CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, APRIL 12, 2010

Present: Ald. Johnson (Chairman), Baker, Lappin, Lennon, Sangiolo, Shapiro, Swiston and Yates
Also Present: Ald. Crossley, Hess-Mahan and Linsky
Others Present: John Lojek (Commissioner, Inspectional Services), Jen Molinsky (Planning Dept.), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#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: APPROVED AS AMENDED 8-0

Clerk's Note: This item was heard in a Public Hearing on February 22, 2010. The Public Hearing notice is attached. Please note that the language in the Public Hearing notice varies from the language in the docket item and is referenced in this discussion.

NOTE: Ald. Johnson explained that a packet of information prepared by the Planning Department was delivered to the Board on Monday, April 12th, with detailed descriptions of the changes being proposed in the Accessory Apartment ordinance. A comparison chart was put together by Jennifer Molinsky of the Planning Department which should make the changes easier to follow. Ald. Johnson referenced the comparison chart in this discussion. Please refer to the chart that was delivered for the detailed information which also explains the rationale for the proposed changes.

Proposed Amendment #6: Definition of Accessory Apartment

Jen Molinsky noted that the existing ordinance is unclear and this provides clarity as well as supporting the other amendments. The current definition does not include a two family dwelling and it should. The historic interpretation has always been that it does include a two family dwelling according to Commissioner Lojek.

Proposed Amendment #1: Allow Owner to Occupy Main or Accessory Dwelling

The existing ordinance allows only for the owner to live in the main dwelling. Ald. Swiston pointed out that although the owner would be allowed to live in the accessory unit and perhaps a family might move into the main dwelling, it would not necessarily increase density. If the owner sold the house, it would likely be to a family. Ald. Baker wondered if the wording should be changed to accommodate reference to a two family home because there would be two main dwelling units and not one.

Proposed Amendment #3: Allow Accessory Apartments in dwellings at least 10 years old.

The existing ordinance allows accessory apartments only in dwellings that were constructed on or before January 1, 1989.

Proposed Amendment #4: Reduce Screening Requirements for Required Parking

Ald. Johnson said there was a great deal of discussion at the last meeting. The committee asked Ms. Molinsky to come back with some intermediate measures in the language. The new amendment language is less prescriptive as to precise materials, size and location of screening. It would allow the Planning Dept in as-of-right cases to judge the suitability of the proposed screening; and it would allow the Board of Aldermen in special permit cases to judge the suitability of the proposed screening.

Ald. Yates felt the language was unclear. Ald. Lennon also felt it needed some work to keep it from being too onerous. The suggested new language is: "…*and landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences or a combination thereof.*"

Proposed Amendment #2: Allowing Accessory Apts in Single Families in MR1 and 2

The existing ordinance is unclear in terms of whether a detached structure must be associated only with a two family dwelling, or whether accessory apartments are also allowed in a detached structure associated with a single-family dwelling in an MR or MR2 district. The proposed amendment will clarify that. There will also be a footnote expressing that the zoning ordinances already allow single-family homes in MR districts to be divided into two-family homes as of right. The Committee asked that the footnote be placed in the most convenient place for the reader to reference.

Proposed Amendment #5: Exterior Changes

This amendment has been withdrawn in its entirety by Ald. Hess-Mahan.

Ald. Yates moved approval of this item as amended. The Committee voted to approve as amended by a vote of 8-0.

The redline version of the ordinance with all of the updated amendments is attached to this report. **Please also find an updated comparison chart and draft board order in the April 16th Friday packet.**

#46-10 ALD. CROSSLEY, HESS-MAHAN & LINSKY requesting adoption of an ordinance to provide for as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable or alternative energy manufacturing facilities in designated locations in order to satisfy the requirements to qualify as a Green Community under MGL Chapter 25A, §10 (c). [02/09/10 @ 7:25 PM]

ACTION: NO ACTION NECESSARY 8-0

NOTE: Items #46-10 and #46-10(2) will be discussed together.
Ald. Crossley noted that #46-10 was one of the criteria necessary to apply for Green Community designation through the Massachusetts Department of Energy Resources (DOER). The Planning Department, the Law Department, Ald. Crossley and two members of the DOER met to discuss the requirements of the expedited permitting criteria. It was complex in its original state, however, it turned out to be the easiest of the criteria to meet. Newton has to show that it has sufficient by-right development or tenanting opportunity within its business/commercial districts to accommodate at least 50,000 square feet of renewable or alternative energy manufacturing or research and development businesses. The City can show much more than and has been mapped by Jen Molinsky in the Planning Dept.

Jen Molinsky said the mapping shows that there is sufficient tenantable space in Newton. About 600,000 square feet is vacant in districts that accept R&D and Manufacturing businesses. Much of this is concentrated on California Street, Bridge Street and the Needham Street corridor. DOER also wanted to know what re-development opportunities existed in the City that would not require a special permit or site plan review. There are 7 or 8 sites totaling about an additional 70,000 square feet to accommodate those requirements.

#46-10(2)
The City also needed to show that the permitting process could be expedited for these properties to guarantee completed permitting within a year. The difficultly came in when the City was told was told that Newton needed a constructive permitting enforcement clause. That meant that if the City were to fail to act on the permitting request within that period of time, the petitioner would automatically be granted a permit to construct the business. This could not apply, however, to any permitting processes that were under state authority. The City could only be responsible for local permitting issues. The DOER removed the constructive permitting enforcement clause as it was ambiguous. Therefore, no action need by taken on #46-10(2).

Ald. Crossley presented a Resolution to the Committee to support #46-10. It was determined in meetings with the DOER that an ordinance amendment was not necessary in order to meet the criteria for as-of-right siting for the clean energy facilities.

Follow Up and Voting Options

Ald. Johnson wondered if the Resolution could be adopted under one of these existing items since it is not a docketed item at this time. It was determined that it could not. These two items should be voted No Action Necessary as they request adoption of an ordinance change and that is not necessary. The Committee thought they should form a parens (3) to docket the Resolution of support. It will be referred back to Committee and go to the full Board for approval on May 3rd. Ald. Crossley wanted a document that showed that the full Board of Aldermen supported each part of the Green Community initiative and supported maintaining the status as a Green Community.

The item relative to the Green Community designation in Programs & Services was approved. However, the Resolution was not voted on since it was not a docketed item and the item did not propose a Resolution. The same is true for the item in Public Facilities. Ald. Baker suggested that all the Resolutions be bundled as a package to be voted out on May 3rd by the Full Board. He suggested laying all the other Green Communities items on the table as they are reported out in meetings prior to May 3rd so they may all be taken up together.

The Committee voted No Action Necessary on both items by a vote of 8-0. They wanted to be sure that the record reflects that they are in full support of the Green Communities application process.

The Committee also voted unanimously to form a parens (3) for the Resolution piece of these items. Ald. Johnson asked the docketers of the original items to work on language. Ald. Lennon suggested working with David Olson to create a comprehensive document for all the Resolutions. The item will then come back to Committee and get to the Full Board on May 3rd to be voted as a whole piece with the other Green Communities items.

#46-10(2) ALD. CROSSLEY,HESS-MAHAN & LINSKY requesting adoption of an ordinance to create an expedited application and permitting process under which renewable or alternative energy generating facilities, renewable or alternative energy research and development facilities, or renewable or alternative energy manufacturing facilities may be sited within the municipality and which shall not exceed one year from the date of initial application to the date of final approval, in order to satisfy the requirements to qualify as a Green Community under MGL Chapter 25A, §10(c). [02/09/10 @ 7:25 PM]

ACTION: NO ACTION NECESSARY 8-0

NOTE: See above note.

Respectfully Submitted,
Marcia Johnson, Chairman

CITY OF NEWTON
PUBLIC HEARING NOTICE
FOR
MONDAY, FEBRUARY 22, 2010

A Public Hearing will be held on Monday, February 22, 2010 at 7:45 PM, Second Floor, NEWTON CITY HALL before the ZONING & PLANNING COMMITTEE and the PLANNING & DEVELOPMENT BOARD, for the purpose of hearing the following petition, at which time all parties interested in this item shall be heard. Complete text is on file in the office of the clerk of the board of aldermen, first floor of Newton City Hall and on the city's website at www.ci.newton.ma.us under board of aldermen/committees/zoning & planning/2010.

Notice will be published Monday, February 8, 2010 and Monday, February 15, 2010 in the NEWS TRIBUNE and Wednesday, February 17, 2010 in the NEWTON TAB, with a copy of said notice posted in a conspicuous place at Newton City Hall.

#164-09 ALD. HESS-MAHAN proposing the following amendments to Chapter 30 of the City of Newton Revised Zoning Ord, as amended, 2007, relative to accessory apartments:

(1) amend Sections 30-8(d)(1), 30-8(d)(1)a), 30-9(h)(1), and 30-9(h)(1)a) to explicitly allow the homeowner to live in the accessory apartment;
(2) amend Section 30-9(h)(1) and 30-9(h)(2) to allow accessory apartments in a detached structure associated with a single-family residence in a Multi Residence 1 and Multi Residence 2 district and to clarify that accessory apartments are allowed in detached structures associated with two-family residences; and amend 30-9(h)(1) to clarify that a single-family dwelling located in a Multi Residence 1 or Multi Residence 2 district may be divided into a two-family dwelling according to other provisions of the zoning ordinance;
(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), 30-8(d)(1)e), 30-8(d)(2)b), 30-9(h)(1)d), and 30-9(h)(1)e) to allow limited exterior alterations or additions, subject to FAR or other dimensional controls, to accommodate an accessory apartment; amend the conditions, where a special permit is required, for approval of exterior alterations or additions; and to remove the time limit before which additions and exterior alterations must be completed to meet the requirements of Table 30-8;
(6) amend 30-1, definition of "accessory apartment" to be consistent with the changes listed above.

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#164-09 Draft Language (As Voted By ZAP April 12, 2010)

Sec. 30-1 Definitions.

Accessory apartment: A separate dwelling unit located in a building originally constructed as a single family or two family dwelling or in a detached building located on the same lot as the single family or two 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.

Sec. 30-8. Use Regulations for Single Residence Districts.

(d) In single residence districts, an accessory apartment shall be a permitted use according to Table 30-8 and 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, as applicable, and subject to section 30-15, provided that:

a) The accessory apartment is located within a single family dwelling and the owner of the single family dwelling occupies either the main dwelling unit or the accessory apartment;

Deleted: The building in which the accessory apartment is located is an owner occupied single family dwelling;

b) The single family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a Certificate of Occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application;

Deleted: on or before January 1, 1989;¶

c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of one thousand (1000) square feet or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is less;*

d) Exterior alterations required to meet applicable building, fire or health codes are permitted as listed here: doors; windows; no more than two exterior landings which may be covered, which do not exceed fifty (50) square feet in area, and are not within the setback area; stairs which are not within the setback; roof and wall venting;*

e) Additions and exterior alterations to the structure made within four (4) years prior to application may not be applied towards meeting the requirements of Table 30-8;*

f) No more than one accessory apartment shall be allowed per lot;

g) There shall be no lodgers in either the original dwelling unit or the accessory apartment;

h) Parking as required by sections 30-19(d)(19) and 30-19(g), and landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof;

Deleted: as required by section 30-19(i)(1) shall be provided, regardless of the number of parking stalls;¶

i) The apartment shall comply with all applicable building, fire and health codes.

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

(2) The board of aldermen may grant a special permit in accordance with the procedure in section 30-24 for an accessory apartment in an owner-occupied single family dwelling or a legal nonconforming two-family

dwelling or a detached structure provided that the provisions of section 30-8(d)(1) and Table 30-8 are met, except as amended below:

a) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet, or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is more;

b) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single family dwelling or a legal nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this sub-section, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of receipt of a special permit hereunder from the board of aldermen.

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 department of inspectional services, where a master list of accessory apartments shall be kept, and with the assessing 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 Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(3) An accessory apartment is allowed in an Overlay District according to the provisions of Section 30-8(d) and Table 30-8. The following land is placed in an Overlay District as specified:

a) Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.

b) Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.

c) Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.

d) Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.

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

a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by

submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:

i) A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or

ii) Assessing department records for the premises indicating the existence of the aforesaid second dwelling unit; or

iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or

iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid second dwelling unit; or

v) Sworn affidavits by former or present tenants of the aforesaid second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or

vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said dwelling unit as of December 31, 1979 and forward.

b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1979 and forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

c) Requirements. The requirements of section 30-8(d)(1)a), b), c), d), f), g), h) and i) must be satisfied.

d) Procedure. Application for the validation of the second dwelling unit under this section 30-8(d)(4) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-8(d)(4)c) above.

Within sixty (60) days of receipt of the completed section 30-8(d)(4) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-8(d)(4)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-8(d)(4) application for the lawful use of the second dwelling unit. Upon expiration of said one (1) year, if the applicant has not

secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the second dwelling unit under the provisions of section 30-8(d)(4). Upon request by the applicant prior to expiration of the aforesaid one year, the commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant 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, 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 Building Code are satisfied.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(5) 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. (Ord. No. T-41, 8-14-89; Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; V-120, 7-14-97; V-156, 1-5-98; V-173, 5-18-98; V-246, 6-7-99; Ord. No. X-37, 12-2-02; Ord. No. Y-10,4-17-07

TABLE 30-8 DIMENSIONAL REQUIREMENTS FOR ACCESSORY APARTMENTS

	LOT SIZE (s.f.)	BUILDING SIZE (s.f.)
SR1		
RAAP	25,000	4,000
SPECIAL PERMIT	15,000*	3,200
SR2		
RAAP	15,000	3,100
SPECIAL PERMIT	10,000*	2,600
SR3		
RAAP	10,000	2,500
SPECIAL PERMIT	7,000*	1,800
OVERLAY A		
RAAP	43,500	4,400
SPECIAL PERMIT	15,000*	3,200
OVERLAY B		
RAAP	16,000	3,600
SPECIAL PERMIT	10,000*	2,600
OVERLAY C		
RAAP	10,000	3,100
SPECIAL PERMIT	7,000*	1,800

OVERLAY D		
RAAP	30,000	4,000
SPECIAL PERMIT	15,000*	3,200
LEGAL NON-CONFORMING		
TWO-FAMILY		
IN SR1, SR2, SR3		
SPECIAL PERMIT	25,000*	2,600
MR1, MR2		
SPECIAL PERMIT	8,000	2,600

*If building constructed on lot created prior to December 7, 1953.

Sec. 30-9. Use Regulations for Multi-Residence Districts.

(h) *Additional Provisions Applicable in Multi-Residence 1 and 2 Districts.* In all multi-residence 1 and 2 districts, land and buildings may be used for the following purpose subject to the dimensional controls set forth in Table 30-8:

(1) The board of aldermen may grant a special permit for an accessory apartment in a two-family structure or in a detached structure associated with either a single family or two family structure in accordance with the procedure in section 30-24 provided that:*

a) The accessory apartment is located in a two family dwelling or detached structure, and the owner of the dwelling occupies either one of the main dwelling units or the accessory apartment;

b) The two family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a Certificate of Occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application

Deleted: building in which the accessory apartment is located is an owner occupied two family dwelling;¶

Deleted: on or before January 1, 1989;

c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet;

d) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in the owner-occupied two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this sub-section, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of the receipt of a special permit hereunder from the board of aldermen;

e) Additions and exterior alterations to the structure made within two (2) years prior to application may not be applied towards meeting the requirements of Table 30-8;

f) 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;

g) There shall be no lodgers in either the original dwelling units or the accessory apartment;

h) Parking as required by sections 30-19(d)(19) and 30-19(g), and landscape screening in the area between the parking space required for the accessory unit and the nearest

side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof;

Deleted: as required by section 30-19(i)(1) shall be provided, regardless of the number of stalls;

i) The apartment shall comply with all applicable building, fire and health codes.

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 department of inspectional services, where a master list of accessory apartments shall be kept, and with the assessing 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 Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

* A single-family dwelling located in a Multi-Residence 1 or Multi-Residence 2 district may be divided into a two-family dwelling to accommodate a second dwelling unit, subject to compliance with the relevant requirements of the zoning ordinance.

(2) Pre-existing Units. Notwithstanding the terms of section 30-9(h)(1) above, an accessory apartment in a two family dwelling or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional criteria of Table 30-8 nor obtain a special permit subject to section 30-24 provided the following criteria are fulfilled:

Deleted: (third dwelling unit)

a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:

i) A valid building alteration permit for the premises indicating the construction of the aforesaid accessory apartment; or

Deleted: third dwelling unit

ii) Assessing department records for the premises indicating the existence of the aforesaid accessory apartment; or

Deleted: third dwelling unit

iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid accessory apartment; or

Deleted: third dwelling unit

iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid accessory apartment; or

Deleted: third dwelling unit

v) Sworn affidavits by former or present tenants of the accessory apartment, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or

vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said accessory apartment as of December 31, 1979 and forward.

b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the accessory apartment as of December 31, 1979 and ongoing forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

c) Requirements. The requirements of section 30-9(h)(1)a), b), c), f), g), h) and i) and section 30-8(d)(1)d) must be satisfied.

d) Procedure. Application for the lawful use of the accessory apartment under this section 30-9(h)(2) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-9(h)(2)c) above.

Within sixty (60) days of receipt of the completed section 30-9(h)(2) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-9(h)(2)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-9(h)(2) application for the lawful use of the accessory apartment. Upon expiration of said one (1) year, if the applicant has not secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the accessory apartment under the provisions of section 30-9(h)(2). Upon request by the applicant prior to expiration of the aforesaid one (1) year, the commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant 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, 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

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services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are met.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

(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. (Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; Ord. No. V-173, 5-18-98; Ord. No. V-246, 6-7-99; Ord. No. X-37, 12-2-02; Ord. No. Y-10, 4-17-07)