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MEMORANDUM

DATE: April 8, 2022

TO: Councilor Deborah Crossley, Chair, Zoning & Planning Committee
Members of the Zoning & Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
Jennifer Caira, Deputy Director Department of Planning and Development
Zachery LeMel, Chief of Long Range Planning
Cat Kemmett, Planning Associate

RE: **#192-22 Request for review and amendments to Section 6.7.1**
COUNCILORS CROSSLEY, DANBERG, LIPOF, KELLEY, ALBRIGHT, NORTON, BOWMAN, GREENBERG, HUMPHREY, LEARY, RYAN, AND KRINTZMAN requesting a review of and possible amendments to, Section 6.7.1 Accessory Apartments, to remove barriers to creating accessory apartments, such as to consider conditions under which detached ADUs may be allowed by right, and under which ADUs may be permitted as part of new construction.

MEETING: April 8, 2022

CC: City Council
Planning Board
Jonathan Yeo, Chief Operating Officer

Introduction

Accessory apartments, or accessory dwelling units (ADUs), are self-contained apartments in an owner-occupied home or lot. An ADU can be attached or detached from the structure of the primary home and are allowed in conjunction with single- or two-family homes (with a maximum of one ADU per property). Newton adopted an Accessory Apartment Ordinance in 1987, which has evolved significantly in that time. The policy has led to the creation of several dozen new housing units and legalized many existing units. The City Council has consistently recognized and affirmed the role ADUs can play in fostering a diverse housing stock in a number of adopted City policies and plans.

Though Newton has seen a steady increase in ADUs since the last major ordinance revision in 2017, the number remains small. Given the minimal production and overall positive sentiment for ADUs, twelve City Councilors recently docketed an item for Planning staff to bring forward targeted proposals that remove barriers to creating ADUs identified by residents, architects, and City staff.

This memo will provide a brief history of Newton's ADU ordinance, data on recently built ADUs, ADU benefits generally, basics of the existing ordinance, and barriers preventing ADU construction, and recommendations for targeted amendments.

History of accessory apartments in Newton

1987: First ordinance enabling ADUs enacted

- Only allowed in Single-Residence zones
- Special Permit required

1988: Creation of ZAP Subcommittee on ADUs

1989: No ADUs created; subsequently ZAP Subcommittee on ADUs releases report with recommendations to facilitate ADU creation

1990: Ordinance amended to expand opportunities including

- Allowed in Multi-Residence zones
- Established an administrative review process and
- Reduced required lot area

1992-2009: Several minor amendments

2010: Amended to permit the owner to occupy either the accessory apartment or principal dwelling, change the look-back period, and related changes

2011: Amended to explicitly prohibit conversion of accessory apartments to condos

2017: Major ordinance amendment

- Internal ADUs allowed by-right within allowed size requirements
- Ability to create an ADU no longer directly tied to lot size (though setbacks requirements still mean that lot size and configuration plays a part)
- Removed minimum parking requirements for ADUs

ADUs 2017- today

The changes made in the 2017 amendments to the Accessory Apartment Ordinance have resulted in a modest increase in ADU permits granted. From 2008-early 2017 about 25 ADU permits were granted in total, averaging just under 3 permitted per year. After the ordinance was revised, at least 10 or more ADUs have been permitted every year since.

Internal ADUs make up the majority of new ADUs permitted (55). Of the 72 ADUs permitted since 2017, 13 were in pre-existing structures, including 10 historic carriage houses. Additional data on Newton's existing ADUs can be found in Attachment A.

This development pattern is consistent with regional and national trends seen in other municipalities that have adopted progressive ADU ordinances like Newton--progress is happening, but it has been slow. In January 2021 Governor Baker signed House Bill 5250, which contained economic development measures as well as the "Housing Choice Law", which allows for zoning amendments to permit the development of internal or detached accessory apartments (up to 900 square feet) as of right to be adopted by a simple majority vote. The high demand for housing statewide and the new guidance in the Housing Choice Law have inspired other cities in the region including Arlington, Watertown, Salem, Wellesley, and others to adopt new ADU rules for the first time, or to loosen existing restrictions and permitting processes to facilitate more ADUs in their communities.

Benefits of ADUs

ADUs provide many potential benefits to a community, but a few key ones include:

Diversify housing options

According to the report [Newton Leads 2040](#), the average housing unit size has increased dramatically even though the average household size has decreased and more Newton residents are living alone. The disconnect between housing production and demographic trends have left seniors ready to downsize and young first-time homebuyers with no local options. ADUs, as naturally smaller units, could offer an attractive housing typology not readily available now. City Councilors have often underscored the need for smaller units in particular.

Add Flexibility

Flexibility is important to sustaining a housing stock that works for everyone and stays resilient to economic and demographic changes over time. In Phase I of the City’s engagement process for village center zoning, many community members voiced support for intergenerational living and expanding options to age in place. ADUs can provide needed flexibility by enabling a homeowner to house a family member or caregiver in close proximity, but in an independent space. Or ADUs can serve as a way for homeowners to make income on underutilized space on a property if used as a long-term rental apartment.

Allow for new housing without adding new buildings

The City has committed to expanding and increasing housing opportunities, and new construction will inevitably play a role in housing production in the future, as it does now. But ADUs provide a unique pathway to utilize space in a home, or accessory structures, that we already have on the ground. From underutilized detached garages to half-finished basements, there are many potential spaces that could be activated and used as housing. Using our existing infrastructure in this way has significant sustainability benefits and allows housing to be folded into the existing fabric of a neighborhood.

Basics of the Current ADU Rules

	Internal ADUs	Detached ADUs
Property owner must live on-site	Yes	Yes
Only one ADU allowed per principal dwelling	Yes	Yes
ADU cannot be turned into condominium	Yes	Yes
Short term rentals not allowed	Yes	Yes
No additional parking is required for ADU	Yes	Yes

The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a building permit	Yes	Yes
Allowed by-right?	Yes, with size restrictions	No (except historic carriage houses in non-historic districts ¹)
Allowed by Special Permit?	Up to 1,200 sq. ft. or 40% of the total Habitable Space, whichever is less, allowed by special permit	Up to 1,500 sq. ft.
Setback requirements?	None	Must meet the setback requirements of the principal dwelling unit, as well as FAR and other applicable dimensional controls, except by special permit

Barriers to ADU Creation

Staff believe that a few targeted changes to the ordinance can address common roadblocks facing homeowners interested in accessory units. Existing barriers include:

- Primary residence must be at least 4 years old to get a permit for an ADU, except by special permit (*Sec. 6.7.1.C.5*)
 - Because ADUs are not a bonus on top of the allowed by FAR, new construction would have to distribute the allowed FAR between a primary and accessory structure, resulting in a smaller primary home due to overall dimensional standards. Allowing ADUs to be part of a building process from the beginning can enable the owner to intentionally fold in accessibility features and egress in the design stage, rather than need to retrofit a portion of the house, a garage or other accessory building later.
- Special permit is required for most detached accessory units (*Sec. 6.7.1.E.1*)
 - Except for some historic carriage houses, all detached ADUs require a special permit. There have been far more internal accessory units permitted since 2017 than detached units, and most of the detached units were in pre-existing structures. Residents and developers have identified the additional cost, time, and difficulty of navigating the special permit process as a known deterrent for ADU construction. The Committee should consider allowing smaller ADUs by-right to ease the process.
- A detached ADU must meet the setback requirements of the principal dwelling unit, except by special permit (*Sec. 6.7.1.E.5*)
 - Many existing accessory buildings that are already part of the built fabric of neighborhoods do not meet the setback requirements of the principal dwelling. A significant number of special permits granted for detached accessory apartments

¹ Historic carriage houses in non-historic districts are allowed by-right and are not subject to the setback requirements or size restrictions that apply to other detached accessory apartments

needed some amount of setback relief. The Committee should consider whether there are any circumstances in which the by-right setback requirements for detached ADUs could be less than those required for a primary dwelling unit.

Looking Ahead

Based on guidance and feedback from the Committee, staff are interested in exploring targeted zoning amendments to address the barriers to ADUs identified above.

Attachments

Attachment A Data on recently constructed ADUs

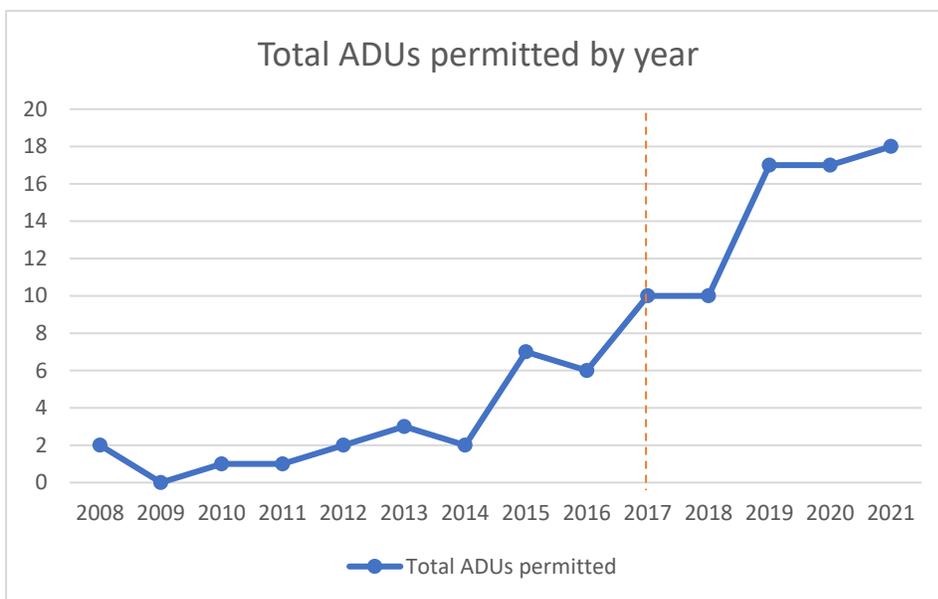
Attachment A

Newton ADU Data Fact Sheet

- 1. Total number of ADUs permitted between 2008 and April 2017 – 25 ADUs
- 2. Total number of ADUs permitted since April 2017 – 72 ADUs

Year	Total ADUs permitted
2017	10
2018	10
2019	17
2020	17
2021	18
Total	72

(Note- not all permitted ADUs were actually built)



- 3. Number of detached ADUs permitted since April 2017 – 17 detached ADUs

Of the 72 permitted ADUs since 2017

- 17 were detached structures
 - 13 pre-existing, including 10 historic carriage houses
 - 4 new

4. Median setbacks for detached ADUs

ADUs	Median setbacks	
	Side	Rear
Pre-existing	6.85	10.45
New	9.48	11.25
All detached*	6.85	10.45

Setback data for 5 historic carriage houses was not available

**The median rear/side setbacks are lower than the required setbacks for pre-1953 SR and MR lots*

5. Number detached ADUs that meet existing setback regulations

ADUs	Does not meet accessory structure setback requirements	Meets accessory structure setback requirements*	No data available
Pre-existing	4	4	5
New	0	4	0

**Note- 2 pre-existing and 3 new ADUs also meet principal structure setback requirements*

6. Average size of detached ADUs permitted 2017-present – 940 square feet

7. Detached ADUs permitted 2017-present that are 900 sq ft or less – 8 ADUs (47%)