

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, JANUARY 25, 2010

7 PM Aldermanic Chamber

Room 202 to Follow

CHAIRMAN'S NOTE: After the joint public hearing on Docket Item #412-09 with the Finance Committee and Planning Board, the Committee will convene in Room 202 to take up the following items:

Appointment by His Honor the Mayor

#410-09 JOHN R. A. PEARS, 102 Parker Street, Newton Centre, appointed as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire December 1, 2012 (60 days 2/19/10).

#164-09 ALD. HESS-MAHAN proposing the following amendments to the accessory apartment ordinances: (1) amend Sections 30-8(d)(1)a) and 30-9(h)(1)a) to explicitly allow the homeowner to live in the accessory apartment; (2) amend Section 30-9(h)(1) to allow accessory apartments in a single family residence located in Multi Residence 1 and Multi Residence 2 zoned districts; and (3) amend the provisions of Sections 30-8(d)(1)b) and 30-9(h)(1)b) to allow accessory apartments in residential buildings built 10 or more years before an application for a permit is submitted; (4) delete the provisions of Sections 30-8(d)(1)(h) and 30-9(h)(1)(h) that require landscape screening for fewer than 5 parking stalls; (5) amend Sections 30-8(d)(1)(d), 20-8(d)(1)(e), 30-8(d)(2)(b) and 30-9(h)(1)(d) to allow exterior alterations and add that any exterior alterations, other than alterations required for safety, are subject to FAR provisions. [06/09/09 @ 4:55 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]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent

accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

#336-08 ALD. LAPPIN requesting a discussion re the creation of an index for the zoning ordinances. [9/12/08 @ 10:31 AM]

#237-01 ALD. MANSFIELD proposing to amend Secs. 30-1, 30-11, 30-12, and 30-13 of the Revised Zoning Ordinances to clarify the definitions of and specify the distinctions between restaurants, retail food establishments, fast food establishments, and food processing and preparation as allowed and permissive uses in Business, Manufacturing and Mixed Use Districts.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

#18-10 ALD. YATES requesting a report from the Conservation Commission as to whether the Commission feels that the ticketing process for violation of wetlands laws proposed in docket #168-02, approved by Zoning & Planning in 2004 and subsequently voted No Action Necessary by the Board in 2009, would still be valuable in preserving the City's environment. [01/04/10 @ 8:16 PM]

#411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.

#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.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #376-09 HIS HONOR THE MAYOR submitting the FY11-15 Capital Improvement Program, totaling \$140,377,285 and the FY10 Supplemental Capital budget, which require Board of Aldermen approval to finance new capital projects over the next five years.
- #207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]
- #475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]
- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM]
- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.
- #288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2, 3 and 4 districts.
- #10-06 ALD. JOHNSON, DANBERG, SANGIOLO, BAKER, & HESS-MAHAN requesting the adoption of legislation to enable the establishment of neighborhood conservation districts in Newton.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of "accessory structure" which will include mechanical equipment.
- #294-03 ALD. BAKER, YATES, JOHNSON AND MANSFIELD requesting analysis and discussion of possible remedies for demolition of modest housing and replacement with oversized structures out of character with the surrounding neighborhood, including examining the experience of

other communities, including those out of state, who have worked to address this problem. **(Recommitted by Full Board 8-14-06)**

- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #217-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more, containing one or more residential units in any residential district.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.
- # 7-99 ALD. PARKER requesting discussion of possible zoning amendments to create additional residential districts with different FAR and lot size requirements.
- #333-97(2) ALD. YATES proposing that Chapter 30 be amended to prohibit without a special permit in any zoning district the approval of a subdivision that would be accessed by any public way on which the Level of Service at the point of access is already a D, E, or F, for at least one hour per week or if the additional traffic to be generated by the subdivisions would cause the Level of Service at the point of access to a public way to fall to D, E, or F for at least one hour per week. [8-7-07 @2:05 PM]

Respectfully submitted,

Marcia Johnson, Chairman



Memorandum

To: Jennifer Molinsky, Zoning & Planning Coordinator
Marie Lawlor, Assistant City Solicitor

Cc: Marcia Johnson, Chair of Zoning and Planning Committee

From: Ald. Hess-Mahan

Re: Proposed amendments to Accessory Apartment Ordinance

Date: January 7, 2010

This memorandum provides background and rationale for the following docket items to be referred to the Zoning and Planning committee: (1) proposed amendments to the accessory apartment ordinance; and (2) requested study of lot and building size restrictions relating to accessory apartments.

In 2006, the Board of Aldermen approved the Community Preservation Committee's recommendation to fund an Accessory Apartment Incentive Program ("AAIP") with Community Preservation funds. The AAIP provided loans or grants and technical assistance to homeowners who wanted to create accessory apartment units in their houses in exchange for an affordability restriction on the unit.

The AAIP was kicked off in July 2006. The purpose of the program was to help Newton homeowners create accessory apartments that would be rented to tenants with limited income. This was intended to create additional affordable housing units in Newton, through the creation of affordable accessory apartments. As stated in the Comprehensive Plan, accessory apartments are a way of increasing the total number of housing units in Newton by using the existing housing stock.

While the AAIP was in existence, over 350 Newton Homeowners have shown an initial interest in creating an accessory apartment, but after consulting with the planning department, none of them signed up for the program. A survey was conducted to determine obstacles to implementation of the purpose of the AAIP, which was to create affordable housing in Newton for an underserved population of low to moderate income households that require only single or double occupancy rental units. The results of the survey suggest that some modest modifications of the existing ordinance, together with a review of the dimensional restrictions as part of an overall study of floor area ratio ("FAR"), would promote the creation of affordable accessory units to serve this population.

1. Homeowner living in the accessory apartment

Background: The Zoning Ordinances do not allow the homeowner to live in the accessory apartment. They require the homeowner to live in the larger unit. Six (6) homeowners interested in the AAIP wanted to take part in the program so that they could live in the accessory apartment. Many others asked about the possibility. Most were seniors who wanted to downsize but still live in Newton.

Proposed: Change the Ordinances to allow the homeowner to live in either the accessory apartment or the larger original dwelling.

This would involve changes to Section 30-8 (d) (1) a) and 30-9 (h) (1) a).

2. Single family house in multi-family zone cannot create an accessory apartment.

Background: The Ordinances allow an existing two family house in a MR1 or MR2 Zone to create an accessory apartment, but a single family house in a MR1 or MR2 Zone is not eligible for an accessory apartment. 28 homeowners that were interested in the AAIP were not eligible because of this.

The single family house in a MR1 or MR2 might be able to create a two family house as long as they follow other zoning requirements. There are situations where the rules to create an accessory apartment would be easier than the rules to create a two family. A one-bedroom accessory apartment unit would have less of an impact on density and intensity of use than a full-sized second unit with 3 or more bedrooms. If the AAIP is reinstated, this change would allow such homeowners to take advantage of it.

Proposed: Change the ordinances to allow the creation of an accessory apartment in a single family residence located in a MR1 or MR2.

This would involve changes to Section 30-9(h)(1).

3. Main dwelling must be constructed on or before January 1, 1989.

Background: The Ordinances require that the main dwelling must be built before January 1, 1989 for the lot to be eligible for an accessory apartment. Three (3) homeowners interested in the AAIP were not eligible because their house was built too late. The houses were built in 1995, 1996, and 1997. Presumably, the rationale behind this restriction was to prevent owners or builders from circumventing zoning restrictions on the number of housing units allowed by, in effect, creating accessory apartments in new construction. A ten-year look back period provides adequate protection against this.

Proposed: Change the Ordinances to set the date 10 years before the application is made rather than the specific date

This would involve changes to Section 30-8 (d) (1)(b) and 30-9 (h) (1) (b).

4. Screening requirements for parking

Background: The Ordinances contain a special rule for accessory apartments that the screening for all the parking has to comply with the rules for 5 or more parking spaces, no matter how many parking places are required. So if a single family house creates an accessory apartment they would need 3 parking places, but would need to create the screening that is required for 5 parking spaces. This is an unreasonable burden to impose, particularly for homeowners who are seeking to “age in place” and/or need rental income to remain in their homes, which the creation of accessory apartments would promote.

Proposed: Drop this special exception and state that the parking screening for accessory apartments follow the same rules as parking for all other dwelling units.

This would involve changes to Section 30-8 (d) (1) h) and 30-9 (h) (1) h).

5. Limited exterior alterations

Background: The ordinances do not allow any exterior alterations (other than safety items) if the homeowner is applying under the RAAP process and limited exterior alterations under the Special Permit Process. Six (6) homeowners interested in the AAIP wanted to do more extensive alterations than allowed.

These ordinances were enacted before the FAR provisions existed. Now that the FAR provisions exist, it would be reasonable to drop the specific restrictions on alterations of the accessory apartment, as long as the FAR provisions are followed.

Proposal: Drop the requirement that there cannot be any exterior alterations, and add that if there are any exterior alterations, other than safety items, the whole dwelling would be subject to the FAR provisions.

This would involve changes to Section 30-8 (d) (1) d), 30-8 (d) (1) e), 30-8 (d) (2) b) and 30-9 (h) (1) d).

6. Lot size and building size

Background: The Ordinances have specific lot and building size requirements for accessory apartment. They differ by zone and by type of permit process, RAAP or Special Permit.

- Out of 237 interested homeowners who gave their address, 57 had lots that were too small to be eligible for an accessory apartment though either the RAAP process or a Special Permit.
- The assessors data base was also researched by major zone and found that less than 4000 lots are eligible for the easier RAAP Process. If you also take in the overlay zones and the building size requirements, it is estimated that less than 3500 are eligible for the RAAP process.

Proposed: Request that the Planning Department study lot and building size requirements for accessory apartments either as part of the FAR Task Force study of floor area ratio (FAR) or as a separate study and make recommendations to amend or revise such requirements for accessory apartments created by RAAP and Special Permits, consistent with the Newton Comprehensive Plan.