

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, DECEMBER 10, 2012

7:45 PM  
Room 202

**ITEMS SCHEDULED FOR DISCUSSION:**

Re-appointment by His Honor the Mayor

#404-12     TABETHA McCARTNEY, 155 Hunnewell Avenue, Newton, re-appointed as a member of the PLANNING AND DEVELOPMENT BOARD for a term to expire February 1, 2017 (60 days 02/01/13) [11/19/12 @ 9:51 AM]

Re-appointment by His Honor the Mayor

#405-12     WILLIAM McLAUGHLIN, 117 Hammond Street, Chestnut Hill, re-appointed as a member of the ZONING BOARD OF APPEALS for a term to expire November 7, 2015 (60 days 02/01/13) [11/19/12 @ 9:51 AM]

Re-appointment by His Honor the Mayor

#332-12     DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of THE CONSERVATION COMMISSION for a term to expire October 25, 2015. (60 days 01/04/13) [10-25-12 @ 10:51AM]

#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]

#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]

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The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Trisha Guditz, 617-796-1156, via email at [TGuditz@newtonma.gov](mailto:TGuditz@newtonma.gov) or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

#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]

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

- #406-12 ALD. JOHNSON requesting a discussion to review City of Newton Zoning Ordinances Chapter 30-20(h)(6) regarding campaign signs, and the failure of candidates to comply with current removal requirements. [11/19/12 @ 9:24AM]
- #328-12 DINO ROSSI, 362 Watertown Street, Newton, requesting that the current Table A in Section 30-15 of the City of Newton Ordinances be replaced with the Sliding FAR Scale Table that was presented by the FAR Working Group in their Final Report [10/26/12 @ 11:08 AM]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #322-12 HIS HONOR THE MAYOR submitting the FY14-FY18 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter. [10/09/12 @ 2:38 PM]

**REFERRED TO PUB.FAC, ZONING&PLANNING, PROG & SERV COMMITTEES**

- #316-12 DEPARTMENT HEADS HAVENS, ZALEZNIK, LOJEK requesting amendments to **Sec. 26-30. Licenses for cafe furniture on sidewalks.** to streamline the procedure allowing businesses to place café furniture on public sidewalks. [09/24/12 @ 3:17 PM]
- #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. [09/10/12 @ 1:17 PM]
- #260-12 ALD. YATES proposing amendments to Sec. 30-19 to increase the vitality of village centers without adverse impacts on the residential neighborhoods around them. [08-17-12 @ 1:01 PM]
- #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.
- #215-12     ALD. YATES proposing a RESOLUTION requesting that the Planning Department and the Economic Development Commission develop a Main Streets Program following the model of the National Trust for Historic Preservation to revitalize the Newtonville and Newton Centre business districts. [07-17-12 @2:55PM]
- #214-12     ALD. DANBERG, BLAZAR, SCHWARTZ proposing an ordinance which would enable the city to respond to properties which are so inadequately cared for, often by absentee owners, as to constitute a nuisance, not only to properties nearby but also to the public at large, with the understanding that timely intervention may help prevent the loss of such properties to severe neglect, excess accumulation of trash or unsightly collectables, inside or out, or even eventual abandonment. [07-09-12]
- #162-12     THE ECONOMIC DEVELOPMENT COMMISSION requesting a one-year moratorium, starting immediately, where no bank shall be allowed to be built or opened for business on the ground floor of any building in any Business District within the city unless granted a Special Permit from the Board of Aldermen. [05-17-12 @ 4:18 PM]
- #64-12     ALD. HESS-MAHAN requesting an amendment to Newton Revised Ordinances Sec 30-24(f)(8)b) to clarify the inclusionary zoning preference provisions for initial occupancy of units for households displaced by the development thereof and for units to serve households that include persons with disabilities. [03-14-12 @8:54AM]

- #48-12 ALD. ALBRIGHT requesting a discussion with the Executive Office and the Planning Department on the creation of a housing trust. [02/10/2012 @ 9:13AM]
- #25-12 TERRENCE P. MORRIS, G. MICHAEL PEIRCE, JASON ROSENBERG, JOHN LOJEK proposing a zoning ordinance amendment to amend section 30-15(c)(3)(b) by inserting the word “*subject*” before the word “*lot*”, the word “*and*” before the word “*such*” and the word “*adjoining*” after the word “*such*” so that the paragraph reads as follows:  
*(b) if the subject lot was held in common ownership at any time after January 1, 1995 with an adjoining lot or lots that had continuous frontage on the same street with the subject lot and such adjoining lot had on it a single-family or two-family dwelling.* [01/30/2012 @ 3:14PM]
- #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]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 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]

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK & CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]

**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]  
**FINANCE REFERRED BACK TO ZAP COMMITTEE 3/26/2012**

- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #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]
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 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.

Respectfully Submitted,  
Marcia Johnson, Chairman

#404-12

Telephone  
(617) 796-1100

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(617) 796-1113

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(617) 796-1089

E-mail  
swarren@newtonma.gov

David A. Olson, CMC  
Newton, MA 02459

2012 NOV 19 AM 9:51

RECEIVED  
Newton City Clerk



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

November 7, 2012

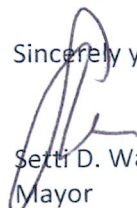
Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint Tabetha McCartney Newton as a member of the  
Planning and Development Board. Her term of office shall expire February 1, 2017 and her  
reappointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,

  
Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

Tabetha G. McCartney

**Education**

1984 **THE WHARTON SCHOOL**, University of Pennsylvania  
Masters of Business Administration  
Concentrations in finance and strategic planning with complementary courses in real estate law and finance.

1980 **MASSACHUSETTS INSTITUTE OF TECHNOLOGY**, Cambridge MA  
Bachelor of Science in Management  
Concentration in economics. Independent research project in managerial psychology.  
Founder and Chairman of Undergraduate Management Student Council  
Vice President Sophomore Class, Executive Committee Senior Class  
Secretary Women's Athletic Council  
Varsity Letters in field hockey, basketball and softball

1979-1980 **Special Assistant to the Director of Admissions**  
Undergraduate representative to the Admissions Committee. Recruited high school students, interviewed applicants and reviewed undergraduate applications participating in final decision process.

**Experience**

2003 to present **Brookline Bank**, Brookline MA  
Vice President  
Manage \$50MM portfolio comprised of over 30 relationships.  
Underwrote \$24 MM in deals resulting in \$19MM of approved transactions.

1998 to present **Newton Public Schools**, Newton, MA  
Head Coach Junior Varsity Softball, Newton South High School  
Head Coach Girls Soccer, Oak Hill Middle School  
Head Coach Girls Softball, Oak Hill Middle School

2000-2002 **MetroWest Bank**, Framingham, MA  
Vice President New Business Development

1993-1998 **Grove Bank**, Chestnut Hill, MA  
Vice President/Team Leader  
New Business development and relationship management of commercial real estate portfolio, Built portfolio from zero to over \$60 Million including permanent loans and construction financing. Managed lending and support staff, Leading originator for four years.

1991-1993 **First Essex Savings Bank**, Lawrence, MA  
Vice President/Workout Officer  
Responsible for the resolution, through restructuring or liquidation of the major, more sensitive and complex, non-performing assets in the institution. Handled twenty eight accounts totaling \$22 Million.

1987-1991 **Security Pacific Credit Corp**, Newton, MA  
Senior Business Development Officer  
Opened satellite office for subsidiary of major commercial bank, Responsible for new business development, underwriting and loan closing.

1987-1988 **Wedgestone Financial**, Newton, MA  
Loan Officer  
Underwriting, loan origination and construction loan monitoring in a Real Estate Investment Trust environment. Problem loan workout including land development of REO. Worked with foreclosure process in various states and Federal Bankruptcy Court.



1985-1987

**Yankee Bank for Finance and Savings, Boston, MA**  
Vice President

Responsible for new business development, underwriting, documentation, negotiation, portfolio monitoring and problem loan workouts. Designed, implemented and managed Multi Family Loan Program including product development, market definition and strategic planning.

1984-1985

**Bank of New England, Boston, MA**  
Condo/Multifamily Specialist

Responsible for all aspects of Multi-family loans; marketing, originations, processing, closing and sales on the secondary market. (Freddy Mac and Fannie Mae). Also prepared condominium project approval packages for submission to the secondary market.

1980-1982

**Chemical Bank, New York, NY**  
Assistant Manager

Completed credit training program. Handled portfolio of middle market accounts, providing credit and non-credit services. Headed credit department, supervised preparation of financial analysis and on-line instruction of trainees. Involved in new business solicitation in rapidly expanding market.

Summer 1983

Intern

Involved in market research and strategic planning for the national expansion of specialized industry groups. Worked on in-bank development of highly specialized, technical new product to facilitate national expansion.

#### AFFILIATIONS

New England Women in Real Estate – Former Steering Committee, Chair of the Community Involvement Committee

The Second Step, Board of Directors, Treasurer, Former Chair of the Building Committee

West Suburban YMCA, Board of Directors

Newton Needham Chamber of Commerce, Former Director

Newton Girls Soccer, Former Director, Chair of Equipment Committee

MIT Educational Counselor

ZNY

#405-12



City of Newton, Massachusetts  
Office of the Mayor

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SETTI D. WARREN  
MAYOR

E-mail  
swarren@newtonma.gov

RECEIVED  
Newton City Clerk  
2012 NOV 19 AM 9:51  
David A. Olson, CMC  
Newton, MA 02459

November 7, 2012

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint William McLaughlin ( Newton as a member of the  
Zoning Board of Appeals. His term of office shall expire November 7, 2015 and his reappointment is  
subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,

Setti D. Warren  
Mayor



William M. McLaughlin

May 13, 2009

- Newton Resident for 16 years
- Massachusetts Native (grew up in Arlington and Belmont)
- BA in Economics from Harvard College (1986)
- Real Estate Development and Investment Professional for 23 years
  - Extensive Land Use/Zoning Experience
  - Overseen Approx. \$3 Billion in Ground Up Development, Rehabilitation, and Investment
  - Managed Local and State Level Entitlement Processes in over 20 MA communities and elsewhere
  - Frequent Guest Lecturer at Area Graduate School Programs on Topics of Real Estate Development, Investment, and Finance; Affordable Housing; Planning and Zoning Issues.
  - Leading Expert on Mixed Income Housing Development
  - On Board of Managers of Large Somerville MA based Industrial Real Estate Investment LLC.
- Charitable and Other Community Activities Include:
  - Can-Do Advisory Board
  - Newton Wellesley Hospital Board of Overseers
  - Board of Directors, Caritas Communities, Inc.
  - Current or Former Coach, NCLL, NGS, NAA
  - Past Chair, Greater Boston Real Estate Board, Past President, Rental Housing Association
- Married (Linda), with 6 children ages 7-17.

11 NOV 12 A 11:46  
CITY CLERK  
NEWTON, MA 02159



# Application for Committee Appointment City of Newton, MA

188.09  
#332-12

Please submit this completed application, or a copy of your resume with a letter stating committee of interest, to Mayor David B. Cohen, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459.

Name: Daniel Green Date: October 15, 2007

Home Address:  
Business Address:  
E-mail:

Occupation, if applicable: Real Estate Development

Committee(s) you might wish to serve on: Conservation Commission

What activities or issues interest you? Environmental preservation and conservation, green building, sustainable building, and smart growth.

Relevant expertise, experience, and education: Associate Member of Newton Conservation Commission since March 2003. Currently President of The Green Company (real estate developer including The Gables in Newton on Dedham Street). Previously worked at Disney (during design stage of town of Celebration in Orlando Florida) and JP Morgan in NY. BA from Harvard University and MBA from Duke University's Fuqua School of Business. Board of Newton Conservators local conservation and land trust organization) and The Green Building Initiative (national green building non-profit).

List your community activities with offices held, if any: Associate Member of Newton Conservation Commission since March 2003. Board of Newton Conservators local conservation and land trust organization) since 2004 and The Green Building Initiative (national green building non-profit) since 2005. Working with Newton neighbor David Carroll on "Keeping Newton Clean and Green" program to reduce litter in Newton center business and adjacent residential areas. Coach Newton Little League since 2005 and Newton Girls Soccer since 2004.

Please provide the names of three references:

Name	Address	Phone Number

Feel free to add any additional information in support of this application.  
While I do not currently vote on the Conservation Commission, I am an active member attending meetings since 2003. Most requests made of the commission involve home renovations, demolition and new construction. On many occasions, my knowledge of construction techniques, area needed for material storage

ance from home that needs to disturbed for restoration work, etc. have allowed the commission to  
ask for less land to be disturbed and to have haybales and silt fence placed in a tighter area to reduce  
effectively. I also appreciate the way the conservation commission operates, helping Newton  
comply with the Wetlands Protection Act while still enabling them to build or renovate the home of  
their dreams or at least the home of their future family memories. Alan Green, my father, previously held this  
position on the commission, and with your permission, I would like to bring my business and development  
expertise to help balance the expertise of the other commission members who excel in legal, education,  
transportation, biological, chemical and scientific areas. I feel I work well with the other members. We greatly  
respect and support each other. This is the way I would like to give back to our community, where I was raised  
since birth and where my wife and I have chosen to raise our four children.

#332-12



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Candace Havens  
Director

**WORKING SESSION MEMORANDUM**

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**DATE:** December 7, 2012

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

**FROM:** Candace Havens, Director of Planning and Development   
James Freas, Chief Planner for Long-Range Planning  
Seth Zeren, Chief Zoning Code Official

**RE:** #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*.

#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.

**MEETING DATE:** December 10, 2012

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

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**EXECUTIVE SUMMARY**

Petitions #61-10 and #164-09(2) both relate to the regulation of accessory apartments and are therefore being considered together for the purposes of this memo and discussion on December 10<sup>th</sup>. Accessory apartments were first permitted in Newton in 1987 and over the following 25 years, approximately 50 accessory apartments have been approved or legalized city wide. However, it is commonly believed that there hundreds of illegal accessory apartments, many of which may not meet adequate standards for public safety according to the requirements of the Building Code. The 2007 *Comprehensive Plan* calls out accessory apartments as one tool for achieving the City's overall goal of



diverse and affordable housing, but does not identify targets for the number of accessory apartments or present an analysis of obstacles or incentives to their creation or the range of issues they may generate in the neighborhoods where they are located.

Petitions #61-10 and #164-09(2) suggest two possible means of encouraging or allowing for a greater number of legal accessory apartments in the City, with the first of these also beginning to address very important questions of public safety relative to the existing stock of illegal accessory apartments. Both items also raise important and challenging questions relative to more precisely defining the City's objectives relative to accessory apartments and fully considering the range of approaches to achieving those objectives. As described in the *Comprehensive Plan*, accessory apartments offer a valuable form of housing to the City's residents, but the design, density, and parking implications for the neighborhoods that host them may need to be managed through regulation. Different approaches allow the City to strike this balance in different ways, which may be more or less acceptable to neighborhood residents and accessory apartment owners (current and future).

At the December 10<sup>th</sup> ZAP meeting Planning Staff will facilitate a discussion on the specific problems with accessory apartments in Newton and seek consensus on a policy direction and process for revising these sections, if deemed appropriate. The Planning Department will also present an array of potential approaches to addressing the docket items, discussed in this memorandum, that range from the creation of a working group to shape a comprehensive revision to targeted revisions focusing on the minimum size of units and easing the adaptation of carriage houses to accessory apartments. Given the complexity and geographic reach of the accessory apartment issue, the Planning Department believes that the issue is best addressed as part of Phase 2 of comprehensive zoning reform and recommends that no action is necessary at this time.

## **BACKGROUND**

The 2007 *Comprehensive Plan's* Housing Element lays out the City's policy objectives with respect to residential areas, including:

- To preserve a diversity of housing to meet different social, economic, and life-cycle needs
- To increase the number of rental and home-ownership opportunities for low, moderate, and middle income families and senior citizens

To achieve these objectives, the *Comprehensive Plan* recommends facilitating modifications to existing housing that can serve these housing goals, such as creating accessory apartments, where appropriate.

### Legislative history

Accessory apartments were first allowed in Newton in 1987 as part of a large package of amendments (S-260). At that time they were only allowed in Single-Residence zones and only by special permit. Two years later, no accessory apartments had been created under the provision. A new amendment was approved in 1990 that loosened the standards and largely created the current accessory apartment regulations. Since the mid-1990's approximately two accessory apartments have been approved per year. The section was revised in 2010 to permit apartments in houses that have existed for at least ten

years and permit the owner to occupy either the accessory apartment or principal dwelling. In 2011, additional changes were made to explicitly prohibit conversion of accessory apartments to condominiums.

### Accessory Apartment Incentive Program

In 2006-2009, the City initiated an Accessory Apartment Incentive Program (AAIP) to increase the supply of affordable housing in the City by encouraging the legalization of existing accessory apartments. The AAIP offered grants and loans to support code compliance and improvements, funded by Community Preservation funds, to owners earning up to 125% of area median income to create accessory apartments for those earning up to 80% of area median income. With certain exceptions, full-time students were not allowed as tenants under the program. Over 350 people indicated interest in creating accessible units under the program, but in the end none participated and no legalized units were created. The most common reasons for not participating in the program were that the lot did not meet the minimum required lot size and that owners perceived the required affordability deed restriction as too restrictive. See Attachment A for more information on the reasons for nonparticipation in the AAIP.

### Approval Process

Accessory apartments are allowed in the Single-Residence and Multi-Residence zones only and can be created by one of three processes:

1. Accessory apartments may be located within a single-family home (that has existed for at least ten years) by administrative approval (RAAP review) so long as the parcel is owner-occupied and meets other dimensional and use standards.
2. For parcels that are smaller than the standard for a RAAP review, in a two-family dwelling, or where the accessory apartment will be located in a detached accessory structure, an accessory apartment may be permitted by special permit from the Board of Aldermen.
3. Lastly, an accessory apartment that has been in existence since December 31, 1979 may be legalized regardless of lot area or building size so long as the property owner can demonstrate that the unit was legally created and continuously used and meets all other standards for an accessory apartment.

### Results

Since the adoption of the accessory apartment provisions in 1987, approximately 50 accessory apartments have been lawfully created under zoning—roughly half by administrative RAAP review and half by special permit from the Board of Aldermen. Approximately ten additional preexisting units have been legalized.

### Illegal Apartments

It is commonly believed that there are numerous illegal accessory apartments in the City that do not comply with the Zoning Ordinance and potentially the Building Code. City staff estimates that the total number of illegal apartments in the City to be in the hundreds, based in part on the 350 respondents to



the AAIP. Enforcement on dwelling units that are in violation of the Zoning Ordinance or Building Code is driven by complaints or when uncovered during requests for building permits. Inspectional Services and public safety departments consider illegal apartments to be a significant public safety concern as many units may lack adequate means of egress or properly inspected utilities, increasing the chance of injury or death in the event of a fire or other emergency.

## **DISCUSSION OF POLICY OBJECTIVE**

In reviewing Petitions #164-09(2) and #61-10, staff considered the history of accessory apartments in Newton and the guidance of the *Comprehensive Plan* and identified two particular potential problems that could be the subject of future amendments, stated below.

### Draft Problem Statements:

1. The number and type of legal accessory apartments created under the current zoning regulations does not significantly contribute to the goal of creating diverse and affordable housing established by the *Newton Comprehensive Plan*.
2. Many illegal apartments may contribute to some of the goals of the *Comprehensive Plan* in that they provide a diversity of housing types and are generally more affordable, but, in so far as they have conditions that violate the Building Code, they represent a public safety problem that must be remedied.

## **WORK PROGRAM**

The Planning Department has identified a range of options that could satisfy a range of policy objectives in response to the general problem statements described above. Setting a scope of work in advance helps to guide staff work and ensure that Department resources and Committee time are appropriately allocated.

### Options for creating diverse and affordable housing

1. *Comprehensive Review of Accessory Apartments*. This option would involve a comprehensive analysis of a range of regulatory and non-regulatory means of allowing for and encouraging accessory apartments in the City and produce a comprehensive revision of the accessory apartment provisions in the Zoning Ordinance and other City policies. Research would include looking at best practices from other communities and the existing state of accessory units in Newton. A citizen/staff working group would be created to discuss possible changes and conduct public outreach, meetings, and workshops to collect broad public input. Based on staff experience with issues such as FAR reform, the Planning Department estimates that this option would take at least one year to complete, with significant staff time and ZAP meetings focused on the issue.
2. *Targeted Reforms*. If the Committee desires to take immediate action to change the accessory apartment regulations, the Planning Department has identified two options that are small enough to be undertaken before the start of Phase 2 of Zoning Reform and would solve some of the problems identified above.

- a. *Lower the minimum unit size.* Currently accessory apartments are required to be a minimum of 400 square feet in area. Lowering this threshold could slightly increase the potential to create accessory apartments or legalize existing apartments, particularly where the size of existing structures, the preferences of the homeowner, or the market limits the ability to create or rent a larger unit. Research and analysis would look at what an acceptable minimum unit size would be under zoning and the potential effects on the number of accessory apartments created. Based on staff experience, the Planning Department estimates that this option would take at least three months to complete, including staff time and four to five ZAP meetings addressing the issue.
  - b. *Ease rules as they apply to the conversion of historic carriage houses.* Carriage houses are recognized as an important historic resource. Staff has identified approximately 300 surviving carriage houses built before the 1910s. Without an active use, many carriage houses fall into disrepair or are removed by new owners who have no need for the structure. Conversion to accessory apartment could provide an economic incentive for restoring and maintaining these historic structures. As detached structures, currently all accessory apartments in carriage houses would require special permits, a substantial burden that can hamper preservation objectives. Furthermore, many carriage houses are too large or are located on lots that are too small to meet the accessory apartment standards and, therefore, cannot be used for accessory apartments. Research and analysis would focus on the impact of waiving some or all of the dimensional standards for accessory apartments in carriage houses constructed before a specified date subject to administrative approval similar to the RAAP process. Based on staff experience, the Planning Department estimates that this option would take at least three months to complete, including staff time and three to four ZAP meetings addressing the issue.
3. *Inclusion in Phase 2 of Zoning Reform.* Instead of undertaking an immediate revision, a review and revision of accessory apartments could take place as part of Phase 2 of Zoning Reform, which is scheduled to begin in the Fall of 2013 and is expected to take two years. The issue of accessory apartments is very common in modern Zoning Reform efforts. This option would take advantage of experienced consultants who have considered this issue in many different places, who would guide a public planning process that would allow consideration of this issue in the context of the full range of changes being proposed. No additional staff resources or ZAP meetings would be required prior to the start of Phase 2 of Zoning Reform.

#### Options for reducing the problems of illegal apartments

Based on experience with the AAIP and enforcement, Planning and ISD staff believe that the number of accessory apartments that lack proper legal approvals or code compliance is in the hundreds City wide. These apartments often lack a second means of egress and/or properly inspected utilities and can therefore represent a public safety hazard. There are three broad approaches to reducing the number of these illegal apartments:

1. *Legalize apartments under the Zoning Ordinance.* By easing regulatory standards and more broadly grandfathering existing apartments, more units would be eligible for legalization and the process would be easier. All apartments would still be required to address Building Code deficiencies, which may represent a significant disincentive to legalize existing units. This approach would raise the same issues as the comprehensive approach, above, and is therefore most appropriate as part of Phase 2 of Zoning Reform.
2. *Aggressive enforcement.* Alternatively, the City could take a more proactive enforcement stance to illegal apartments, going beyond the current complaint-driven system. Units enforced upon would either be forced into compliance with Zoning and Building Code requirements or be eliminated. Based on the City's experience with the AAIP, additional zoning enforcement staff would be required to seek out these apartments and manage the increased caseload.
3. *Combination of lowering regulatory barriers and enforcement.* The first step in this middle-ground approach would be to better understand the specific zoning noncompliance issues that are a barrier to existing illegal apartments. Where existing units cannot be legalized under present zoning, the Board may consider changes to the Zoning Ordinance that would bring more of these existing units into compliance, so long as they can also comply with Building Code. This research process would be difficult. As the City has seen in the AAIP, there is little incentive to comply and concern that once identified a property owner might be subject to enforcement. The AAIP identified some 350 potential apartments, but also operated with a dedicated staff person to manage the project. The Planning Department believes that making a significant dent in the number of noncompliant accessory apartments would require a similar investment of resources in enforcement and negotiation.

## **PREVIOUS REVIEW**

Petition #61-10 was last discussed at the Zoning and Planning Committee working session on October 22<sup>nd</sup>.

## **RECOMMENDATION**

In its initial review of the history and present status of accessory apartment regulations, the Planning Department has attempted to lay out two clear problem statements that may require a policy response: inadequate creation of accessory apartments to meet housing plan goals and illegal apartments which represent a public safety hazard.

The Planning Department believes that the issue of whether or how accessory apartments should contribute to the City's overall housing mix in the future is a large and complex topic best suited to Phase 2 of Zoning Reform. During Phase 2 the City will have access to expert consultant resources in the context of a large, inclusive public outreach process. Addressing the enforcement challenge is a similarly complex issue. Balancing the task of legalizing some units that do not conform to zoning with

ensuring adequate public safety again lends itself to the comprehensive, public process of Phase 2 of Zoning Reform. The Planning Department recommends no action on Petitions #164-09(2) and #61-10 at this time.

**ATTACHMENT A:** Accessory Apartment Incentive Program Summary

table created by A. Ingerson 07 July 17 and 09 Feb 11  
 from notes by CLN program managers Kevin McCormick (phase 1) & Cyd Kane (phase 2)

<b>Newton, Massachusetts</b>			
<b>Accessory Apartment Incentive Program</b>			
<b>RESULTS</b>	<b>Phase 1</b> April 2006- March 2008	<b>Phase 2</b> April 2008- February 2009	<b>TOTAL</b>
	<i>pieces mailed with tax bills</i>	<i>homeowners re- contacted from phase 1</i>	
Initial contacts	5000	75	5075
Responded to mailing/contact or made new inquiry	350	19	369
Provided address (to allow staff to check property's eligibility)	245	13	258
Property not eligible	104	4	108
<i>lot too small (one phase 2 inquiry might have been eligible for special permit, but ran out of time)</i>	63	4	67
<i>single-family house in multi-family zone</i>	29	0	29
<i>house not owner-occupied</i>	9	0	9
<i>house built after 1989</i>	3	0	3
Property potentially eligible but owner unwilling or unable to meet program requirements	74	15	89
<i>deed restriction seen as too restrictive</i>	38	0	38
<i>building code or space issues could not be resolved</i>	7	0	7
<i>wanted to do more new construction than was allowed</i>	7	0	7
<i>wanted to move into accessory unit and rent out larger unit</i>	6	0	6
<i>no longer interested/no response to further info. provided</i>	0	4	4
<i>income too high</i>	0	3	3
<i>info sent outside Newton, or outside Massachusetts</i>	0	3	3
<i>wanted apt. for employee or family member</i>	0	2	2
<i>wanted more review time</i>	0	2	2
<i>concerned with increased taxes</i>	0	1	1
Property potentially eligible AND homeowner initially interested	67	2	69
Property eligible AND homeowner stayed in contact after initial conversations	2	2	4
Grant or loan made/apt. created	0	0	0



Setti D. Warren  
Mayor

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Candace Havens  
Director


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## WORKING SESSION MEMORANDUM

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**DATE:** December 7, 2012

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

**FROM:** Candace Havens, Director of Planning and Development  
James Freas, Chief Planner for Long-Range Planning  
Seth Zeren, Chief Zoning Code Official 

**RE:** #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 "whenever 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."

**MEETING DATE:** December 10, 2012

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

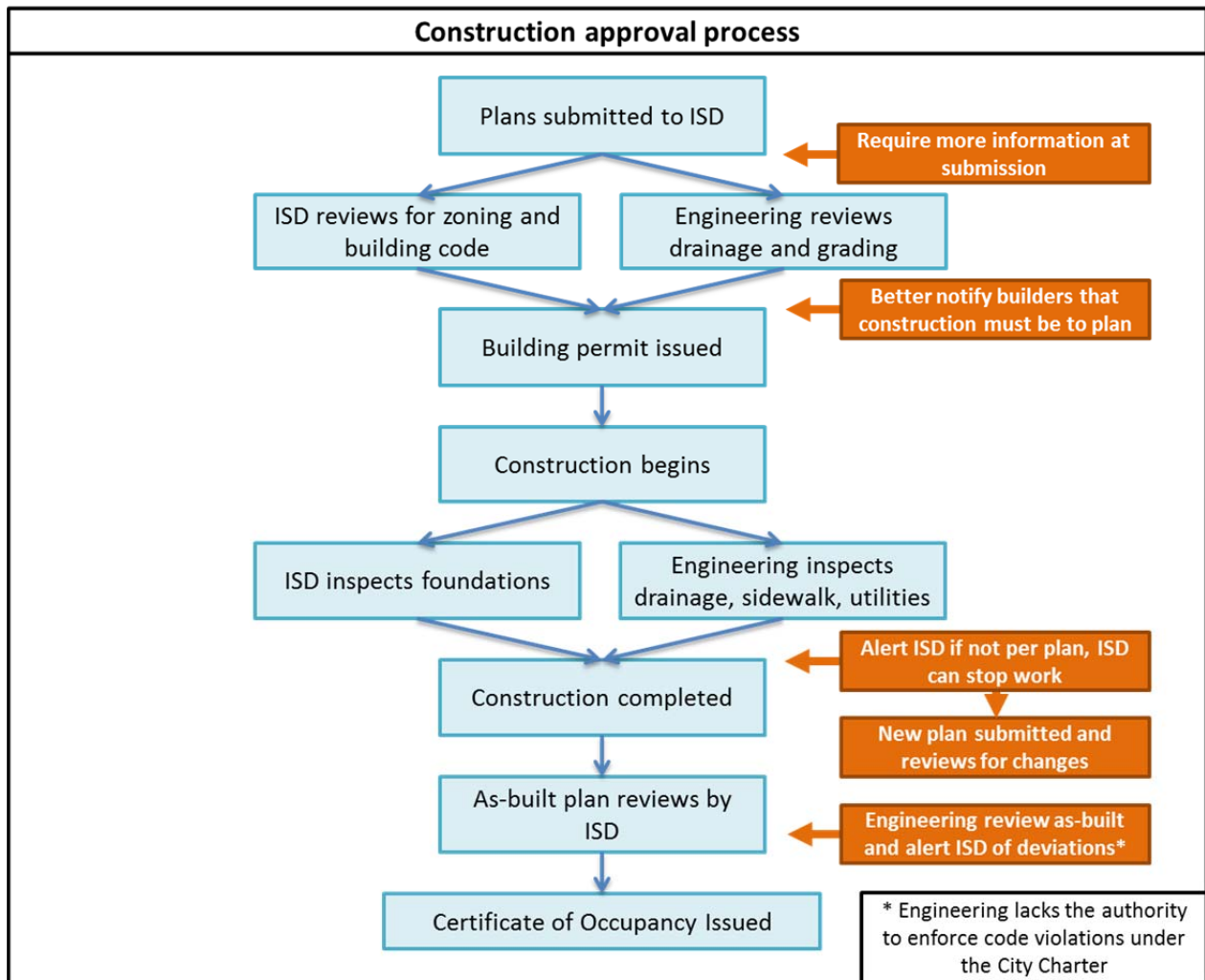
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### EXECUTIVE SUMMARY

Petition #11-12 was introduced at a meeting of the Zoning and Planning Committee on October 22, 2012 in response to concern about implementation and enforcement of a zoning ordinance provision, Section 30-5(c)(1), which requires that "whenever 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." An example was provided of a case where a builder did not grade/improve a site according to the City-approved plan, enforcement authority was unclear, and, as a result, may have increased stormwater flow onto a neighboring property. The Committee asked ISD and the Planning Department to discuss the matter with Engineering and this memorandum summarizes that inter-departmental review.

Staff from Planning, ISD, and Engineering met to discuss the existing review and permitting process as it pertains to site grading and drainage and proposed improvements to that process.

The flowchart below diagrams the full building permit process from initial application through final certificate of occupancy. At several points along the process, the Engineering Division provides specific technical review or site inspections, particularly as related to grading, drainage, sidewalk, and public road alterations. Engineering then communicates to ISD whether the plans are acceptable or conform to previously-approved plans. Under City Ordinance, Engineering does not have any enforcement authority of its own over private property; that authority is granted to ISD. This results in a situation where ISD may lack the expertise to enforce, while Engineering lacks the authority. Central to improving the review process, as shown in orange below, is improving communication between these two departments in order to ensure that ISD has access to the expertise offered by Engineering so that enforcement action can be taken as required by the ordinance.



It is a central tenet of good regulation that the regulatory process be fair, understandable, and predictable both for the person subject to the regulation, as well as those the regulation is intended to protect (in this case, the neighbors being protected from flooding). The improvements described above are intended to improve communications both between the two City Departments involved, as well as with builders and developers in the community so that the requirements, and the expectation of enforcement should those requirements not be met, are clearly stated.

In order to improve the implementation and enforcement of Section 30-5(c)(1), and other related provisions of the Code, ISD and Engineering commit to the following:

- The Departments will work to ensure that all construction or site alteration proceeds on the basis of the approved plans.
- If the plans must change due to unforeseen circumstances, Engineering will review those new plans on behalf of ISD and confirm that they are acceptable.
- Engineering will alert ISD to put a “stop work” order into effect if, during their inspections of infiltration systems, they observe that construction does not match the approved plan or that the drainage system does not function properly.
- If a project is not built to plan, Engineering will alert ISD and a Certificate of Occupancy (CO) will not be issued.
- ISD will work with Engineering to ensure that all site plans are submitted with all necessary information pertaining to drainage—including information on drainage on adjoining parcels or historic drainage patterns, where relevant or available.
- Both departments agree that through improved communication, future issues will be minimized.

**RECOMMENDATION**

Planning staff believe that the concerns raised in Petition #11-12 are being addressed in improvements to the procedures by which ISD and Engineering collaborate in issuing and reviewing building permits. No change to the Ordinance language is necessary to achieve the desired outcome. Therefore, the Planning Department recommends no action on petition #11-12.