RFP anticipates, as well as the staffing and funding needed to enable both in-house and contracted work under the RFP to be both well done and appropriately supervised. [12/29/14@4:00 PM]
- #448-14 ALD. SANGIOLO requesting a discussion with the Newton Historical Commission regarding their process and policy of reviewing demolition applications. [11/13/14 @ 2:03pm]
- #266-14 ALD. BLAZAR, YATES AND DANBERG requesting to amend Section 22-50 to require that in the event there is a transfer of legal or beneficial ownership of a preferably preserved property during the demolition delay period, the full demolition delay period will restart from the date of the transfer of ownership; and further requesting to amend Section 22-50 to require that in the event a transfer of legal or beneficial ownership of a preferably preserved property occurs after the expiration of a demolition delay period but prior to the issuance of a demolition permit, no demolition permit shall issue until the new owner complies with the procedures of Section 22-50(c)(5). [07/07/14 @ 12:35PM]
- #265-14 ALD. BLAZAR, YATES AND DANBERG requesting 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; 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; 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; and to amend Section 22-50 to increase the demolition delay period for all other preferably preserved buildings or structures to 24 months. [07/07/14 @ 12:35PM]

- #447-14 ALD. SANGIOLO proposing an ordinance requiring the submission of building plans with applications for full or partial demolitions. [11/13/14 @ 2:03pm]
- #446-14 ALD. SANGIOLO requesting a discussion with the Commission on Disability regarding the status of City compliance with ADA regulations. [11/13/14 @ 2:03pm]
- #445-14 ALD. SANGIOLO requesting an update with members of the Newton Fair Housing Committee on the status of housing opportunities in the City of Newton. [11/13/14 @ 2:03pm]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #375-14 HIS HONOR THE MAYOR submitting the FY16-FY20 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/15/14 @ 3:01 PM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #315-14 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 @ 5:08PM]
- #238-14 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 @ 11:55AM]
- #212-14 BOARD OF ALDERMEN requesting a discussion with the Executive and Inspectional Services Departments and the Commission on Disability regarding the creation of full-time positions to address the city's need re 1) ADA requirements and 2) zoning enforcement, including State building code, Newton's zoning ordinance, and special permits. [05/23/14 @ 11:03AM]

- #140-14 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 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]
- #428-13 ALD. HESS-MAHAN requesting periodic updates on complaints of discrimination filed against the City of Newton under Section 504 of the 1973 Rehabilitation Act, the Fair Housing Act, and Title II of the Americans with Disabilities Act, based on the City's denial of housing and exclusion from participation by people with disabilities in the Newton HOME and CDBG programs filed with the U.S. Department of Housing and Urban Development. [12/06/13 @ 9:51 AM]
- #427-13 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]
- #426-13 ALD. HESS-MAHAN requesting periodic updates on development of the Consolidated Plan for the City of Newton Housing and Community Development Program and the WestMetro Home Consortium. [12/06/13 @ 9:51 AM]
- REFERRED TO ZAP, PROG & SERV AND FINANCE COMMITTEES**
- #397-13(3) ALD. SANGIOLO AND DANBERG requesting creation of an ordinance to protect trees deemed ~~historie~~ significant by the ~~Historical Commission and the~~ City's Tree Warden ~~with the advice and counsel of the Urban Tree Commission~~. [05/05/14 @ 4:32 PM] **AMENDED IN PROGRAMS & SERVICES 11/19/14**
- #266-13 ALD. YATES requesting that the Law Department provide the Zoning & Planning and Land Use Committees and other interested members of the Board with legal advice on what parties have standing to challenge zoning ordinances and the relevant court cases involving uniformity. [08/05/13 @ 12:28PM]

- #129-13 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]
- #128-13 ALD. ALBRIGHT, FULLER, CROSSLEY, LAREDO requesting the creation a comprehensive, 10-year strategic plan for Newton’s conservation lands which would include a multi-year prioritized list of short-term and long-term projects with appropriate estimated budget. This plan should be finished in time to include high priority item(s) in the FY15 Budget, with any project exceeding \$75,000 added to the Capital Improvement Plan. [03/15/13 @ 10:56 AM]
- #308-12 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]
- #282-12 ALD. JOHNSON, CROSSLEY, DANBERG, SANGIOLO requesting quarterly reports, starting the last month of the quarter beginning December 2012, Re-implementation of *Ramping Up: Planning for a More Accessible Newton*. [09-09-12]

REFERRED TO ZONING & PLANNING, LAND USE & FINANCE COMMITTEES

- #273-12 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.

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #257-12 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.
- #11-12 ALD. HESS-MAHAN & LINSKY requesting discussion on the implementation and enforcement of the provisions of Section 30-5(c)(1) of the Newton Ordinances which requires that “[w]henver the existing contours of the land are altered, the land shall be left in a usable condition, graded in a manner to prevent the erosion of soil and the alteration of the runoff of surface water to or from abutting properties.” [1/11/12 1:01PM]

- #61-10 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. [02/23/10 @ 2:48 PM]
- #391-09 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.
- ZONING REFORM – PHASE 1**
- #220-12 RECODIFICATION COMMITTEE recommending that the table in Sec. 30-8(b)(10)a) be clarified with respect to “lot width,” “lot area,” or “lot frontage.”
- #219-12 RECODIFICATION COMMITTEE recommending that Sec. 30-5(b)(4) as most recently amended by Ordinance Z-45, dated March 16, 2009, be amended to reconcile the apparent discrepancy relative to the definition of “structure.”
- #218-12 RECODIFICATION COMMITTEE recommending that Sec. 30-19(g)(1) be amended to clarify “sideline” distance, which is a reference to an undefined concept.
- #217-12 RECODIFICATION COMMITTEE recommending that Secs. 30-19(d)(1) and 30-19(g)(1) relative to the number of tandem parking stalls allowed in the side setback (two) and the number of tandem parking stalls (one) allowed in the setback for parking facilities containing less than five stalls be amended to make the both sections consistent.
- #216-12 RECODIFICATION COMMITTEE recommending that the definition of “Space, usable open” in Sec. 30-1 be amended by removing the exemption for exterior tennis courts as they are now classified as structures.
- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @ 11:34AM]
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

ZONING REFORM – PHASE 2

#323-14 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 @ 11:42AM]

#139-14 ALD. ALBRIGHT requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to clarify rules relative to retaining walls. [04/09/14 @ 8:32 AM]

Public Hearing to be assigned:

#404-13 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. [11/01/13 @ 12:57 PM]

A MOTION TO AMEND THE PREVIOUSLY APPROVED POSTPONEMENT OF DOCKET ITEM #404-13 TO APRIL 7, 2014 TO SUBSTITUTE RECOMMITTAL OF THE ITEM TO THE ZONING & PLANNING COMMITTEE WAS APPROVED BY VOICE VOTE ON MARCH 17, 2014.

#267-13 LAND USE COMMITTEE proposing to amend Section 30-21(c) to permit de minimis relief for alterations, enlargements, reconstruction of or extensions to lawfully nonconforming structures in which the nonconformity is due to Floor Area Ratio (FAR) requirements set out in section 30-15(u) Table A, subject to administrative review by the Planning Department.

#264-13 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. [08/05/13 @ 12:28PM]

#81-13 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]

#65-13 ALD. YATES, FISCHMAN, KALIS requesting that Chapter 30 be amended to require a special permit for major topographic changes. [02/12/13 @ 12:30 PM]

- #64-13 NEWTON 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.
[02/05/13 @ 11:35 AM]
- #153-11 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.
[05/10/11 @ 3:19 PM]
- #152-10 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. [06/01/10 @ 4:19 PM]
- #164-09(2) 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. [01/07/10 @ 12:00 PM]
- #142-09(7) 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.
[07/03/14 @ 9:10AM]

Respectfully Submitted,

Marcia T. Johnson, Chairman

SECTION XVID. LARGE HOUSE REVIEW

A. PURPOSE

This Section is adopted by the Town to provide pre-construction and post-construction review of single family dwellings which meet the applicability standards set forth below.

B. DEFINITIONS

Total Living Area plus Garage Space - This term includes:

- (i) The sum of the horizontal area(s) of the above-grade floors, including portions of attics, in the residential building(s) on a lot, measured from the exterior face of the exterior walls; and
- (ii) Area(s) of attic(s) measured from the floor to the interior roofline if 7 ft. or greater in height, and 5 ft. or greater in height on a sloped interior roofline; and
- (iii) Garage and storage space, whether in principal or accessory structures, in excess of 600 sq ft.; and
- (iv) Basement areas multiplied by a fraction, the numerator of which is the external above ground surface of basement walls and the denominator of which is the total surface (both above and below ground) of external basement walls, provided that if such fraction is less than .25, then the basement areas shall not be included.

Calculations shall be determined in accordance with the Rules and Regulations adopted by the Planning Board.

C. APPLICABILITY

The provisions of this Section shall apply to all building permits issued after January 1, 2008 for new single family dwellings where the Total Living Area plus Garage Space of the dwelling, after completion, exceeds:

3,600 square feet for dwellings within the Single Residence 10,000 Square Foot Area Regulation District;

4,300 square feet for dwellings within the Single Residence 15,000 Square Foot Area Regulation District;

5,900 square feet for dwellings within the Single Residence 20,000 Square Foot Area Regulation District; and

7,200 square feet for dwellings within the Single Residence 30,000 and 40,000 Square Foot Area Regulation Districts.

The provisions of this section shall also apply to all building permits issued after January 1, 2008 for alteration of single family dwellings where the alteration will increase the Total Living Area Plus Garage Space of the dwelling in question by more than 10%, and the Total Living Area Plus Garage Space of the dwelling, after completion of the project, will exceed the applicable threshold, as listed above.

Notwithstanding the foregoing, the following are exempt from Planning Board review:

1. Changes to non-conforming single-family dwellings which are subject to a Finding in accordance with Section 6 of Chapter 40A M.G.L and SECTION XVII. PRE-EXISTING NON-CONFORMING USES, STRUCTURES AND LOTS., of this Zoning Bylaw,
2. The reconstruction of pre-existing, non-conforming buildings, damaged or destroyed by accidental cause, including fire, or otherwise damaged or destroyed without the consent of the owner, in accordance with SECTION XVII. PRE-EXISTING NON-CONFORMING USES, STRUCTURES AND LOTS., C. DISASTER REBUILD.
3. Attics that are determined by the Building Inspector to remain unfinished in perpetuity due to the slope or construction of the roof; and
4. The completion or finishing of attics in existing structures where there are no exterior alterations or changes.

D. PROCEDURE

1. General. Any applicant for a single family residential dwelling which is subject to this Section shall submit the required information, including plans indicating the delineation of the neighborhood, existing and proposed site conditions, photographs, topography, building elevations, proposed grading and landscape design described in the Rules and Regulations to the Planning Board through the Planning Director and shall not be entitled to the issuance of a building permit unless and until the dwelling is approved in accordance with this Section.
2. Waivers. The Planning Board may, in any particular case where it determines such action to be consistent with the purpose and intent of the Zoning Bylaw and otherwise in the public interest, waive strict compliance with certain application and review requirements contained in this Section and with the Rules and Regulations adopted by it under this Section if it finds that the proposed construction, or certain aspects of the construction are de minimus based on the Standards and Criteria contained in Part E of this Section. Waiver requests must be made in writing and shall be addressed in a preliminary meeting between the Planning Board and the prospective applicant, held not later than 21 days after receipt of the waiver request. An applicant who makes a waiver request shall not submit an application until after meeting with the Planning Board on the waiver request.

3. Review and Timing. The Planning Board and Design Review Board shall each meet separately with the applicant to discuss the applicability of the Standards and Criteria set forth in Part E of this Section after receipt of the submission to discuss the project. Although a public hearing is not required, notice of the Planning Board meeting shall be sent by mail, postage prepaid, to the abutters and abutters to the abutters within 300 feet of the property line of the applicant, as they appear on the most recent applicable tax list at least 10 days prior to the public meeting. Owners of land directly opposite the applicant on any public or private street or way shall be considered abutters under this Section. Written comments from abutters will be received and considered, and oral comments will be considered only at the discretion of the Planning Board. The Design Review Board shall prepare comments and recommendations as it deems appropriate and shall submit these to the Planning Board. The Planning Board shall prepare its decision and provide it to the applicant within 90 days of the submission as well as to the Building Inspector and Zoning Board of Appeals as may be appropriate. The Planning Board may seek the recommendations of other Town Departments depending on the nature of the application. If the Planning Board has not issued its decision within 90 days of receipt of the submission from the applicant, the project, as described in the submission, shall be deemed approved. The 90-day time limit may be extended by written agreement between the Planning Board and the applicant, signed by, or on behalf of, the applicant.
4. Approval. The Planning Board shall determine whether the Standards and Criteria for Review set forth below have been satisfied. In reaching its decision, the Planning Board shall consider the recommendations of the Design Review Board and other applicable Boards and Departments, and all other materials submitted to the Planning Board. If the Planning Board finds that the Standards and Criteria for Review have been satisfied, it shall approve the project as set forth in the submissions, provided that it may approve the project subject to conditions or plan modifications specified by the Planning Board in writing. A construction mitigation plan may be required if the site warrants erosion and sedimentation control measures. If the Planning Board finds that the Standards and Criteria for Review have not been satisfied, it shall disapprove the project, and shall state in writing the basis for its decision.
5. Issuance of Building Permit and Certificate of Occupancy. The Building Inspector shall not issue a building permit unless and until the project is approved by the Planning Board or is deemed approved in accordance with this Section and is filed at the Registry of Deeds. The Building Inspector shall verify compliance with all required conditions or plan modifications prior to the issuance of a Certificate of Occupancy. The Building Inspector shall inform the Planning Director and the applicant of any failure to comply with conditions of plan approval or plan modifications pursuant to this section.
6. Revision and Amendment of Plans. Any revision, amendment or new information relating to an LHR application shall be considered as follows:

- a. Pending LHR Applications. Revision or amendments relating to a pending LHR application that is before the Planning Board for review shall be accepted by the Planning Board as part of the original submission.
- b. Previously Approved LHR Applications. Revisions or amendments to an LHR Application that has previously been approved by the Planning Board must be submitted to the Planning Director who shall make a determination as to whether the revisions are major or minor and shall be processed as follows:
 - i. Minor. If the Planning Director determines the proposed revisions or amendments to be minor, he or she shall determine the consistency of the revisions with the Planning Board's previous findings and the Standards and Criteria for Review, and either approve or deny the revisions accordingly. If denied, the Planning Director shall notify the applicant and the Planning Board within five (5) business days of the applicant's submittal of such revisions. The applicant may submit denied minor revisions to the Planning Board for their consideration; the Board shall either accept or reject the proposed revisions as part of the approved LHR application.
 - ii. Major. If the Planning Director determines the proposed revisions or amendments to be major, the Director shall notify the applicant and Planning Board within five (5) business days of the applicant's submittal to such revisions. The applicant may then submit the proposed revisions to the Planning Board, which shall either accept or reject the proposed revisions as part of the approved LHR application.

E. STANDARDS AND CRITERIA FOR REVIEW

1. Preservation of Landscape. The landscape shall be preserved in its natural state insofar as practicable by minimizing use of wetlands, flood plains, hilltops, any grade changes and vegetation and soil removal. Unique natural areas, topographic features such as ledge outcrops, significant trees and landscaping, and historic features shall be saved or enhanced insofar as practicable.
2. Scale of Buildings. All new construction shall be sited and implemented in a manner that is consistent with the scale of other structures in its vicinity through the use of appropriate massing, screening, lighting and other architectural techniques such as variation in detail, form and siting. Consideration shall be given to the need for vegetated buffers. To the extent practicable this shall be based on the "Intent, Policy and Recommendations" specified in Part II. Design Criteria. of the "Design Guidelines Handbook" adopted by the Design Review Board and otherwise applying good architectural and aesthetic principles. Structures shall be arranged insofar as practicable to avoid casting shadows onto abutting property.

3. Lighting. Exterior lighting shall be only as needed to accomplish safety and design objectives and shall be arranged so as to minimize the impact on neighboring properties.
4. Open Space. Open space shall be as extensive as is practicable and designed so as to add to the visual amenities of the neighborhood for persons passing the site or overlooking it from nearby properties. To the extent practicable this shall be based on the “Intent, Policy and Recommendations” specified in Part II. Design Criteria. of the “Design Guidelines Handbook” adopted by the Design Review Board
5. Drainage. The development shall incorporate measures that are adequate to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes to groundwater levels, increased rates of runoff, and minimize potential for flooding. Drainage shall be designed so that groundwater recharge is maximized, and so that the rate of runoff shall not be increased at the project boundaries.
6. Circulation. Walkways, drives and parking shall be safe and convenient and, insofar as practicable, not detract from the use and enjoyment of adjacent properties and Town streets.

F. FEES

Any applicant seeking plan approval under this section shall submit an application and pay such fees as shall be determined by the Planning Board, to cover any expenses connected with public notice and review of plans, including but not limited to the costs of any engineering or planning consulting services necessary for review purposes.

G. RULES AND REGULATIONS

The Planning Board may promulgate or amend Rules and Regulations which pertain to the plan approval process under this section, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, and the procedure for the submission and approval of such review so long as the Rules and Regulations conform to this SECTION XVID. LARGE HOUSE REVIEW of the Zoning By-law. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.

H. APPEALS

An applicant, or any person receiving notice under paragraph D., 4. above, may appeal the Planning Board’s approval, denial, conditions or plan modifications to the Zoning Board of Appeals in accordance with SECTION XXIV. PERMIT GRANTING AUTHORITY.

similarly located within such zone and further provided that the lot area covered by such building, structure, driveways and required parking shall not exceed fifty percent (50%).

Commercial vehicle: Any vehicle, conveyance or piece of mechanized equipment which is used to further any business, trade, profession or employment, and which meets any one (1) or more of the following criteria:

- (a) There is affixed on it any writing or logo that designates an affiliation with any business, trade, profession or employment;
- (b) It is used to store in a manner or place that is visible from outside of the vehicles any tools, equipment, accessories, body height extensions or other things used to further any business, trade, profession or employment;
- (c) It is used to transport persons, their luggage, and/or their animals or other materials for any kind of fee or charge;
- (d) Its length is more than eighteen (18) feet;
- (e) Its width is more than seven (7) feet;
- (f) It has a mechanized dumping capability;
- (g) It has a plow blade or plow blade frame or other device attached thereto, or a plow blade or other device is stored on the premises.

Common roof connector: An exterior roof surface on a two-family dwelling that meets all of the following requirements:

- (a) It extends over the common wall a minimum of twelve (12) feet over the interior space(s) in one dwelling unit and a minimum of twelve (12) feet over the interior space(s) in the other dwelling unit;
- (b) The roofing material over each dwelling unit has identical materials and color;
- (c) The roof surfaces do not have any vertical separation, subject to the following exceptions:
 - (1) A dormer shall not be deemed a vertical separation;
 - (2) A vertical separation between the roof surface of one dwelling unit and the roof surface of the other dwelling unit may be allowed if all of the following conditions are met:
 - a) The difference between the mean grade slope of one dwelling unit and the mean grade slope of the other dwelling unit is more than three (3) feet;
 - b) The vertical separation between the roof surface of one dwelling unit and the roof surface of the other dwelling unit does not exceed the difference between the mean grade slope of each of the two dwelling units;
 - c) The roof surfaces may have varied roof slopes, but if so, they shall conform to the requirements stated in subsections (c)(2)a) and b) above.
- (d) It is designed to give the appearance that it connects the two dwelling units to each other.

Common wall connector: An interior wall that is shared by and separates the two dwelling units of a two-family dwelling and meets all of the following requirements:

- (a) It is no less than twelve (12) feet in length;
- (b) It exists at the ground story level and is at least one (1) story in height;
- (c) It separates enclosed interior space(s) in each of the dwelling units;
- (d) It is designed to give the appearance that it connects the two dwelling units to each other.

Community Use Space: Space that is open to the public and used for, but not limited to, ball courts, gymnasias, play areas, community meeting rooms, community gardens, social services, outdoor play areas, playgrounds, related seating areas, and similar uses.

Congregate living facility: An association of persons living together in a shared living environment which integrates shelter and service needs of elderly, functionally impaired and/or functionally isolated persons who are otherwise in good health and can maintain a semi-independent lifestyle and who do not require constant supervision or intensive health care as provided by an institution. Each resident may have a separate bedroom, living room, kitchen, dining area or bathroom, or may share living, dining, and bathroom facilities with other persons. Such facility shall be deemed an association of persons living together in a single dwelling and not a lodging house.

Corner lot: See Lot, corner.

Day care center: As defined and licensed under G.L. c. 28A, a facility which on a regular basis receives for temporary custody and care more than ten (10) children at a time.

Development Parcel: The real property on which a Planned Multi-Use Business Development or a Mixed-Use Development (including any appurtenant easement areas benefiting a Mixed-Use Development) is located in connection with a special permit under Section 30-15(s) or 30-13(g).

Dormer: A projection built out from a sloping roof, usually containing a window or vent.

Dormitory: A building owned or controlled directly or indirectly by a religious or educational non-profit institution (excepting a nonprofit hospital) providing sleeping quarters for five (5) or more unrelated persons.

Drive-in business: A retail or consumer use of land or a building in which all or part of the business transacted is conducted by a customer from within a motor vehicle.

Drive-in food service establishment: A fast food establishment which provides convenient vehicular access and may provide service to customers while in their vehicles.

Driveway: An area on a lot which is designed or used to provide for the passage of motor vehicles to and from a street or way.

Dwelling: A building or structure used for human habitation.

Dwelling, attached: A building or structure that either:

- (a) contains three (3) or more dwelling units, attached to one another at the ground level and each having a separate primary and secondary access at ground level; or

(b) contains two (2) dwelling units and is not a “dwelling, two family,” as defined in section 30-1.

Dwelling, multi-family: A building or structure containing three (3) or more dwelling units.

Dwelling, two-family: A building or structure that meets all of the following requirements:

(a) It contains two (2) dwelling units;

(b) It contains either:

(1) a common floor-ceiling assembly between the upper and lower level dwelling units; or

(2) a common wall connector and a common roof connector, as defined in section 30-1.

Dwelling unit: One (1) or more rooms forming a habitable unit for one family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.

Family child care home: See *Child care home, family*.

Fast food establishment: An establishment whose primary business is the sale of food for consumption on or off the premises which is:

(a) primarily intended for immediate consumption rather than for use as an ingredient or component of meals;

(b) available upon a short waiting time; and

(c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

Floor area ratio:

(a) For residential structures in residential districts, gross floor area of all buildings on the lot divided by total lot area.

(b) For all others: Gross floor area of all buildings on the lot divided by total lot area. Any portion of a basement not used for storage, parking or building mechanicals shall be included in determining the floor area ratio.

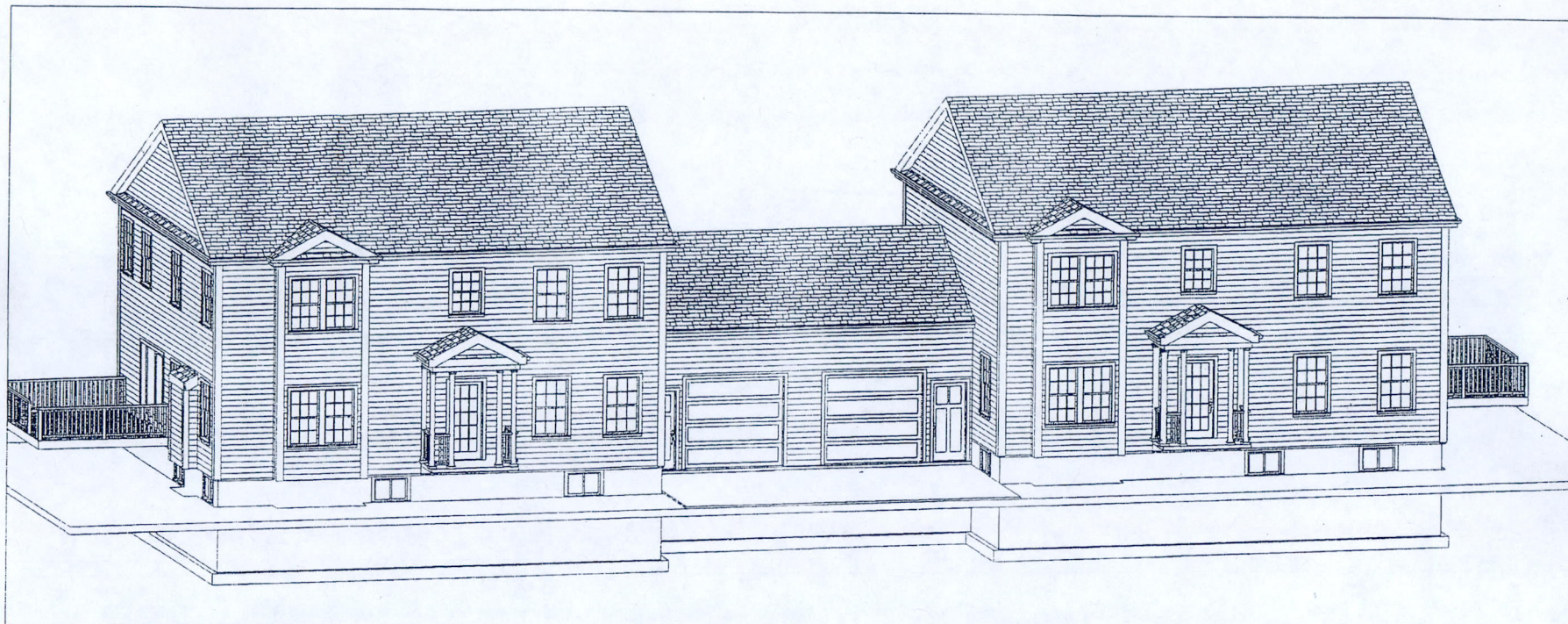
Floor area, gross:

(a) For residential structures and buildings accessory to residential structures in residential districts, the sum of the floor area of all principal and accessory buildings whether or not habitable, except as excluded below. Floor area measurements shall be taken from the exterior face of the exterior walls of each building without deduction for garage space, hallways, stairs, closets, thickness of walls, columns, atria, open wells and other vertical open spaces, or other features as defined in this section.

a) Gross floor area shall include:

i. First and second stories;

ii. Any floor area above the second story, whether finished or unfinished, that meets all of the following criteria:



Density Control Calculations:
Old lot 13,268 SF in MR1 zone.

Max FAR .48 + Bonus .02 for using new lot setbacks.

Max allowed: 13,268x.50=6,634

Total proposed: 6,617

House: 41'x35'8"x4=5,849

Attached Garage: 31'x24'=744

Bays: 1'6"x8"x2=24

Total: 5,849+744+24=6,617

No FA for 1st floor Bays:

Wall area 22'8"x41'=929, living room bay area 11'x8'=88SF<10%

Wall area (35'8"x22'8"=806)+(35'8"x9/2=160)=968 FP bay area 5'x7'=35SF<10%

Max lot coverage: .30

Max allowed: .30x13,268=3,980

Total proposed: 3,669

House: 41'x35'8"x2=2,925

Attached garage: 31'x24'=744

Total: 2,925+744=3,669

Max open space: .50

Max allowed: .50x13,268=6,634

Total proposed: 6,540

House: 41'x35'8"x2=2,925

Attached garage: 31'x24, =744

Decks: 18'x12x2=384

Driveway: (100'x14'=1,400)+(31'x33'=1,023)=2,423

Porches: 4'x8'x2=64

Total: 2,925+744+384+2,423+64=6,540

Max building height: 36'

Proposed: 33' from average grade.

See Cross section.

No Fa above 2nd floor: Roof is a 6/12 pitch no area more than 6'10" wide at 7' from rafters to subfloor. see cross section.

No FA below 1st floor: No exterior wall from 1st level subfloor grader than 3'10" from grade.

ALL OF THE CHECKS REVIEWED AND ACCEPTED AS NOTED BELOW

- PER BUILDING PERMIT ONLY
- PER DECK/DECK ONLY
- PER FIRE ALARM APPROVAL ONLY
- PER TREE REMOVAL ONLY
- PER SPARKLES APPROVAL ONLY
- PER POOL TO BE DESIGNED & SUBMITTED BY OWNER
- NO FIRE PROTECTION REQUIRED - BASED ON PLANS SUBMITTED
- OTHER

Project: 648 Watertown Street, Newton MA 02460

Title Sheet

Nick Zagorianakos 617-285-7992

Scale 1/4"

Page 1



Setti D. Warren
Mayor

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James Freas
Acting Director

WORKING SESSION MEMORANDUM

DATE: February 6, 2015

TO: Alderman Marcia T. Johnson, Chairman
Members of the Zoning and Planning Committee

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning

RE: Accessory Apartment Subcommittee

MEETING DATE: February 9, 2015

CC: Board of Aldermen
Planning and Development Board
Donnalyn Kahn, City Solicitor
John Lojek, Commissioner of Inspectional Services



EXECUTIVE SUMMARY

Attached is a draft of proposed revisions to Sec. 6.7.1. Accessory Apartments, from the Accessory Apartment Subcommittee and the Planning and Development Department. Notable changes include a new definitions section, the replacement of the term RAAP with Administrative Review, and a general cleaning up and simplification of language where it appears to make sense.

ATTACHMENT A: Proposed Sec. 6.7.1. Accessory Apartments

Sec. 6.6. Open Space Uses

6.6.1. Agriculture, Horticulture, Floriculture or Viticulture

- A. Defined. Includes horticulture, silviculture, floriculture and viticulture.

6.6.2. Indoor Recreation Facility

- A. Defined. Indoor swimming pools, indoor tennis courts, or similar indoor recreational activities.

6.6.3. Outdoor Recreational Activities, Private Active or Passive

- A. Defined. Includes, but is not limited to, golf courses, boating, play areas, nature studies and walks.

6.6.4. Resource Extraction

- A. Defined. The removal of resources such as sod, loam, subsoil, sand or gravel from the premises for the purpose of sale.
- B. Standards. Resource extraction requires a special permit.

6.6.5. Riding School, Stock Farm

- A. Defined. [reserved]

Sec. 6.7. Accessory Uses

6.7.1. Accessory Apartments

A. Accessory Apartment Defined

1. Internal. An accessory apartment located within a single-family dwelling unit and the owner of the single-family dwelling unit occupies either the main dwelling unit or the accessory apartment associated with the main dwelling unit;
2. Detached. An accessory apartment not located within a single-family dwelling unit but in a separate detached accessory structure, and the owner of the single-family dwelling unit occupies either the main dwelling unit or the detached accessory apartment.

B. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/dwelling unit; and
2. The single-family dwelling unit must have been ~~was~~ 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 structure dwelling on or before a date at least 10 years prior to the date of application.
3. 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 Board Order or a 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.
4. When ownership of the property changes, the new owner shall notify the Commissioner of Inspectional Services, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with the

Board order, ~~this Chapter the Newton Zoning Ordinance~~ and the State Building Code.

5. The owner of the subject property shall file with the Commissioner of Inspectional Services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

C. Accessory Apartments Allowed By Administrative Review

1. **Standards.** An accessory apartment is allowed by administrative review as a use accessory to an owner-occupied single-family ~~detached~~ dwelling in accordance with the procedures for administrative site plan review, and subject to the dimensional standards for the district as noted in Sec. 6.7.1.F, provided that:

- a. The accessory apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33% of the total building size in the dwelling structure, whichever is less;*
- b. Exterior alterations required to meet applicable Building, Fire or Health Codes are permitted as listed here:
 - i. Doors;
 - ii. Windows;
 - iii. No more than two exterior landings which may be covered, which do not exceed 50 square feet in area, and are not within the setback area;*
 - iv. Stairs which are not within the setback;* and
 - v. Roof and wall venting;
- c. Additions and exterior alterations to the structure made within 4 years prior to application may not be applied towards meeting the requirements of Table ~~30-8~~;* Sec. 6.7.1.F.*
- d. No more than one accessory apartment shall be allowed per lot;

- e. There shall be no lodgers in either the original dwelling unit or the accessory apartment;
- f. Parking as required by Sec. 5.1., and 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 thereof;
- g. ~~The apartment shall comply with all applicable Building, Fire and Health Codes.~~

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

D. Accessory Apartments Allowed by Special Permit

1. **By Special Permit.** The Board of Aldermen may grant a special permit ~~in accordance with the procedure in section 30-24~~ for an accessory apartment as a use accessory to an owner-occupied single-family dwelling in a Single Residence district, or a ~~legal~~ nonconforming two-family dwelling in a Single Residence district, or a dwelling in a Multi-Residence district, or a detached structure, provided that the provisions of ~~Sec. 6.3.4~~ Sec. 6.7.1.F are met, except as amended below. ~~Any special permit issued by the Board for such use shall be automatically subject to the condition that the two dwellings may not be held in separate ownership.~~
 - a. The accessory apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet, or 33% of the total building size ~~of in~~ the dwelling ~~structure~~, whichever is more;
 - b. Exterior alterations required to meet applicable Building, Fire or Health codes are permitted provided they are if in keeping with the architectural integrity of the structure and the residential character of the neighborhood.
 - c. 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 ~~legal~~ 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% of the final gross floor area of ~~said the~~ accessory apartment as provided in this Sec. 6.7.1., whichever is greater.

- d. No additions or exterior alterations beyond those in the final grant of a petition 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. **District Boundaries.** The following land 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.

F. Lot Size and Building Size

Detached Accessory Apartment	Lot Size (Min SF)	Building Size (Max SF)
SR 1		
Admin. Rev.	25,000	4,400
Special Permit	15,000*	3,200
SR 2		
Admin. Rev.	15,000	3,100
Special Permit	10,000*	2,600
SR 3		
Admin. Rev.	10,000	2,500
Special Permit	7,000*	1,800
Nonconforming two-family dwelling in SR1, SR2, SR3		
Special Permit	25,000*	2,600
MR 1, MR 2		
Special Permit	8,000	2,600
Overlay A		
Admin. Rev.	43,500	4,400
Special Permit	15,000*	3,200
Overlay B		
Admin. Rev.	16,000	3,600
Special Permit	10,000*	2,600
Overlay C		
Admin. Rev.	10,000	3,100
Special Permit	7,000*	1,800
Overlay D		
Admin. Rev.	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 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;
5. Floor space in an attic, if used to meet minimum building size or apartment size, must meet State Building Code requirements for floor to ceiling height as specified in Section 2101.6.

H. Pre-Existing Units. ~~Notwithstanding the terms of Sec. 30-8(d)(1)-(3) above, A pre-existing~~ accessory apartment (~~second dwelling unit~~) in a ~~single-family~~ dwelling unit or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional standards criteria above of Table 30-8 provided the following criteria are fulfilled:

1. **Proof of Existence.** An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 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 **aforesaid** 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 **aforesaid** dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the **aforesaid** second dwelling unit; or
- e. Sworn affidavits by former or present tenants of the **aforesaid** 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 said the second dwelling unit as of December 31, 1979 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, 1979 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 ~~in section 30-8(d)(4)a)v~~ shall be presumed to be reliable, unless there is substantial evidence to the contrary.

3. Requirements. The requirements of Sec. 6.7.1-A, G, C.1.a), b), c), d), f), and g) E., D., H., G. and H. must be satisfied.