

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JANUARY 25, 2010

Present: Ald. Johnson (Chairman), Baker, Lappin, Lennon, Sangiolo, Shapiro, Swiston and Yates

Also present: Ald. Crossley and Hess-Mahan

Others Present: Marie Lawlor (Assistant City Solicitor), Eileen McGettigan (Assistant City Solicitor), John Lojek (Commissioner, Inspectional Services Department), Trisha Guditz, David Wilkinson (Comptroller), Elizabeth Dromey (Assessor), , Phil Herr, Jennifer Molinsky (Planning Dept.), Hope Stege (MIT), Doug Sweet (Planning & Development Board), Leslie Burg, (Planning & Development Board), Josephine McNeil (CAN-DO), Karyn Dean (Committee Clerk)

*Please see the January 25, 2010 Joint Report of the Finance and Zoning and Planning Committees for the details of the Public Hearing on this item:*

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

#412-09      HIS HONOR THE MAYOR requesting approval of an amended 121A Tax Agreement between the City of Newton and the New Falls Associates Limited Partnership ('the owner'), dated November 13, 2009, whereby the City will receive \$2,537,500 in deferred taxes upon the completion of refinancing by the owner and 41 affordable housing units will be extended for an additional 22 years, until 2040.

**NOTE:** The Zoning and Planning Committee convened to continue discussion of this item. The Planning Board reported that they approved this item by a vote of 6-0.

Ongoing Maintenance

Ald. Baker said that the City would be getting a substantial payment of over \$2M from this new agreement. However, he said they were also giving up the accrued liability that the City had not been able to collect. He asked how the property would be maintained in order to facilitate the long term viability of this project. Elizabeth Dromey had explained at the Public Hearing that the proposed agreement would allow New Falls Associates to refinance the property and pay the city over half of the money owed in deferred payments. The remaining deferred taxes would be rolled into a note with a 3% compound interest rate per year, which would be payable in thirty years. In addition, the refinancing will allow New Falls Associates to apply \$1.5 million for capital maintenance and needed improvements to the property.

Trisha Guditz said that in order to continue to maintain Section 8 certification on the 41 units, HUD requires annual visits to the units to be sure they're meeting housing standards as well. Eileen McGettigan also stated that during the negotiations, one of their consultants through the Planning Dept., looked at the financials of New Falls and worked closely with one of their attorneys, Philip Silver, to come up with the numbers that would work. The consultant had confidence that the numbers would work going forward.

Ald. Yates said that it looked like HUD was going to contribute more money for Section 8, which was another contributing factor to the success of this agreement. Philip Silver said there is a proposal into Mass Housing that just needed final HUD approval. He was confident this would happen and expects a signed Section 8 contract to be available in the next two weeks. The rent levels have already been approved through HUD and Mass Housing so he said it was a secure commitment.

Mr. Wilkinson said that as the accrued interest on this receivable grew dramatically, and began to far exceed the principle, he and outside auditors started to have some concerns about being able to collect. This new agreement makes the payments possible. There are also some preliminary talks between the Treasurer, the Mayors office, and the Comptroller about this year's bond sale. Newton's financial reserves relative to other AAA rated towns are very thin and getting thinner. Collecting this \$2M early in this year is a very positive step. Mr. Wilkinson said he was quite happy with this arrangement.

#### Composition of Units

Ald. Swiston asked what the breakdown was for the units. Trisha Guditz said the intention was to have 20 units reserved for the elderly, 21 other units as affordable for families, and 19 market rate units. Ald. Sangiolo said she was concerned about making the language clear about seniors, disabled and affordable units for families. As was mentioned before, the units for seniors and disabled were interchangeable when the original agreement was drawn up. Trisha Guditz explained that the original board order had 20 units for elders, and subsequently 21 additional affordable units for families. The 19 market rate units remained the same throughout.

#### Appraisal

Ald. Shapiro asked if the appraisal on the property came in lower than expected, would the City still receive the amount it has been promised. Philip Silver said the property has been properly appraised and that will not be a problem. Eileen McGettigan said she was completely comfortable with the appraisal and the City will get its money.

Ald. Sangiolo moved approval of this item and the Committee voted 8-0 in favor.

#### 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).

**ACTION:**      **APPROVED 8-0**

**NOTE:** Mr. Pears joined the Committee. He noted that he has lived in Newton for 26 years and is an architect by profession. He and his wife have a son in college and a son at Newton South High School. Mr. Pears felt it was a time in his life when he could participate in and contribute to the community. Currently he is a Board member of the Judge Baker Children's Center and involved with a group called Newton Villagers which is meant to improve certain aspects of civic and urban spaces. He said his skills are in planning public and open spaces and the Economic Development Commission seems to have some influence in these matters. Ald. Sangiolo said she has known Mr. Pears for years and is quite pleased that he will be working with the EDC. The Committee voted to approve Mr. Pears' appointment by a vote of 8-0.

#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]

**ACTION:**      **HELD 8-0**

**NOTE:** The Planning Department invited Hope Stege, a Masters Program graduate of the MIT Department of Urban Studies and Planning, to deliver a presentation of her thesis research to the Committee. Ms. Stege's thesis focused on Accessory Dwellings and included Newton as one of her case studies. Her presentation can be found on the Zoning and Planning Committee webpage attached to the electronic version of this report.

Ald. Baker distributed a Memo and a report from 1989 which addressed Accessory Apartments as by-right projects and special permit projects, and provides the framework for the existing ordinance. They will be included in the packet as well as on the Zoning and Planning Committee webpage, attached to the electronic version of this report.

Jennifer Molinsky also delivered a presentation specific to items #164-09 and #164-09(2). It can be found attached this report as well as on the Zoning and Planning Committee webpage, attached to the electronic version of this report. Please refer to the presentation as it provides the detailed information about each of the amendments proposed in this item.

Public Hearing

Ald. Baker said that some of the proposed amendments to the ordinance would not be difficult to do or think through but others might be more complex or take more time. He asked Ald. Hess-Mahan if he would like to break this item down or take it up all together at the public hearing. Ald. Hess-Mahan said he would like to propose all of the amendments at once in a public hearing. He said that he formed this item with data collected by the Accessory Apartment Incentive Program survey and these were the issues that were preventing people from creating accessory apartments. Ald. Yates agreed as did Ald. Johnson.

Ald. Johnson said the Public Hearing could be held on Monday, February 22, 2010. Ald. Hess-Mahan will work with Jennifer Molinsky and Marie Lawlor on the final wording of the item for the public hearing.

Ald. Yates moved to hold this item and the Committee voted in favor.

#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]

**ACTION:** **HELD 8-0**

**NOTE:** Ald. Hess-Mahan would like to have a public hearing on this item as well at some point. He said it would make sense to finish the FAR task force work before beginning the study requested in this item.

Ald. Yates moved to hold this item and the Committee voted in favor.

The Committee thanked Ms. Stege for her presentation to the Committee.

**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.

**ACTION:** **HELD 8-0**

**NOTE:** Ald. Hess-Mahan said the item was meant to generate a discussion and hear some ideas. He noted that the Town of Barnstable had a program that included a subsidy that helps people to create “affordable” accessory apartments by HUD standards. Phil Herr thought there were other communities that offered programs as well but he could not be specific at this time. Ald. Hess-Mahan said Barnstable’s program worked around the permitting process and a very small amount of money was used to help people qualify. Newton’s Accessory Apartment Incentive Program did not work because of the various barriers that were mentioned in Jennifer Molinsky’s presentation, therefore, a different



kind of program was needed. Ald. Johnson asked Ms. Molinsky if she could get some more information on the Barnstable program.

The Committee voted to hold this item.

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

**ACTION:**      **HELD 8-0**

**NOTE:** John Lojek said that his personnel have created an index, of sorts, that they use within their office. He said it was not an official index of the zoning ordinances, however. Mr. Lojek will provide a copy of the tabs that they use to the Committee members. He explained that this index is not comprehensive and does not cross-reference items.

Ald. Lappin said the last discussion about this item was that the index should wait until the zoning ordinances were re-done. She suggested hiring an intern from a local college. Mr. Lojek said indexing the zoning ordinances was a task far beyond the ability of an intern. He believed that it involved scanning and sourcing of references, cross-referencing, etc. Mr. Lojek said he will do some research on how this might be done and what it would entail and come back to a meeting in the near future. Ald. Sangiolo suggested that Mr. Lojek talk to the City's IT Department as they might have some information. Ald. Yates said that there were several vendors at the Massachusetts Municipal Association meeting with software for re-codification. He said that he had some literature and would share it with Commissioner Lojek.

The Committee voted to hold this item by a vote of 8-0.

#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.

**ACTION:**      **NO ACTION NECESSARY 8-0**

**NOTE:** Ald. Swiston said there really needs to be clarification of the terms in this docket item. For example, his became an issue when Panera Bread came in for a special permit recently. Ald. Sangiolo moved No Action Necessary and said she would docket a new item with more specific language regarding fast food. The Committee voted No Action Necessary on this item by a vote of 8-0.

Motion to adjourn.

Respectfully submitted,

Marcia Johnson, Chairman

**PLANNING AND DEVELOPMENT BOARD MINUTES**  
January 25, 2010 City Hall, Planning and Development Department  
Aldermanic Chambers, 7:00 p.m.  
1000 Commonwealth Avenue, Newton, Massachusetts 02459

**Full Members Present:**

Tabetha McCartney, Chair  
Joyce Moss, Vice Chair  
David Banash  
Leslie Burg  
Doug Sweet

**Alternate Members Present:**

Howard Haywood

**Planning Board [7:30]**

1. #412-09 HIS HONOR THE MAYOR requesting approval of an amended 121A Tax Agreement between the City of Newton and the New Falls Associates Limited Partnership ('the owner'), dated November 13, 2009, whereby the City will receive \$2,537,500 in deferred taxes upon the completion of refinancing by the owner and 41 affordable housing units will be extended for an additional 22 years, until 2040.

D. Banash made a motion that the Planning Board approve the amended 121A Tax Agreement between the City of Newton and the New Falls Associates Limited Partnership, as outlined in the letter from the Assessor's Department. L. Burg seconded the motion and the Board voted 6-0-0 to approve the amendment.

# **Zoning and Planning Committee**

January 25, 2010



# Agenda – Accessory Apartments

- **#164-09**, Ald. Hess-Mahan proposing the following amendments to the accessory apartment ordinances: (1) to explicitly homeowners to live in an accessory apartment; (2) amend to allow accessory apartments in a single-family residence in Multi Residence 1 and Multi Residence 2 zoned districts; and (3) to allow accessory apartments in residential buildings built 10 or more years before an application for a permit is submitted; (4) no longer require landscape screening for fewer than 5 parking stalls; (5) allow exterior alterations and add that any exterior alterations, other than alterations required for safety, subject to FAR provisions
- **#164-09(2)**, Aid. 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*
- **#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

# 164-09 Background

- **Program dates to late 1980s; revised 1989, mid '90s**
- **Since 1995, 28 apartments created under program:**
  - 5 under “RAAP” process
  - 23 by special permit
  - 8 preexisting units legalized
- **Accessory Apartment Incentive Program 2006-9**
  - Designed to encourage creation of units with affordability restrictions
  - Created no apartments
  - Identified barriers to use of accessory apartment ordinances

Barriers Identified in AAIP Program	#
<i>Property ineligible for the AAIP program:</i>	<b>104</b>
Lots did not meet minimum lot sizes in Table 30-8	63
Involved single-family home in a Multi-Residence zone	29
Involved houses built after 1989	3
Involved homes that were not owner-occupied	9
<i>Property eligible, but owner decided not to apply for AAIP program:</i>	<b>74</b>
Owner perceived deed restriction of AAIP program as too restrictive	38
Owner wanted to live in accessory apt. and rent primary residence	6
Owner wanted to do more new construction than was allowed	7
Owner could not resolve building code or space issues	7

# 164-09 Proposed Amendments

1. Allow homeowner to live in apartment OR main dwelling
2. Allow accessory apartments in single-family homes in MR districts
3. Allow accessory apartments in buildings 10 years old or more rather than buildings that predate 1989
4. Delete screening requirement for parking for accessory apartments
5. Allow exterior alterations to accommodate apartments

# 164-09 Amendment 1

## *Proposed Amendment #1: Allow homeowner to live in the accessory apartment*

- **Current:** Owner must reside in main dwelling
- **Proposed:** Owner can reside in either main dwelling or accessory apartment
- **Considerations:**
  - Owner must still live on premises
  - Useful for those seeking to downsize but stay in neighborhood



# 164-09 Amendment 2

## *Proposed amendment #2: Allow accessory apartments in single family homes located in Multi-Residence districts*

- **Current:** Single family homes and their accessory structures located in MF districts are ***not*** eligible for accessory apartments
- **Proposed:** Explicitly allow accessory units in single family homes in MF districts by special permit

# 164-09 Amendment 2 (continued)

## – Considerations:

- Single-family homes in MF districts **can** be divided into a two-family house as-of-right, with fewer restrictions than under the accessory apartment ordinances, so this provision may not be needed
- Planning Department recommends allowing **detached structures** associated with single-family homes to have accessory apartments in MR districts by special permit (this section is not clearly written now for two-family homes)

# 164-09 Amendment 3

## *Proposed amendment #3: Allow accessory apartments in dwellings built 10 or more years ago*

- **Current:** Accessory apartments are only allowed in dwellings built before 1989
- **Proposed:** Allow accessory apartments only if dwelling was built ten or more years before application
- **Considerations:**
  - Both current and proposed prevent new construction from having accessory units, but proposed amendment updates ordinance
  - Does detached structure or just main dwelling have to be 10 years old?

# 164-09 Amendment 4

## *Proposed amendment #4: Delete requirement that parking for accessory structures be screened*

- **Current:** An accessory apartment must have one parking stall, and stall must be screened according to requirements typically reserved for parking facilities for 5 or more vehicles
- **Proposed:** Remove screening requirement
- **Considerations:**
  - Current screening involves 5' wide strip of shrubs or trees, walls or fences with 3' landscaped strips, or 3'w x 18"h berms
  - Two-family homes with accessory unit would have to provide 5 stalls, so Committee may not want to remove explicit screening requirement in this instance

# 164-09 Amendment 5

## *Proposed amendment #5: Allow exterior alterations, subject to FAR*

- **Current:** Only exterior alterations that are allowed within two (MR) or four (SR) years of application for accessory apartment permit involve changes to doors, windows, landings pertaining to building, health, and fire codes
- **Proposed:** Allow exterior alterations, with entire house subject to FAR requirements

# 164-09 Amendment 5 (continued)

## – Considerations:

- What extent of exterior alteration should be permitted under RAAP or special permit? What about exterior alterations to detached structures?
- Under current zoning, detached structures are limited in size but not subject to FAR
- If exterior alterations are allowed, remove time limit?
- For RAAP apartments, how much discretion on architectural integrity or neighborhood character should there be? Currently RAAP permits are reviewed by the Planning Director.

# 164-09(2) Study of Eligible Lots

- Requests that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments
- Refers to requirements in Table 30-8, which sets minimum lot sizes and building sizes in each residential zone and in overlay districts for a lot to be eligible for an accessory apartment

<u>Comparison of Lot Size Requirements</u>	Accessory Apartments		Minimum Lot Sizes in District		Median Lot Size
	RAAP	Special Permit (if old lot)	Old Lot	New Lot	
SR1	25,000	15,000	15,000	25,000	18,025
SR2	15,000	10,000	10,000	15,000	10,860
SR3	10,000	7,000	7,000	10,000	7,900
MR1	N/A	8,000	7,000	10,000	7,535
MR2	N/A	8,000	7,000	7,000	5,712
Overlay A (SR1 land)	43,500	15,000			
Overlay B (SR2 land)	16,000	10,000			
Overlay C (SR3 land)	10,000	7,000			
Overlay D (SR1 land)	30,000	15,000			



# 164-09(2) Study of Eligible Lots

- We have record of a previous study, which found that about **3,500 lots** were eligible for RAAP process given minimum lot and building sizes
- For comparison, there are about 17,000 lots in SR 1-3 (includes condominiums) –
- Unclear how/when this study was conducted
- Another study of eligible lots would involve GIS database query

**WHAT NEXT FOR  
ACCESSORY DWELLINGS?  
Getting from bylaws to buildings**

Presentation of thesis research to:

City of Newton

Board of Aldermen Zoning and Planning Committee

January 25, 2010

*Hope Stege*

*Master of City Planning, 2009*

*Department of Urban Studies and Planning*

*Massachusetts Institute of Technology*

## Overview

### CONTEXT

#### **Introduction**

Premise

Questions

#### **About accessory dwellings**

### ANALYSIS

#### **Precedent studies**

BARNSTABLE (Massachusetts)

SANTA CRUZ (California)

#### **Four major strategies for encouraging accessory dwellings**

#### **Case Studies**

LEXINGTON (Massachusetts)

LINCOLN (Massachusetts)

NEWTON (Massachusetts)

#### **Impediments to creating accessory dwellings**

### CONCLUSION

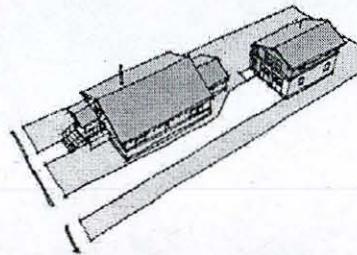
#### **Planning for accessory dwellings**

Next steps for Lexington, Lincoln and Newton

Next steps for accessory dwellings

**WHAT IS AN ACCESSORY DWELLING?**

An accessory dwelling is a secondary, self-contained housing unit on the same property as the primary residence; the accessory dwelling can be attached to or detached from the main residence, but is subordinate in size, location and appearance.



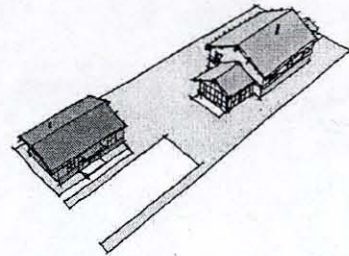
**accessory apartment**

**accessory cottage**

**accessory dwelling unit**

**ADU**

**auxiliary unit**



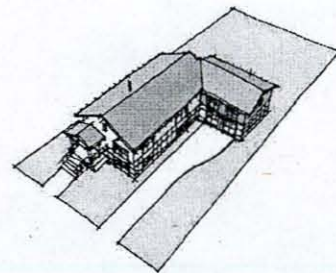
**backyard cottage**

**carriage house**

**English basement**

**granny flat**

**guest house**



**in-law apartment**

**mother-in-law apartment**

**secondary unit**

**single-family conversion**

Illustrations: Bruce Race of RACESTUDIO  
Source: City of Santa Cruz (2003)



**“...the idea of accessory apartments is deceptively simple...”**

Patrick Hare  
in *Accessory Units: The State of the Art (1989)*

## Introduction

### PREMISE

Passing a bylaw permitting accessory dwellings is anything but a guarantee they will actually be created

### QUESTIONS

- *Where did the idea of accessory dwellings come from, why do we need them, and what are their benefits and drawbacks?*
- *How have communities successfully established more accessory dwellings?*
- *Knowing that these strategies exist, and work in some places, what barriers prevent other communities from creating more accessory dwellings?*
- *What can planners do to encourage the creation of accessory dwellings?*



## About accessory dwellings

*Where did the idea of accessory dwellings come from, why do we need them, and what are their benefits and drawbacks?*

- Rural: *Grossdaadi Haus* (Amish communities in North America)
- Urban: Alley-facing mews houses in Philadelphia and Washington, modeled on London
- common in the United States until World War II (rental income or housing for relatives)
- post-war emphasis on single-family housing
  - housing boom and suburban expansion
  - further zoning restrictions and neighborhood covenants
  - homogenized housing design
- regained interest since 1980s
  - affordable housing
  - smart growth
  - sustainability

## FOR ACCESSORY DWELLINGS

### **Affordability**

- Earn rental income
- House aging parents or other relatives at less cost
- Provide affordable housing at no cost to the government
- Increase income and property tax base

### **Efficiency**

- Use existing physical and social infrastructure more intensively

### **Social benefit**

- Improve sense of security
- Live independently
- Improve neighborhood stability
- Increase economic and social diversity

## AGAINST ACCESSORY DWELLINGS

- Loss of single-family neighborhood “feel”
- Threat of outsiders
- Loss of privacy
- Increase in noise and crowding
- Increase in traffic congestion and parking needs
- Threat of more school-aged children



## **Precedent studies**

*How have communities successfully established more accessory dwellings?*

BARNSTABLE, MASSACHUSETTS

SANTA CRUZ, CALIFORNIA

## BARNSTABLE, MASSACHUSETTS

### Cape Cod

50,000 year-round residents and  
150,000 seasonal residents

late-1990s—fast rise in home values

Vacation homes

Environmental restrictions

in 2000, 5.1% of housing units were  
affordable

### **Accessory Affordable Apartment Program (2000–present)**

- 2000—began as amnesty program
- 2002—expanded to include new structures
- program supported by annual grant of \$75,000 (HUD-designated entitlement community)
- program coordinator helps property owners in exchange for registering a deed restriction guaranteeing affordability
- 125 apartments created (over 10% of 1,000 unit goal for affordable units)



## BARNSTABLE, MASSACHUSETTS

### Lessons learned:

- existing stock of illegal units helped program succeed
  - Faster growth in amnesty units than new units
  - Less expensive to upgrade existing unit
  - Fewer neighbor complaints
- but this required enforcement of accessory dwelling regulations
- outside funding enabled the handholding program
- success in adding units to SHI

## SANTA CRUZ, CALIFORNIA

55,000 residents

by 2000—severe shortage of  
affordable housing

Expansion of UC—Santa Cruz  
Silicon Valley growth

Santa Cruz City Council initiated a  
study of how to reintroduce afford-  
able housing

### **Accessory Dwelling Unit Program (2002—present)**

- 2002—loosened zoning bylaw  
Especially parking requirements
- \$350,000 grant from California  
Pollution Control Financing Agency  
(Sustainable Communities Grant and  
Loan Program)
- 5 components to current program:  
Zoning changes      Technical assistance  
Community outreach      Financial assistance  
Design Prototypes
- <10 permit applications in 2001, now  
over 50 per year



## SANTA CRUZ, CALIFORNIA

### Lessons learned:

- base conditions of readily apparent housing crisis and community commitment to diversity helped get program started
- City Council and CPCFA showed strong forward vision and had capacity for risk
- zoning ordinance had to be carefully composed to reduce impact on neighbors and make owners responsible for potential impacts
- community outreach helped shift the idea of accessory dwellings from the abstract to the real

## Four major strategies for encouraging accessory dwellings

- **Tying to other initiatives**

Tying accessory dwellings to broader initiatives, both for program funding and visibility

- **Providing funding**

Providing homeowners with financial assistance in creating accessory dwellings

- **“Handholding” programs**

Running “handholding” programs to help homeowners navigate the processes of funding, permitting, constructing, and operating an accessory dwelling

- **Revising bylaws**

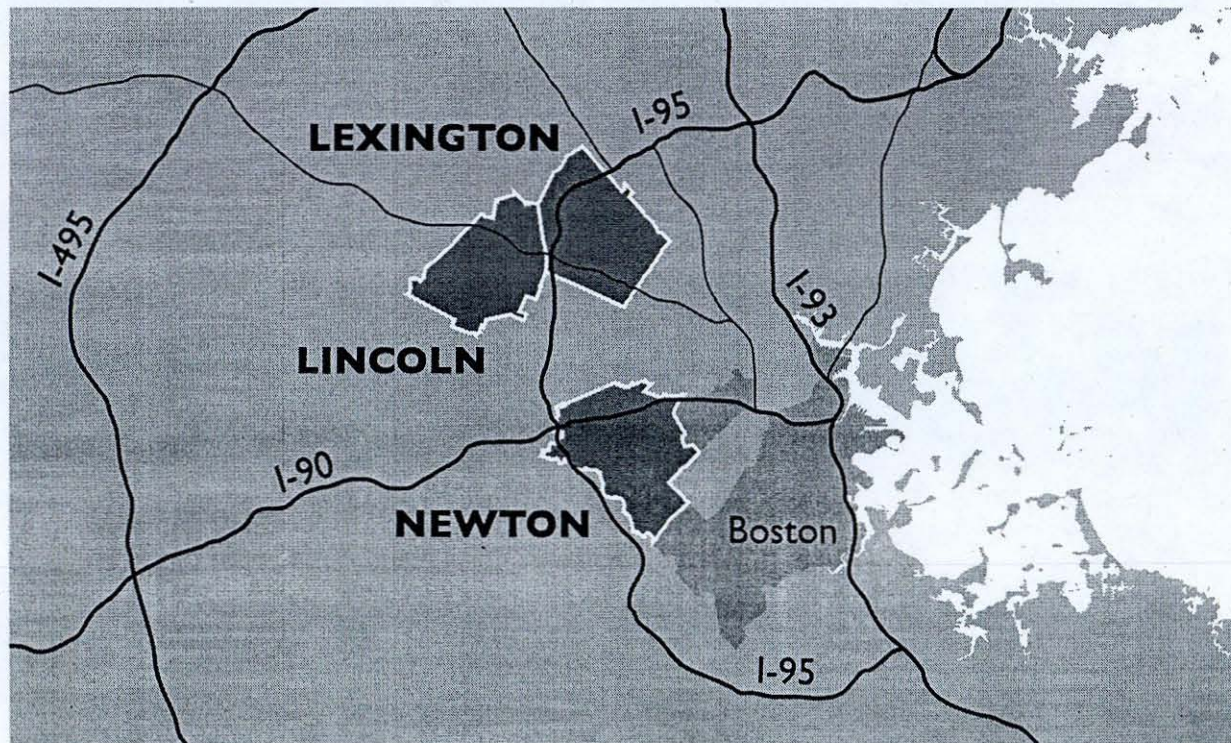
Revising existing bylaws to relax restrictions on accessory dwellings

Also—Barnstable and Santa Cruz each faced some sort of outside threat to their existing communities and housing stock



## Case studies

*Knowing that these strategies exist, and work in some places, what barriers prevent other communities from creating more accessory dwellings?*





## LEXINGTON, MASSACHUSETTS

	<b>Lexington</b>	<b>Lincoln</b>	<b>Newton</b>
Population	30,332	7,994	83,271
Housing units	11,332	2,911	32,112
Population per square mile	1,849.5	556.3	4,613.4
Housing units per square mile	691.0	202.6	1,779.1
Assessed value single family	\$702,346	\$1,059,665	\$807,541
Average single family tax bill	\$9,109	\$11,466	\$8,043
Median single-family home sales price	\$700,000	\$1,045,000	\$760,000
Annual number of home sales	360	49	540
# affordable (SHI)	1,279	218	2,435
% affordable (SHI)	11.3%	10.5%	7.6%
Average hh size	2.71	2.8	2.54
% owner-occupied	83.2%	61.3% (2000)	70.6%
Median hh income	\$122,656	\$97,031	\$104,014
Residents below poverty level	2.8%	0.8% (2000)	4.7%
% land area residential	44%	39%	49%
Governance	Town Manager, Selectmen, Representative Town Meeting	Town Administrator, Selectmen, Open Town Meeting	Mayor, Aldermen



## LEXINGTON'S ACCESSORY APARTMENT BYLAW

### Source:

Lexington Zoning Bylaw. Ch. 135: Zoning.

### Date adopted:

Original bylaw adopted in 1983; revised significantly c. 2005.

### Definition of accessory apartment:

A second dwelling unit subordinate in size to the principal dwelling unit on an owner-occupied lot, located in either the principal dwelling or an existing accessory structure. The apartment is constructed so as to maintain the appearance and essential character of a one-family dwelling and any existing accessory structures.

### Method:

Attached accessory apartments are allowed by-right or special permit (depending on degree of change and size of apartment) in one-family dwelling and multi-family dwelling residential districts, as well as neighborhood business commercial districts. Detached accessory structure apartments are allowed by special permit in the same zones as well as two-family dwelling residential districts.

### Pre-existing apartments:

Unknown

### Restrictions and requirements:

#### Lot or zoning standards:

- No more than two dwelling units per structure or two dwelling units per lot
- By right—lot must be 10,000 sf
- By special permit—lot must meet minimum area set in the Schedule of Dimensional Controls, or specific dimensions set for accessory structure apartments

#### Occupancy requirements (owner and renter):

- Owner must occupy one of the dwelling units, except for temporary absences
- No boarders or lodgers in either dwelling unit (each unit must have kitchen facilities)

#### Size and density limitations:

- By right—apartment cannot exceed 1,000 sf, maximum of two bedrooms
- By special permit—apartment can be up to 40% of total dwelling floor area

### Appearance standards:

- Must maintain the appearance and character of a single-family dwelling (stairwells must be within enclosure of main building, new entrances cannot be in the front)

- By right—no enlargements of main dwelling to accommodate apartment

### Other:

- Dwellings must be connected to public water and sewer systems
- There must be at least two off-street parking spaces for the primary dwelling and one for the accessory dwelling, though a maximum of four outdoor parking spaces per lot; additional visibility and paving requirements
- Must meet applicable state building, fire and health codes (two modes of egress, etc.)
- By right—structure containing accessory apartment must have existed for 5 years

- **1983—legalized**

Many existing illegal apartments were recognized, but few new apartments were constructed

- **2000—emphasized in new comprehensive plan**

- **2005—revised bylaws**

Relaxed restrictions (allowed larger units)

## LEXINGTON, MASSACHUSETTS

- encouraging accessory apartments is not a priority (especially during current economic downturn)
- little community advocacy
- town has identified homeowner motivation as major barrier



## LINCOLN, MASSACHUSETTS

	<b>Lexington</b>	<b>Lincoln</b>	<b>Newton</b>
Population	30,332	7,994	83,271
Housing units	11,332	2,911	32,112
Population per square mile	1,849.5	556.3	4,613.4
Housing units per square mile	691.0	202.6	1,779.1
Assessed value single family	\$702,346	\$1,059,665	\$807,541
Average single family tax bill	\$9,109	\$11,466	\$8,043
Median single-family home sales price	\$700,000	\$1,045,000	\$760,000
Annual number of home sales	360	49	540
# affordable (SHI)	1,279	218	2,435
% affordable (SHI)	11.3%	10.5%	7.6%
Average hh size	2.71	2.8	2.54
% owner-occupied	83.2%	61.3% (2000)	70.6%
Median hh income	\$122,656	\$97,031	\$104,014
Residents below poverty level	2.8%	0.8% (2000)	4.7%
% land area residential	44%	39%	49%
Governance	Town Manager, Selectmen, Representative Town Meeting	Town Administrator, Selectmen, Open Town Meeting	Mayor, Aldermen

LINCOLN'S ACCESSORY APARTMENT BYLAW

Source:

Town of Lincoln Zoning By-Law. Latest amendment March 29, 2008.

14.3 Accessory Apartments in a R-1 District

Date adopted:

October 16, 1972

Definition of accessory dwelling:

"Accessory dwelling" is undefined in the bylaws, though the components "accessory use or structure" and "dwelling unit" can be combined to create a rough definition:

- Accessory use or structure: A use or structure which is subordinate to, customarily incidental to and located on the same lot with the principle use or building to which it is accessory.
- Dwelling unit: A portion of a building occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit with its own cooking, living, sanitary and sleeping facilities, but not including trailers or mobile homes, however mounted, or commercial accommodations offered for periodic occupancy.

Method:

Special permit only for homeowners of a single-family dwelling unit in a R-1 District

Restrictions and requirements:

Lot or zoning standards:

- Lot must be 40,000 sf
- No more than one apartment per lot (unless by special permit, which requires the designation of nearby open space)

Occupancy requirements (owner and renter):

- Owner must live in either the apartment or the principal residence, except for temporary absences (unless the lot is owned by the Town, in which case owner-occupancy is not required)

Size and density limitations:

- Apartment must be under 1200 sf and no more than 35% of the total floor area of the primary and secondary units combined; larger units can be granted

by special permit, but must then be rented at affordable rates for five years (the affordability requirement can be deferred if the apartment is initially used by a family member)

Appearance standards:

- The apartment's construction and existence cannot be detrimental to the neighborhood or injurious to persons or property

Permitting processes:

- Permit for special exceptions requiring affordable rental rates must be renewed every 7 years

Other:

- Adequate provision must be made for disposal of sewage, waste and drainage
- Must have adequate ingress and egress from apartment
- Existing building must be 10 years old; if not, the accessory apartment addition cannot compromise more than 10% of the total floor area, cannot be more than 900 sf, and must be rented at affordable rates for five years; the affordability requirement can be deferred if the apartment is initially used by a family member
- Provisions must be made for off-street parking

- 1972—legalized
- 1978 and 1985—revised bylaws
- 1980s and 1990s—slight modifications to encourage as affordable housing

Total of 60 legal apartments and ~40 illegal apartments

2 new accessory apartments in past 2 years

- recently identified as "no-build" affordable housing strategy

## LINCOLN, MASSACHUSETTS

- planners and residents are minimally engaged in idea of accessory apartments
- permit renewal process is only current activity (does allow abutters to air grievances)
- priority is having enough affordable housing to be exempt from Chapter 40B
- creating de facto affordable accessory dwellings that are not listed on the SHI actually hurts Lincoln's effort to meet 40B requirements



# NEWTON, MASSACHUSETTS

	<b>Lexington</b>	<b>Lincoln</b>	<b>Newton</b>
Population	30,332	7,994	83,271
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Residents below poverty level	2.8%	0.8% (2000)	4.7%
% land area residential	44%	39%	49%
Governance	Town Manager, Selectmen, Representative Town Meeting	Town Administrator, Selectmen, Open Town Meeting	Mayor, Aldermen

## NEWTON'S ACCESSORY APARTMENT BYLAW

### Source:

The Revised Ordinances of Newton, Massachusetts, 2006  
30-8(d) Use Regulations for Single Residence Districts

### Date adopted:

Original date unknown. Significant revisions made c. 1995.

### Definition of accessory apartment:

A separate dwelling unit located in a building originally constructed as a single family dwelling or in a detached building located on the same lot as the single family dwelling, provided that such separate dwelling unit has been established pursuant to the provisions of section 30-8(d) and 30-9(h) of this ordinance.

### Method:

- 1) Review of accessory apartment petitions (RAAP, by-right)
- OR
- 2) Special permit (allowing a bit more flexibility for the owner, but requiring review by the Newton Board of Aldermen)

### Pre-existing apartments:

Deemed lawful if homeowner can prove existence prior to December 31, 1979 and the apartment fulfills all the current requirements for accessory apartments, other than the size restrictions.

### Restrictions and requirements:

#### Lot or zoning standards:

- Single-family zoning—main dwelling must be owner-occupied single family dwelling
- Multi-family zoning—lot must already have two units (cannot add an accessory unit to a lot zoned for multi-family but with only one built dwelling)
- Maximum of one accessory dwelling per lot

#### Occupancy requirements (owner and renter):

- No lodgers in either dwelling unit (a lodger lives and sleeps in the space, but lacks cooking facilities)

- appearance of embracing accessory apartments
- bylaw amended in mid-1990s
  - 36 permits granted since 1995
  - 8 pre-existing units legalized
  - 5 by right new units
  - 23 special permit units
- accessory apartments can be created by right, by special permit, or by amnesty
- strict lot size and dimensional requirements; limit to one accessory dwelling per lot
  - Only 4,000 of 32,000 lots qualify for the by right process. Only 3,500 (10%) fulfill overlay zones and building size requirements as well.



## **Accessory Apartment Assistance Project (c. 1997)**

- late 1980s—study in conjunction with BU on elders' housing needs and preferences
- Cooperative Living Network
- provided information and services (nominal fee)
  - Initial assessment
  - Detailed assessment
  - Preparing the zoning application
  - Selecting a remodeler
  - Finding financing
  - Acting as developer
  - Supervising construction
  - Property management
  - Tenant selection
- no new apartments, though some remodeling help
- remaining concerns
  - Going in front of peers at a zoning hearing
  - Cost of creating an apartment
  - Navigating the regulatory requirements



## **Accessory Apartment Incentive Program (2006–2008)**

- encourage creation of accessory apartments while isolating reasons for slow adoption
- broader target audience, funding, staff
- 350 people contacted AAIP in 16 months, but no actual participation
- 2007—program renewed, financial component simplified
- still no participation (though a handful of apartments created outside of program during this time)
- UCHAN (Uniting Citizens for Housing Affordability in Newton) and AAIP reviewed program with conclusion that zoning bylaws were the main barrier remaining

*Accessory apartment incentive program: summary of feedback as of July 5, 2007*

Over 350 Newton residents contacted Community Living Network about the AAIP through email, telephone, or in person.

Of these, 245 also gave their address of the property where they wanted to create an accessory apartment. Below are reasons why some of these properties were not eligible:

- 63 were lots that were too small for the zone that they were in
- 29 were single family houses in a multi-family zone
- 3 had a house that was built after 1989
- 9 were not owner occupied

Of those homeowners that were initially eligible, 74 responded on why they were not interested in the program:

- 38 felt the deed restriction was too restrictive
- 6 wanted to move into the accessory apartment and rent out the larger unit
- 7 wanted to do more new construction than was allowed
- 7 had building code or space issues that they could not resolve



## **Draft revisions to accessory apartment bylaw (Spring 2009)**

- Allow the homeowner to live in either the primary or secondary dwelling, rather than just the primary dwelling as at present.
- Allow accessory apartments to be created in existing single-family houses within a multi-family zoning district, rather than just on existing two-family houses as at present.
- Allow accessory dwellings to be added to homes built at least 10 years prior to the application, rather than before a specific date (January 1, 1989) as currently required.
- Reduce the requirement for additional screening of parking spaces to match the standards for all dwelling units, rather than increasing the standard for accessory apartments.
- Change lot size and building size requirements so more properties are eligible for accessory apartments.
- Allow further exterior alterations to the dwelling, as long as the dwelling remains within the FAR requirements.
- Allow for the primary dwelling to be rented out at times when the accessory apartment is not occupied, rather than requiring that any dwelling with an accessory apartment be permanently owner occupied.
- Allow lodgers in a dwelling where an accessory apartment is being created.

## NEWTON, MASSACHUSETTS

- **covers all four major strategies for encouraging accessory apartments**
  - Providing funding (AAIP grants and loans)
  - Tying to other causes (AAIP tie to affordable housing)
  - Handholding (AAAP and AAIP staff)
  - Revising bylaws to make them more permissive of accessory apartments
- **high degree of citizen interest and advocacy in local housing efforts**
- **focus on bylaws rather than homeowner motivation**



## **Impediments to creating accessory dwellings**

- **Lack of homeowner motivation to create and maintain an accessory dwelling**
  - Homeowner not knowing about accessory dwellings as a potential housing type
  - Homeowner cannot afford the initial or ongoing costs of an accessory dwelling
  - Homeowner is uncomfortable with the loss of privacy and control
  - Homeowner does not want to take on the responsibility of being a landlord
  - Homeowner lacks strong incentive to create an accessory dwelling
  
- **Insufficient planner advocacy for accessory dwellings**
  
- **Prohibitive zoning bylaws that restrict the creation of accessory dwellings**
  - Special permit requirements
  - Minimum age of primary dwelling
  - Size and density limitations
  - Primary or secondary dwelling occupancy rules
  
- **Complicated ties to affordable housing standards**

## **Planning for accessory dwellings**

*What can planners do to encourage the creation of accessory dwellings?*

- **Be stronger and better-informed advocates**

Planners must become stronger and better-informed advocates for accessory dwellings.

- **Put emphasis on human benefits**

When communicating with homeowners, planners need to emphasize the human benefits from accessory dwellings rather than the planning motivations for them.

- **Loosen regulations**

Planners, local regulatory bodies, and residents must work together to loosen regulations on creating and occupying accessory dwellings.

- **Expand efforts at the regional, state, and national scales**

Planners and housing advocates must expand efforts to support accessory dwellings at the regional, state, and national scales.

- **Redefine link to Chapter 40B**

Massachusetts policy-makers must redefine how accessory dwellings are linked to Chapter 40B (Comprehensive Permit Law).

- **Encourage in new construction**

Planners and policy-makers must encourage accessory dwellings in new construction.

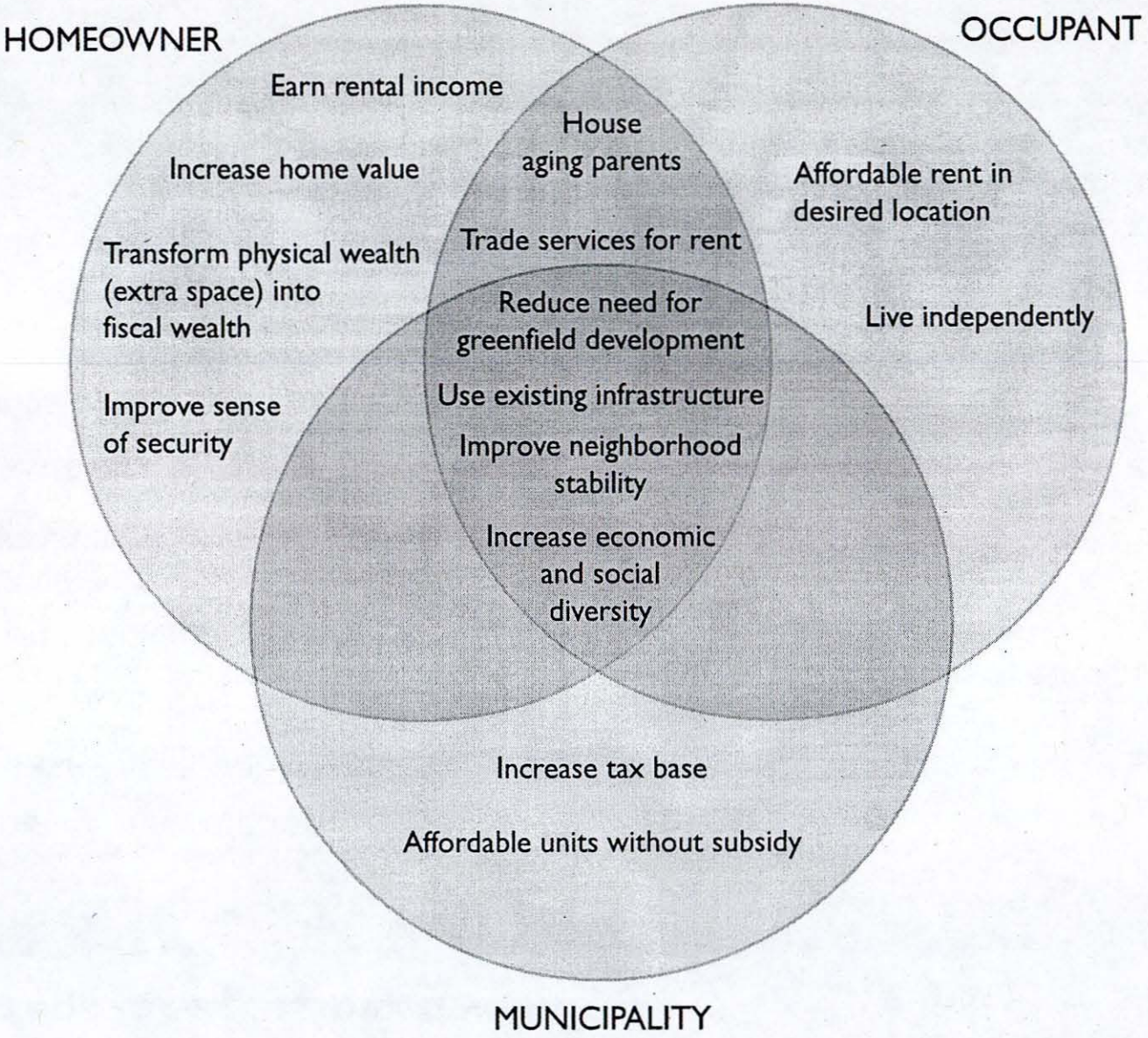
## **Next steps for Newton, Lexington, and Lincoln**

**LEXINGTON:** *Planners must become stronger and better-informed advocates for accessory dwellings.*

**LINCOLN:** *Planners and policy-makers must encourage accessory dwellings in new construction.*

**NEWTON:** *When communicating with homeowners, planners need to emphasize the human benefit from accessory dwellings rather than the planning motivations for them.*







## **Next steps for accessory dwellings**

- disseminate information
- supplement qualitative analysis with quantitative analysis
- focus on municipalities about to start considering accessory dwellings (e.g. Brookline)
- envision a future in which accessory dwellings have a meaningful presence!

Hope Stege

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608.628.0950

#164-09, #164-09(2)





CITY OF NEWTON, MASSACHUSETTS

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DEPARTMENT OF PLANNING AND DEVELOPMENT

Eugene A. Bober, Director

Public Hearing Date:	October 25, 1989
Zoning and Planning Action Date:	December 13, 1989
Board Of Aldermen Action Date:	December 18, 1989
90 Day Expiration Date:	January 23, 1989

MEMORANDUM

TO: Mayor Theodore D. Mann  
Board of Aldermen  
Planning and Development Board

FROM: Eugene A. Bober, Director of Planning and Development

SUBJECT: Petition #355-88(3)  
Proposed Accessory Apartment Ordinance

RECOMMENDATION: Approve

I. ELEMENTS OF PETITION

The petition proposes to amend the Zoning Ordinance by deleting Section 30-8(b)(11) which currently allows accessory apartments in Single Residence Districts by Special Permit. A new Section 30-8(d) would be added to the uses allowed in Single Residence districts. This section would allow accessory apartments in Single Residence districts by an administrative review process, Review of Accessory Apartment Petitions (RAAP) and by Special Permit. Section 30-9(h) would be added allowing accessory apartments in Multi-Residence districts also by RAAP and Special Permit. Section 30-22 would be added which sets forth the applications and procedures for RAAP. The definition of habitable space would be amended to consider sloped ceilings as in the State Building Code for the reason that accessory apartments might be created in attic spaces. Other minor revisions to the ordinance have been proposed for consistency.

II. BACKGROUND

In 1987, the Board of Aldermen adopted an accessory apartment ordinance, Section 30-8(b)(11), allowing accessory apartments in Single Residence districts. The goal was to



provide additional housing opportunities while preserving the exterior character of larger residential structures. Since that time, one application has been processed and denied by the Board (Petition #594-87). In October 1988, the Zoning and Planning Committee appointed a subcommittee to review the ordinance and propose revisions if deemed necessary. The accessory apartment subcommittee met for a year and crafted an ordinance which is intended to better meet the goals of the original ordinance by making the process less cumbersome for homeowners whose properties pose little impact to the neighborhood and by expanding the ordinance to include multi-residence districts.

The accessory apartment subcommittee report contains an extensive comparison of the differences between the current and the proposed ordinance and presents the basic information on the major new elements of the proposed ordinance. The subcommittee report should be read in conjunction with this memo. This memo discusses some items in more depth and presents the data which describes potential land use impacts of the ordinance.

### III. PROPOSED AMENDMENTS

#### A. Review of Accessory Apartment Petitions

One of the subcommittee's primary initiatives has been to establish a method by which accessory apartments would be allowed without the Special Permit - Public Hearing process which homeowners find cumbersome and discouraging. A new administrative process has been proposed called Review of Accessory Apartment Petitions or RAAP.

RAAP is patterned after the existing review process for non-profit educational and religious uses known as Administrative Site Plan Review (Section 30-5(b)). RAAP establishes the criteria by which the Planning Department reviews each application and includes screening of parking areas, location of parking, design and location of exterior landings and stairs and disruption of historically significant structures and architectural elements. Of course if the building is in the historic district, then the alterations must be reviewed and approved by the Historical Commission. Under RAAP, Planning Department comments are still advisory to the Commissioner of Inspectional Services. However, if the Director of Planning does not send a statement within sixty days stating that the procedures of RAAP have been met, the Commissioner has six months within which to make a decision to issue the building permit. With this provision, the petitioner is encouraged to comply with Planning Department recommendations concerning RAAP criteria.



RAAP requirements differ from Special Permit requirements for an accessory apartment in that under RAAP the dimensional requirements for lot, building and apartment sizes are more restrictive (see Table 1). If an applicant cannot meet the RAAP requirements to the satisfaction of the Planning Director and Commissioner of Inspectional Services, the option to apply for a Special Permit still exists. RAAP also requires that a certificate of occupancy be recorded at the Registry of Deeds which states that a change in ownership requires a new occupancy permit for the apartment. In this manner, the apartment runs with the land, but the review for occupancy assures that the zoning requirements for the apartment will continue to be met.

B. Multi Residence Districts

The subcommittee proposes that accessory apartments be extended to the MR1 and MR2 zones as well as Single Residence zones thereby allowing for further expansion of housing opportunities. An accessory apartment would be allowed under RAAP in a two-family home on a lot of 12,500 s.f., provided other ordinance requirements including building size, are met.

C. Non-conforming Structures

The proposed ordinance also provides an opportunity to add an accessory apartment by Special Permit to a non-conforming two-family structure in a Single Residence district if the lot is 25,000 s.f., the size currently required for a single family structure in the SR1 zoning district, and the building is at least 2600 s.f. in size.

D. Overlay

In modifying the ordinance to make it more effective and provide real housing opportunities, the subcommittee set a goal of allowing 10% of the properties city-wide to be eligible for an accessory apartment under RAAP. Certain neighborhoods by virtue of their large lot and house sizes would have significantly more than 10% of the properties eligible under RAAP. To remedy this situation an overlay district has been proposed which sets more restrictive dimensional requirements in those areas thereby reducing the number of properties eligible under RAAP to approximately 10% (see Table 2). The properties which would no longer be eligible under RAAP would fall into the Special Permit category. The Law Department has been requested to review the legal implications of the proposed overlay district.



## ACCESSORY APARTMENTS REQUIREMENTS TABLE 1 \*\*

Under Review of Accessory Apartment Petitions (RAAP) and Special Permit Process

## ZONING DISTRICT:

	SINGLE RESIDENCE				LEGAL TWO FAMILY IN A SR ZONE		MULTI-RESIDENCE 1 AND 2		
	SR1		SR2		SR3				
	RAAP	S.PERMIT	RAAP	S.PERMIT	RAAP	S.PERMIT	RAAP	S.PERMIT	
min lot area	25,000	15,000	15,000	10,000	10,000	7,000	25,000	12,500	8,000
min habitable space	4,000	3,600	2,900	2,600	2,100	1,800	2,600	3,100	2,600
min apt size	400	400	400	400	400	400	400	400	400
max apt size	800 or 33% total	1,200	800 or 33% total	1,200	800 or 33% total	1,200	1,200	800 or 20% total	1,200

\*\* Current ordinance requires a minimum building of 3600 s.f. in SR1, 3100 s.f. in SR2 and SR3, and an apartment between 700 s.f. and 800 s.f.

## ACCESSORY APARTMENTS REQUIREMENTS TABLE 2 - OVERLAY DISTRICTS

Under Review of Accessory Apartment Petitions (RAAP) and Special Permit Process

## OVERLAY DISTRICT

	A		B		C	
	RAAP	S.PERMIT	RAAP	S.PERMIT	RAAP	S.PERMIT
min lot area	43,500	15,000	25,000	15,000	16,000	10,000
min habitable space	4,400	3,600	4,400	3,600	3,600	2,600
min apt size	400	400	400	400	400	400
max apt size	800 or 33% total	1,200	800 or 33% total	1,200	800 or 33% total	1,200



E. Lot and Building Size

The new lot size requirement would allow accessory apartments on appropriately sized lots while precluding them on smaller lots where the impact on abutters and the neighborhood could be substantially greater. This restriction allows the building size requirements to be less restrictive than under the current ordinance, in particular in the SR2 and SR3 Districts. In the SR1 district the building size requirements under the Special Permit process remains at 3600 s.f. as under the current ordinance. Under the RAAP process the building must be 4000 s.f. in size. Certainly, a smaller structure could comfortably accommodate an accessory apartment but the house size was set this high in order to reach a 10% eligibility rate.

In general, the required lot size under RAAP is the same as that required to build a new single family structure by right. Any increase in the lot size would disqualify a large number of properties due to the fact that most lots predate the establishment of minimum lot size requirements. Under a special permit, the lot size requirements are reduced for each zoning district to the minimum lot size for parcels which were created prior to 1953.

F. Ordinance Format

The format of the proposed ordinance incorporates the dimensional requirements for each zoning district into the text of the ordinance. If this information were extracted into a table and merely referred to in the text, as is the case in section 30-15 of the ordinance, the text would read more easily and the dimensional information be more accessible. The Planning Department will seek to provide alternative formats for review.

III. ANALYSIS

A. Land Use Considerations

The 1987 amendment to allow accessory apartments in single residence districts was intended to introduce the concept of an accessory apartment, and provide additional housing opportunities in the City while preserving the exterior character of residential neighborhoods. The accessory apartment ordinance was also a response to the demographic trend toward smaller household sizes as well as the graying of Newton's population. Accessory apartments would provide additional rental housing and provide the means for some homeowners to remain in their homes. Clearly the land use impact of the ordinance has been negligible as no



apartments have been created under the ordinance. The proposed ordinance would be more likely to effectively meet those goals by providing a way to expedite the permitting process while still assuring compatibility with the surrounding neighborhood.

B. Potential Impact

The proposed ordinance has been designed to qualify approximately 10 percent of the residential parcels in the City utilizing the RAAP dimensional requirements procedure and another 15-20 percent would need to obtain a Special Permit. Table 3 provides a summary of the potential impact of the existing and proposed zoning requirements. A total of 1607 parcels would become eligible under the RAAP procedures. Of those parcels, 1465 are in the Single Residence districts and the remaining 142 are in the Multi-Residence 1 and 2 districts. Another 3161 parcels would meet the dimensional criteria as set forth under the Special Permit process, 2569 of those parcels in the Single Residence districts and 592 in the Multi-Residence districts. Under the current ordinance, 1862 parcels meet the building size criteria, all of which are located in Single Residence Districts and only by Special Permit. Maps 1 and 2 and Tables 4 and 5 indicate the geographic distribution by real estate section of the eligible parcels under the proposed ordinance.

The proposed ordinance provides for a 70% increase in parcels that meet Special Permit dimensional criteria. While this may appear significant, experience suggests that very few accessory apartments would actually be created under the Special Permit process. More significant is the number of parcels which would meet the dimensional requirements under RAAP. However, this number is a theoretical maximum in that, for a variety of reasons, large numbers of homeowners would chose not to introduce a second unit their home.

Only a small number of eligible parcels would be added by the inclusion of the Multi-Residence Districts (142 parcels under RAAP). This limited number assures that the older village centers would not be overly impacted by accessory apartments but that some additional units could be provided on larger lots, those 1 1/4 times the current size required for single and two-family homes.

The proposed provision allowing an accessory apartment in an existing non-conforming two family in Single Residence districts would qualify only 41 parcels city wide: 14 in SR1 districts, 16 in SR2 districts, and 11



TABLE 3

## CURRENT ORDINANCE VERSUS PROPOSED ORDINANCE

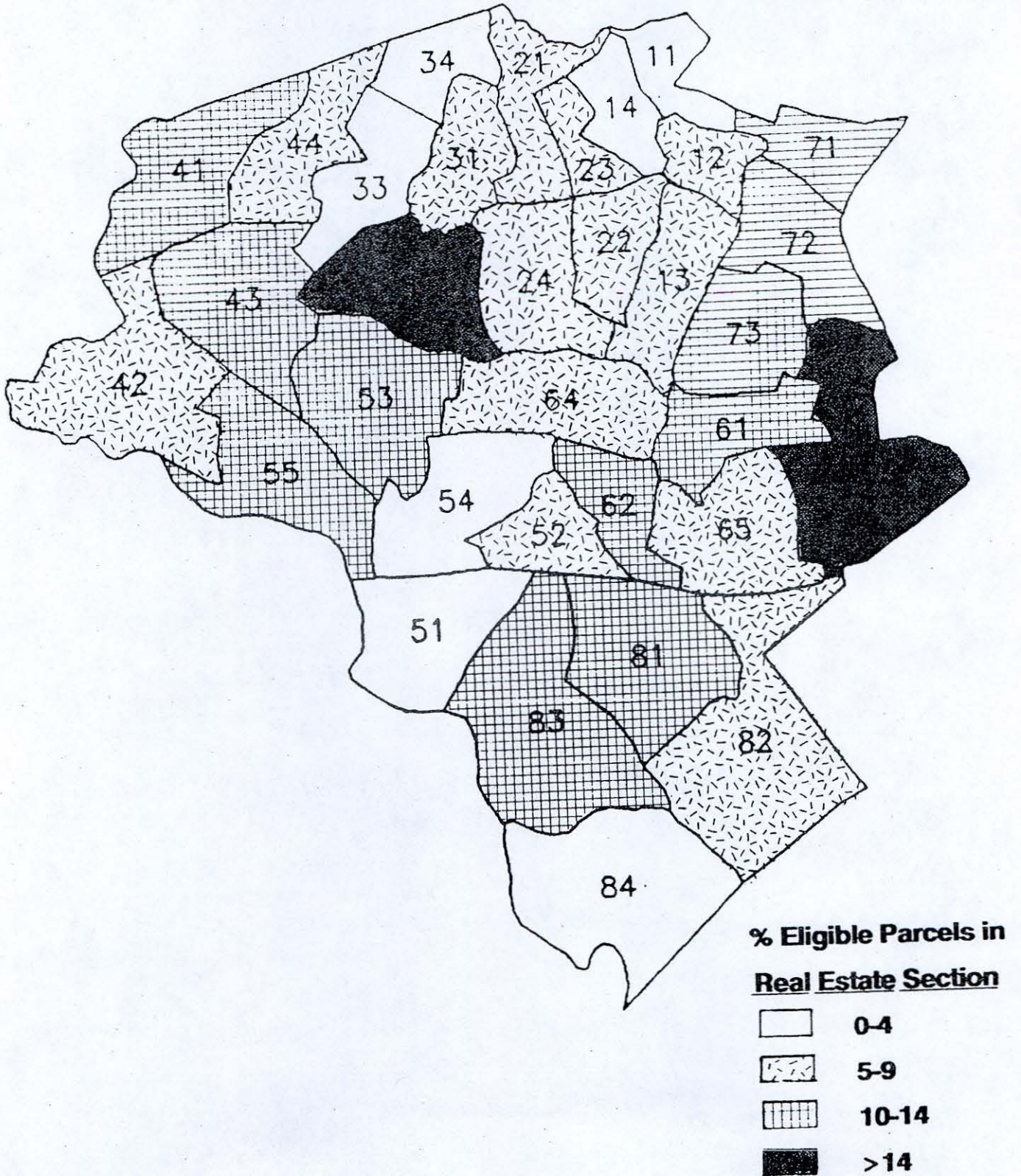
## # ELIGIBLE PARCELS

<u>ZONING DISTRICT</u>	<u>CURRENT</u>	<u>PROPOSED</u>	
	<u>Special Permit</u>	<u>RAAP</u>	<u>Special Permit</u>
SR1	546	238	227
SR2	1,161	702	1,282
SR3	155	525	1,060
SUBTOTAL	1,862	1,465	2,569
MR1		135	529
MR2		7	63
SUBTOTAL		142	592
TOTAL	1,862	1,607	3,161



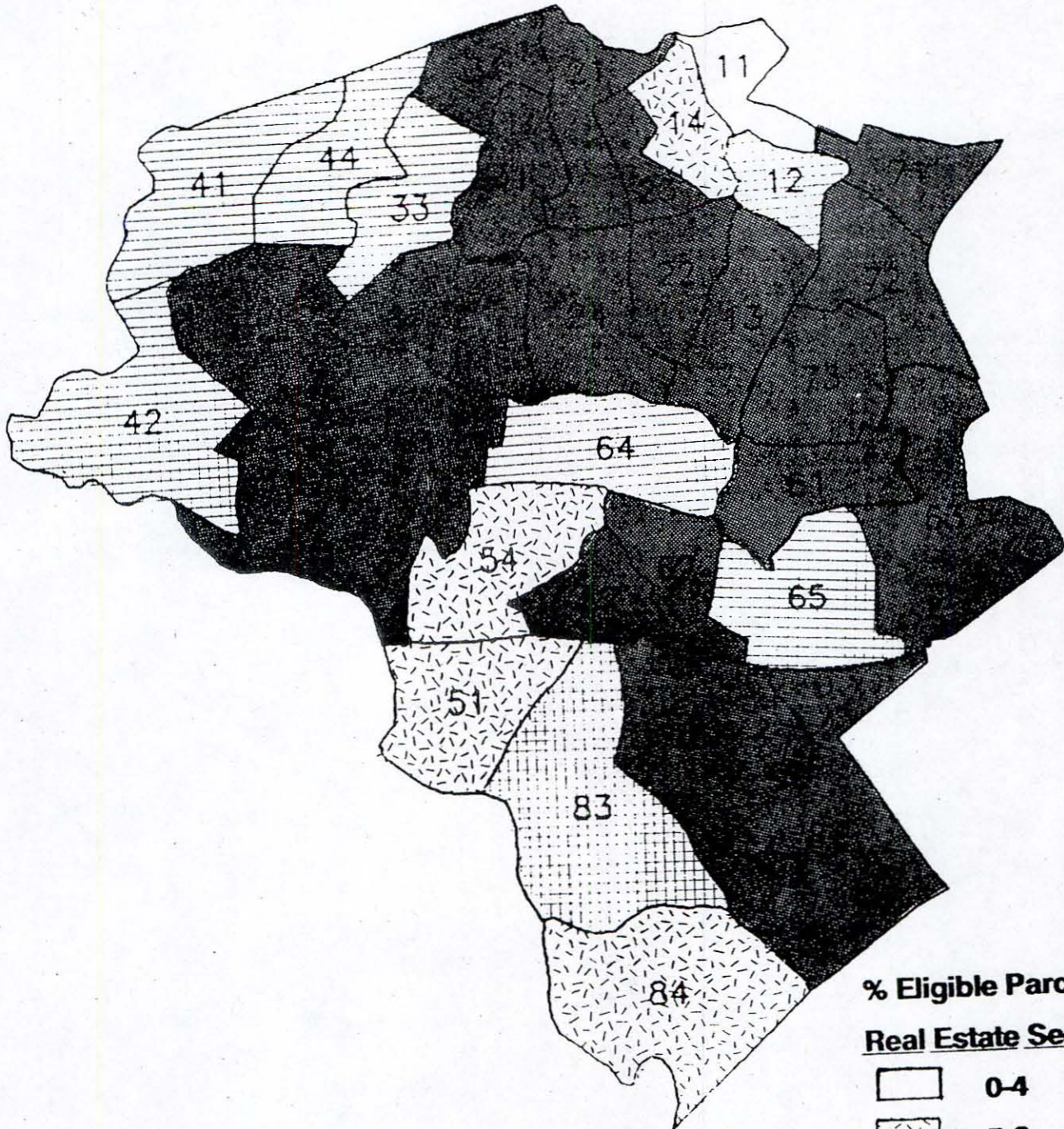
# MAP 1

## PARCELS ELIGIBLE UNDER RAAP





# ADDITIONAL PARCELS ELIGIBLE UNDER SPECIAL PERMIT



**% Eligible Parcels in  
Real Estate Section**





-  0-4
-  5-9
-  10-14
-  >14



TABLE 4

#164-09, #164-09(2)

PROPOSED ORDINANCE  
PARCELS ELIGIBLE UNDER RAAP

<u>Real Estate Section</u>	<u># Parcels</u>	<u>% Total</u> <sup>1</sup>
11	3	1
12	23	7
13	43	8
14	3	1
21	32	6
22	33	6
23	21	8
24	52	9
31	26	6
32	145	17
33	22	4
34	17	2
41	46	10
42	25	6
43	70	12
44	33	6
51	24	4
52	48	9
53	98	13
54	19	2
55	104	14
61	60	12
62	49	10
63	93	19
64	39	6
65	31	6
71	43	11
72	65	13
73	72	10
81	106	10
82	81	7
83	67	10
84	14	2
<b>CITY TOTAL</b>	<b>1,607</b>	<b>8</b>

<sup>1</sup> % Total - Percent of total parcels in that real estate section which are eligible.

TABLE 5

## PROPOSED ORDINANCE

ADDITIONAL PARCELS ELIGIBLE UNDER SPECIAL PERMIT

<u>Real Estate Section</u>	<u># Parcels</u>	<u>% Total</u> <sup>1</sup>
11	12	4
12	48	14
13	99	18
14	24	6
21	81	15
22	91	18
23	56	22
24	98	17
31	115	25
32	189	23
33	59	10
34	109	16
41	64	14
42	59	14
43	97	17
44	82	14
51	53	9
52	100	18
53	175	24
54	55	7
55	174	24
61	142	28
62	176	35
63	76	16
64	70	11
65	57	12
71	59	16
72	76	15
73	150	21
81	210	20
82	173	15
83	98	14
84	34	6
CITY TOTAL	3,161	17

<sup>1</sup> % Total - Percent of total parcels in that real estate section which are eligible.



in SR3 districts. The eligible parcels are distributed as follows: 11 parcels in Newton Corner, 6 in Chestnut Hill, 4 in Auburndale, 4 in Newtonville, 3 in West Newton Hill and 2 in Upper Falls. The rest are scattered throughout the City. The City wide impact of these units is minimal due to the small number and scattered location, except for Newton Corner, and the further consideration that they are only allowed by Special Permit.

The zoning ordinance currently has a provision which requires a Special Permit to extend a legal non-conforming use (i.e. a two-family in a single-family zone). Therefore, the proposed provision may be unnecessary.

C. Neighborhood Protection

The proposed ordinance contains several safeguards for neighborhoods in addition to the dimensional restrictions. These include provisions for parking, landscaping, and criteria for exterior alterations.

As in the current ordinance, an additional parking space must be provided for the accessory apartment. However, the proposed ordinance requires that the parking area be screened and landscaped just as a larger lot in a larger development would be required by section 30-19 (i)(1). This includes a 3 1/2 foot high evergreen screen, or a wall, a fence or a berm. This section also provides that every effort be made to preserve existing trees.

Exterior alterations allowed under RAAP are identified spelled out in section 30-8(d)(1)(g). Allowed are doors on the ground floor, windows, small exterior landings and stairs which are not within the setback. It is important that exterior stairs be allowed under RAAP because due to the egress requirements of the building code very few accessory apartments could be created without a Special Permit. These exterior alterations would be further controlled by the guidelines identified in the RAAP process which govern the Planning Department review and by the ability of the Commissioner of Inspectional Services to withhold a permit for six months if an approval letter were not received from the Planning Director.



IV. CONCLUSION

The accessory apartment ordinance was adopted in 1987 with the intent of providing additional rental housing without new construction while protecting the character of residential neighborhoods. These goals remain relevant in Newton. The proposed ordinance would be more effective in that the creation of the apartments would be far less cumbersome. However, the safeguards for the neighborhood are still substantial.

Consideration should be given to a revised format which puts the dimensional controls for accessory apartments in a table which is adopted as part of the ordinance and referred to in the text, as in section 30-15 of the ordinance. Also, the provision allowing an accessory apartment in a non-conforming two-family structure in the SR districts could be deleted as the opportunity presently exists for a homeowner to obtain permission by an extension of a non-conforming use.

I, therefore, recommend approval of the ordinance.





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ZONING AND PLANNING SUBCOMMITTEE

REPORT ON

ACCESSORY APARTMENTS

September 27, 1989

The Zoning and Planning Subcommittee on Accessory Apartments met 19 times between October, 1988 and September, 1989. Its members, Aids. Ruth Balser (Chair), Lisle Baker, and Linda Jordan Kraus faithfully attended each meeting. Aid. Sondra Shick, who is not on the Zoning and Planning Committee but has had a longstanding interest in the issue, attended frequently. The subcommittee had the able assistance of the Planning Department: Gene Kennedy attended the early meetings and Amy Rosen joined him midway in the process. Michael Baseman of the Law Department and Inspectional Services Commissioner Walter Adams also provided input. In addition, there was considerable interest from the Community. Representatives of The League of Women Voters and Cooperative Living of Newton attended most of the meetings. Other organizations which sent representatives include: the Newton Housing Coalition, Community Support Systems, Inc., the Chestnut Hill Association, and the Newton Centre Neighborhood Association. Many individuals and organizations sent statements which have been attached in the appendices.

The subcommittee was charged with the task of taking a second look at the accessory apartment ordinance, which after two years since its enactment has not resulted in a single apartment being legalized or created. Many citizen inquiries have been made. However, in the judgment of both the Planning and Inspectional Services Departments potential applicants were discouraged by the cumbersome special permit process. The Zoning and Planning Committee believed that a second look was justified because of the potential significance of accessory apartments.

Accessory apartments:

- (1) allow more diversity of housing opportunity for City residents;
- (2) allow under utilized housing to continue to be occupied by current owners who might otherwise be unable to remain in their homes.

Goals:

In our early meetings the subcommittee identified certain goals which established the framework for our discussions. These goals were:

- (1) to create affordable rental housing without any new development;
- (2) to bring existing apartments up to code for health and safety;
- (3) to preserve historic buildings by providing an owner with some income to offset the cost of preserving some of our older and larger homes;



- (4) to respond to the housing needs of a demographically changing community, e.g., the increase in the single parent family; the "graying" of the population; respond to housing needs of special needs individuals.
- (5) to maximize options for the elderly - many of whom would like to remain in their own homes but can no longer maintain their houses alone;
- (6) to minimize the obstacle of political bureaucracy which a resident must encounter in order to develop this kind of housing;
- (7) to protect neighborhoods from the potential adverse impact of increased density.

While our primary goal was to expand the housing stock in Newton and encourage its affordability, at all times we were cognizant of the potential impact on neighborhoods. The subcommittee was aware that if accessory apartments were to proliferate widely they could:

- (1) change the character of Newton's single family neighborhoods, which over time might resemble a two-family zone;
- (2) drive up housing costs;
- (3) increase the demand for city services without an increase in city revenue;
- (4) leave some neighborhoods vulnerable to the problems associated with student housing.

The challenge the subcommittee faced was to recommend changes to the zoning ordinance which balanced the risks of increased density that accessory apartments can mean with the benefits in new housing opportunity which they can provide.

The subcommittee membership represented a variety of points of view. During the lengthy process a consensus evolved, the result of which is our recommended revised ordinance. The following is a summary of the policies and highlights of the proposed ordinance.

#### Policies

The Goals referred to in the introduction were expanded into the following policies:



1. Accessory apartments should complement the overall zoning scheme of the City. The new density created would be distributed in accordance with the density distribution implicit in the current zoning ordinance. This policy would be implemented by dimensional requirements specific to each zoning district.
2. Accessory apartments which pose limited impact on the neighborhood should be permitted by an administrative review process. Those properties with potential for greater impact and which do not meet the more stringent criteria established for the administrative review process should be subject to Aldermanic and neighborhood review via the Special Permit/Public Hearing process. The special permit process is difficult, costly, and often confusing for the average homeowner who is neither a developer nor an attorney. The subcommittee proposes that some accessory apartment applications undergo an administrative review process (called RAAP - Review of Accessory Apartment Petitions) conducted by the Planning and Inspectional Services Departments, similar to that used for religious and educational uses. RAAP would be available only to applicants whose property meets very rigid criteria which ensure minimal impact on neighboring properties. All other applicants would still require a special permit.
3. Expand the accessory apartment ordinance to include multi-residence districts. This proposal expands the opportunity to add to our housing stock in neighborhoods which were previously excluded, by allowing the conversion of certain two-family buildings to three units. At the same time we recognize that these areas are already relatively densely settled, thus, more stringent dimensional criteria have been suggested.
4. Introduce the opportunity to add an accessory apartment to existing non-conforming two-family dwellings in single-residence districts. Many large two-family homes were built in multi-residence districts which were later rezoned to single-family districts. Some of these properties could accommodate an accessory apartment.
5. Additional and revised zoning requirements should be established to protect neighborhoods from the risk of too great a number of apartment conversions. These additional requirements would balance the proposed new opportunities and less burdensome process in order to protect the character of Newton's neighborhoods.



Ordinance Highlights

The subcommittee's policies and goals are reflected in the proposed ordinance. Unchanged elements, changes to the current ordinance requirements, and new requirements are highlighted below.

## Unchanged requirements:

Some provisions of the 1987 ordinance have not been altered. As before, no lodgers will be allowed on a property with an accessory apartment; accessory apartments will not be allowed in new structures or additions so that buildings will not be constructed with that purpose in mind; the property must be owner occupied; the property must meet all fire, health, and building codes; one parking space must be provided for the accessory apartment; and the apartment must not exceed a maximum size. Also, accessory apartments will continue to be allowed in detached structures only by special permit because, by virtue of their characteristic location near property lines and their original intent and design to provide covered parking, their conversion has a greater potential for impact on abutters and the neighborhood.

## New requirements:

1. Lot area. Lot area is a new dimensional criterion in addition to building size. The subcommittee felt that lot area is more likely than building size to correlate with neighborhood impact. The minimum lot areas reflect those in the current zoning code. Under the current ordinance a very large home on a small lot (and thus probably with minimal setbacks) would have qualified but might not under the proposed ordinance. Conversely, a smaller home on a large lot would not have qualified under the current ordinance but might under the proposed ordinance.
2. Minimum apartment size. The minimum size compares to the size criteria established for one-bedroom elderly units to guard against unsuitably small units.
3. Maximum apartment size as a percentage of the total building size (in addition to the absolute number established.) This criterion will assure newly created apartments have the intended characteristic of an accessory apartment status rather than possibly taking on the characteristic of an equal sized unit in a two-family home. This criterion also gives a desired flexibility so that the range of apartment size will be appropriate to the building size.



4. Landscape screening of the parking area. The property must meet the screening requirements established in the ordinance for parking lots with more than five cars in order to minimize the impact on the neighborhood.

Changed requirements:

1. Reduced building size criteria. The proposed numbers more accurately reflect the dimensions of the City's housing stock. Decreasing the minimum building size does not necessarily increase the number of eligible properties because we have added lot size criteria.
2. Owner may reside in either unit. As in the original ordinance, the owner is required to be an occupant. We believe this will prevent economic exploitation by absentee landlords and meet the goal of the ordinance: affordability and allowing the original owner to remain in her/his home. What has changed in the new ordinance is that the owner may live in either unit. It is the subcommittee's belief that regardless of which unit the owner occupies the land use impact is the same. However, the social reasons for the ordinance's revisions come into play here. It is our belief that many of the people who will make use of this option are the elderly who might prefer to live in the smaller unit.
3. Accessory Apartments run with the land. It is the subcommittee's belief that once the land use criteria have been met by a property, the land use conditions will remain constant. However, a zoning and building code review process by the Commissioner of Inspectional Services will be triggered by a change in ownership.
4. Exterior Alterations. Exterior alterations which would have minimal impact on abutters are allowed under the review process (RAAP) including windows, doors on the ground floor, exterior landings limited in number and size and not allowed within setback, stairs not allowed within the setback, and venting. Under RAAP, the Planning Department has considerable input in the design and placement of the above elements. More extensive exterior changes require a special permit.

Review of Accessory Apartment Petitions - RAAP

As explained above, the subcommittee proposes RAAP (Section 30-22) in order to permit the creation of accessory apartments which meet stringent requirements and pose limited impact to the neighborhood. RAAP is carefully crafted to allow the use of but ensure the preservation of neighborhood character. The process is similar to the administrative site plan review process for



nonprofit uses in Section 30-5, in that the Planning Department conducts the review. However, RAAP has important differences which ensure that the intent of the ordinance is met

- (1) RAAP sets forth specific criteria for review and gives Planning Department recommendations more strength by allowing the Inspectional Services Department an additional six months in which to issue a building/occupancy permit if a statement is not received from the Planning Department stating that the petitioner has completed the process and complied with the regulations of the accessory apartment ordinance and the criteria of RAAP. The main purpose of this provision is to ensure that exterior alterations are limited and in character with the structure and neighborhood.
- (2) The petitioner is required to record at the Registry of Deeds the certificate of occupancy which states that before a change in ownership the current owner must apply to the Commissioner of Inspectional Services for a new occupancy permit to ensure that the City ordinances and State Building Code are met. This provision is intended to ensure that the property continues to meet the ordinance requirements, in particular, that of the owner occupancy.

Certain requirements of RAAP may be waived or varied by the special permit process. The differences under Special Permit include:

- more relaxed dimensional standards
- less restricted exterior alterations
- the use of a detached structure for an apartment.

#### Affordability

It is the subcommittee's assumption that an accessory apartment will by nature be relatively affordable because of its smaller size and its inclusion within another dwelling structure. However, the subcommittee has looked at several options to encourage affordability. A memo dated June 6, 1989 was sent to the City Solicitor and is excerpted below:

- "2. Three proposals have been suggested by which the City could maintain some control over the affordability of accessory apartments by restricting rents. These proposals are described below.
  - a. An affordability requirement could be added to the special permit requirements to create an accessory apartment. This option closely resembles the existing "10% Ordinance" in that to receive the density bonus with



the more flexible dimensional requirements that apply under the special permit process, the affordability requirement must be satisfied.

- b. The affordability requirement could be added to the requirements to create an accessory apartment under the review process. The Board of Aldermen would be permitted to waive the requirement under the special permit process.
- c. A provision could be added to the ordinance by which an accessory apartment could be created with the more flexible dimensional requirements outlined in the special permit provisions, but the special permit application process could be waived in favor of the review process if the apartment were to meet affordability requirements.

Are any of the above options legally viable and, if so, would any be preferable legally?

- 3. Can the nature of the prospective apartment tenant be one of the criteria for granting an accessory apartment? By nature of the tenant we mean not only income, but age or handicap.
- 4. Can a requirement for granting an accessory apartment be that the owner cannot discriminate against a tenant with a Section 8 voucher?"

Because the subcommittee to date has not received an answer from the Law Department, a recommendation has not been made. We hope this issue will be dealt with, however, while the report is before the Zoning and Planning Committee.

#### Amnesty

The subcommittee discussed amnesty as a method by which to create an incentive for owners of illegal accessory apartments to legalize their units. The subcommittee recommends a policy by which the applicant will not be cited for past or present violations once the petitioner has come forward to begin the legalization process, unless in the opinion of the Commissioner of Inspectional Services flagrant violations exist which threaten health and safety. Amnesty in terms of allowing illegal apartments to continue to exist under less stringent criteria is not recommended.

#### Overlay District

After developing standard criteria for each zoning district in the City, the subcommittee studied the potential impact of the proposed ordinance on different neighborhoods. It had been hoped that the opportunity/burden of accessory apartments would be

spread relatively evenly across the City. Computer data revealed, however, that there were few districts whose proportion of eligible properties was far greater than in all others. Therefore, the subcommittee proposes the creation of an overlay district in which the building and lot sizes are higher in those districts in order to allow by right the same proportion of properties (10%) as in the other real estate districts.

What follows is the proposed ordinance and letters from the community.



The Ordinance

(Including the Table of Requirements and Overlay Maps)

PROPOSED ACCESSORY APARTMENT ORDINANCE

STEP ONE. Add to Section 30-8(a) Allowed Uses in Single Residence Districts:

"(6) Accessory Apartments subject to provisions of Section 30-8(d)(1) (Accessory Apartments in Single Residence Districts allowed by Review)."

STEP TWO. Delete Section 30-8(b)(11) (Current provisions) and replace with:

"(11) Accessory Apartments subject to provisions of Section 30-8(d)(2)(Accessory Apartments allowed by Special Permit).

STEP THREE. Add Section 30-8(d):

(d) In SINGLE RESIDENCE DISTRICTS, an accessory apartment shall be a permitted use according to the following provisions:

(1). An accessory apartment is allowed in an owner occupied single family dwelling in accordance with the procedures of Section 30-22 (Review of Accessory Apartment Petitions - RAAP), as applicable, and subject to Section 30-15 (Dimensional Regulations); provided that:

- a). The building in which the accessory apartment is located is an owner occupied single family dwelling.
- b). The single family dwelling was constructed on or before January 1, 1989.
- c). The lot area is not less than 25,000 s.f. in an SR1 district, 15,000 s.f. in an SR2 district, and 10,000 s.f. in an SR3 district, with the exception of the Accessory Apartment Overlay Districts A, B and C, Section 30-8(d)(1)(e).\*
- d). The structure contains a minimum habitable space of 4,000 sq. ft. in an SR1 District, 2,900 s.f. in an SR2 District, and 2,100 s.f. in an SR3 District, including any habitable space added as a result of the proposed accessory apartment, with the exception of the Accessory Apartment Overlay Districts A, B and C, Section 30-8(d)(1)(e).\*
- e). In Overlay District A, the lot area is not less than 43,500 s.f. and the structure contains a minimum habitable space of 4,400 s.f. In Overlay District B, the lot area is not less than 25,000 s.f. and the structure contains a minimum habitable space of 4,400 s.f. In Overlay District C, the lot area is not less than 16,000 s.f. and the structure contains a minimum habitable space of 3,600 s.f.

\* Requirements marked with an asterisk may be altered by a Special Permit. See Section 30-8(d)(2).



- f). The accessory apartment shall be a minimum of 400 sq. ft. and a maximum of 800 sq. ft. or 33% of the total habitable space in the dwelling structure, whichever is less.\*
  - g). Exterior alterations required to meet applicable building, fire or health codes are permitted as listed here: doors on the ground floor; windows; 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; stairs which are not within the setback; roof and wall venting.\*
  - h). Additions and exterior alterations to the structure made within five years prior to application may not be applied towards meeting the requirements of section 30-8(d).\*
  - i). No more than one accessory apartment shall be allowed per lot.
  - j). There shall be no lodgers in either the original dwelling unit or the accessory apartment.
  - k). Parking as required by Sections 30-19(d)(19), and 30-19(g) and landscape screening as required by Section 30-19(i)(1) shall be provided, regardless of the number of parking stalls.
  - l). The apartment shall comply with all applicable building, fire and health codes.
- (2.) The Board of Aldermen may grant a Special Permit in accordance with the procedure in Section 30-24 (Special Permits) for an accessory apartment in an owner-occupied single family dwelling or a legal non-conforming two-family dwelling or a detached structure provided that the provisions of Section 30-8(d)(1) (criteria under Review of Accessory Apartment Petitions - RAAP in Single Residence Districts) are met, except as amended below:
- a). If the single family dwelling or detached structure was constructed before December 7, 1953 the lot area must be no less than 15,000 s.f. in an SR1 district, 10,000 s.f. in an SR2 District and 7,000 s.f. in an SR3 District. If the legal non-conforming two-family was constructed prior to December 7, 1953, the lot area must be no less than 25,000 s.f.
  - b). The single family dwelling contains a minimum of 3,600 s.f. of habitable space in an SR1 District, 2,600 s.f. in an SR2 District, 1,800 s.f. in an SR3 District or if a legal two-family dwelling 2,600 s.f. including any habitable space added as a result of the proposed apartment, or the habitable space in the primary dwelling unit plus the habitable space above the first story in the detached building if applicable.
  - c). The accessory apartment shall be a minimum of 400 sq. ft. and a maximum of 1,200 sq. ft. , or 33 percent of the total habitable space in the dwelling structure, whichever is more.



- d). The detached structure, if applicable, must be setback at least ten (10) feet from the property line or the required setback distance in section 30-15, whichever is less.
- e). Exterior alterations required to meet applicable building, fire or health codes or otherwise required to create the apartment are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the Board Order granting the accessory apartment and certified copies shall be filed with the City of Newton Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the City of Newton Assessors Department. 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, the Newton Zoning Ordinance and the State of Massachusetts Building Code.

- (3.) If it shall be determined by a court of competent jurisdiction that any provision or requirement of Section 30-8(d) is invalid as applied for any reason, then Section 30-8(d) shall be declared null and void in its entirety."

✓ STEP FOUR. Add to Section 30-9(a) Allowed uses in Multi-Residence Districts.

- (1) Any use permitted as of right in Single Residence Districts "except for accessory apartments which are permitted according to Section 30-9(h)(1) below (Accessory Apartments in Multi-Residence Districts allowed under Review of Accessory Apartment Petitions)."

STEP FIVE. Add to Section 30-9(a) Allowed uses in Multi-Residence Districts.

- "(4) Accessory Apartment subject to Section 30-9(h)(1)."

STEP SIX. Add Section:

"30-9(h) In MULTI-RESIDENCE DISTRICTS 1 & 2, an accessory apartment shall be a permitted use according to the following provisions:

- (1) An accessory apartment is allowed in an owner occupied two family dwelling in accordance with the procedures of Section 30-22 (Review of Accessory Apartment Petitions - RAAP), as applicable, and subject to Section 30-15 (Dimensional Requirements) provided that:
  - a). The building in which the accessory apartment is located is an owner occupied two family dwelling.
  - b). The two family dwelling was constructed on or before January 1, 1989.
  - c). The lot contains no less than 12,500 sq. ft.\*



- d). The two family dwelling contains a minimum of 3,100 sq. ft. of habitable space, including any habitable space added as a result of the proposed apartment.\*
  - e). The accessory apartment shall be a minimum of 400 sq. ft. and a maximum of 800 sq. ft. or 20% of the total habitable space in the dwelling structure, whichever is less.\*
  - f). Exterior alterations required to meet applicable building, fire or health codes are permitted as listed here: doors on the ground floor; windows; 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; stairs which are not within the setback; roof and wall venting.\*
  - g). Additions and exterior alterations to the structure made within five years prior to application may not be applied towards meeting the requirements of section 30-9(h).\*
  - h). No more than one accessory apartment shall be allowed per lot. This shall include instances where the two dwelling units in a two family structure are separately owned and instances where more than one habitable structure occupy a single lot.
  - i). There shall be no lodgers in either the original dwelling units or the accessory apartment.
  - j). Parking as required by Sections 30-19(d) (19) and 30-19(g), and landscape screening as required by Section 30-19(i)(1) shall be provided, regardless of the number of stalls.
  - k). The apartment shall comply with all applicable building, fire and health codes.
- (2). The Board of Aldermen may grant a Special Permit in accordance with the procedure in Section 30-24 (Special Permits) for an accessory apartment in a two-family structure or in a detached structure provided that the provisions of Section 30-9(h)(1) (criteria for accessory apartment under Review of Accessory Apartment Petitions - RAAP) are met except as amended below:
- a). The lot contains no less than 8,000 sq. ft.
  - b). The two family dwelling contains a minimum of 2,600 sq. ft. of habitable space including any habitable space added as a result of the proposed apartment or the habitable space in the two family dwelling plus the habitable space above the first story in the detached building, if applicable.

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\* Requirements marked with an asterisk may be altered by a Special Permit. See Section 30-9(h)(3).



- c). The accessory apartment shall be a minimum of 400 sq. ft. and a maximum of 1,200 sq. ft.
- d). The detached structure must be setback at least ten (10) feet from the property line or the required setback distance in section 30-15, whichever is less.
- e). Exterior alterations required to meet applicable building, fire or health codes or otherwise required to create the apartment are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the Board Order granting the accessory apartment and certified copies shall be filed with the City of Newton Department of Inspectional Services, where a master list of accessory apartments shall be kept, and with the City of Newton Assessors Department. 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, the Newton Zoning Ordinance and State of Massachusetts Building Code.

- (3.) If it shall be determined by a court of competent jurisdiction that any provision or requirement of Section 30-9(h) is invalid as applied for any reason, then Section 30-9(h) shall be declared null and void in its entirety."

STEP SEVEN. Add to the definition of "habitable space", "If any room has a sloped ceiling, section 2101.6 of the State Building Code shall be used to measure habitable space."

STEP EIGHT. Amend 30-19(d)(19) - "provisions of Sections 30-8(d) or 30-9(h), whichever is applicable."

STEP NINE.

Section 30-22 Review of Accessory Apartment Petitions - RAAP

- (a). Applicability. Whenever approval is required for an accessory apartment under the provisions of Section 30-8(d)(1) or 30-9(h)(1) of this Ordinance, the procedure set forth in this Section shall be followed.
- (b). Applications. The applicant shall file a site plan application for the proposed development with the Director of Planning and Development and the Commissioner of Inspectional Services. Such application shall consist of 2 sets of plan(s) prepared, as appropriate, by an architect, landscape architect, professional engineer or land surveyor. Such site plan(s) shall be drawn at a suitable scale, on sheets no larger than twenty-four (24) by thirty-six (36) inches. Except when waived by the Director of Planning and Development, the plans shall include the following information:
  - (1) Evidence of the applicants ownership of and residence at the subject property;



- (2) Boundaries, dimensions and area of the subject lot(s); ~~#164-09~~; #164-09(2)
- (3) Use of the existing building or structures on the subject lot(s);
- (4) All existing and proposed buildings, structures, parking spaces, maneuvering aisles, driveways, driveway openings, pedestrian walks, loading areas, and natural areas and landscaping on the subject lot(s) with the dimensions thereof;
- (5) Facade elevations for any proposed new construction and/or alteration to the existing building or structure.
- (6) Floor plans for all habitable space or space to be made habitable.

The applicant shall give all reasonable assistance to the Director of Planning and Development in his review of the site plan, including, but not limited to attendance at at least one meeting called by the Director of Planning and Development.

(c). Procedures.

- (1.) The Director of Planning and Development shall review said plan for compliance with Sections 30-8(d)(1) (Single Residence Districts) or 30-9(h)(1) (Multi Residence Districts), whichever is applicable, of these ordinances. Further, the Director may consider the application in light of the criteria set forth below:
  - a) Convenience and safety of vehicular and pedestrian movement within the site to adjacent streets;
  - b) Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between any existing or proposed structures and the street shall be discouraged;
  - c) Design and location of exterior landings and stairs in a manner appropriate to the structure and inobtrusive to the neighborhood.
  - d) Disruption of historically significant structures and architectural elements.
- (2.) After said review the Director of Planning and Development shall make recommendations to the applicant for changes in the plans, which changes shall be consistent with accepted and responsible planning principles. Upon completion of the review process, the Director of the Planning and Development shall indicate, in writing, to the Commissioner of Inspectional Services whether there has been compliance by the applicant with the procedural requirements as stated above and whether in his opinion, applicant has complied with the regulations of Sections 30-8(d) or 30-9(h), whichever is applicable. This statement shall be made within sixty days (60) after



receipt of the complete and proper site plan application as described in section 30-22(a). If no such statement is received by the Commissioner of Inspectional Services within the above-stated time period, he shall accept an application for the creation of the accessory apartment by a building permit, or occupancy permit if building permit not required, without receipt of such statement and he shall have 6 months from the date of application within which to issue the building or occupancy permit. If the applicant does not apply for a Certificate of Occupancy within one (1) year from the date of the original application to the Director of Planning and Development, he/she must file for review under the procedures set forth above.

- (3). The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the Certificate of Occupancy for the accessory apartment which states that before ownership of the property changes hands the current owner must apply to the Commissioner of Inspectional Services for a new occupancy permit. Before issuing such occupancy permit, the Commissioner of Inspectional Services must assure that the provisions of the Newton Zoning Ordinance and the State of Massachusetts Building Code are met.
- (d). If it shall be determined by a court of competent jurisdiction that any provision or requirement of Section 30-22 is invalid as applied for any reason, then Section 30-9(h) shall be declared null and void in its entirety."



