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MEMORANDUM

DATE: July 15, 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: July 18, 2022

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

Introduction

At the April 8 ZAP meetings, staff introduced targeted zoning amendments to the ADU Ordinance intended to remove barriers to ADU construction for the Committee's consideration. At that meeting, ZAP members, and other City Councilors, in attendance expressed interest in further exploring these recommendations. The memo for the April 8 meeting [can be found here](#).

At the upcoming July 18 meeting, staff will present the updated proposals. This memo provides an overview, a side-by-side comparison of the existing text and suggested revisions as well as a brief explanation of the change.

Proposals

1. Proposed change: Remove the 4-year lookback period for ADUs

Comparison to existing zoning

Section 6.7.1.C.5

Current	Proposed
<p>The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;</p>	<p>The principal dwelling unit must have been constructed 4 or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by a certificate of occupancy for the original construction of the dwelling or, where no certificate is available, the owner provides other evidence of lawful occupancy of the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;</p>

Description of change

- Currently, a primary residence must be at least 4 years old to get a permit for an ADU, except by special permit. This amendment would delete Sec. 6.7.1.C.5. To allow ADUs in both existing homes and in new construction.

Why?

- 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
- Because ADUs are not a bonus on top of the allowed by right FAR, new construction would have to distribute the allowed FAR between a primary and accessory building, resulting in a smaller primary home due to overall dimensional standards.

2. Proposed change: Allow small detached ADUs by right

Comparison to existing zoning

Section 6.7.1. E.

Current	Proposed
<p>E. Rules for Detached Accessory Apartments.</p> <ol style="list-style-type: none"> 1. Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single Family, Detached building or a Two-Family, Detached building. 2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,200 square feet or 40% of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet. <ol style="list-style-type: none"> a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated 	<p>E. Rules for Detached Accessory Apartments.</p> <ol style="list-style-type: none"> 1. Except as provided below, a Detached Accessory Apartment may be allowed by special permit from the City Council as a use accessory to a Single Family, Detached building or a Two-Family, Detached building. <u>A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building</u> 2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of 900<u>1,200</u> square feet or 50%<u>40%</u> of the total Habitable Space of the principal dwelling, whichever is less. The City Council may grant a special permit for a larger Detached Accessory Apartment up to 1,500 square feet. <ol style="list-style-type: none"> a. The total Habitable Space is the sum of the Habitable Space of the accessory unit and the principal unit with which it is associated.

Description of change

- Allow detached ADUs between 250 and 900 square feet by right, or up to ½ the size of the principal building
- Allow detached ADUs over 900 square feet, and up to 1,500 square feet, by special permit only

Why?

- The additional cost, time, and difficulty of navigating the bureaucratic process is a known deterrent for ADU construction
- The special permit is also a barrier to converting existing space to ADUs. Making it easier to allow ADUs in detached garages, for instance, could allow for modest additional density within spaces that already exist in the city but might be underutilized

- Allowing detached units by-right can make ADUs less expensive and add more flexible options. In recent years there has been an increase in affordable & high-quality options for prefabricated ADUs, which can be appealing for homes that don't have the space or a layout that makes sense for interior ADUs
- Limiting the size of a detached ADU to 900 sq ft should ease some tensions that might arise from allowing these by-right, and aligns with Housing Choice legislation which defines an ADU as being 900 square feet maximum or $\frac{1}{2}$ the size of the principal building

3. Relax setback requirements

Section 6.7.1. E.

Current	Proposed
<p>5. The Detached Accessory Apartment must meet the setback requirements of the principal dwelling unit, as well as floor area and other applicable dimensional controls, except by special permit.</p> <p>6. Except as required above, a Detached Accessory Apartment is subject to the dimensional requirements of Section 3.4.3, Accessory Buildings. For the purposes of this section, the Commissioner of ISD may determine which lot line is the front on corner lots.</p>	<p>5. The Detached Accessory Apartment must meet the setback requirements of <u>Accessory Buildings in compliance with Section 3.4.3.A.1.</u>the principal dwelling unit, as well as floor area and other applicable dimensional controls, except by special permit. <u>The Detached Accessory Apartment must meet floor area dimensional controls of the principal dwelling unit, except by special permit.</u></p> <p><u>If any portion of a Detached Accessory Apartment is located within the setback applicable to the principal dwelling unit, the portions of the Detached Accessory Apartment within said setback shall be screened from abutting properties. Screening shall consist of one or a combination of the following:</u></p> <ul style="list-style-type: none"><u>i. A strip of densely planted shrubs or trees which are at least 31/2 feet high at the time of planting and are of a type that may be expected to form a year-round screen;</u><u>ii. A wall, barrier, or fence of uniform appearance. Such wall, barrier, or fence may be opaque or perforated provided that not more than 50 percent of the face is open. The wall, barrier, or fence shall be at least 6 feet in height and in compliance with the Revised Ordinances Chapter 5, Article III, Fences. The required screening shall be located so as not to conflict with any corner visibility requirements or any other City ordinances. Such screening may be interrupted by entrances or exits.</u> <p>6. Except as required above, a <u>A</u> Detached Accessory Apartment is subject to the dimensional requirements of Section 3.4.3, Accessory Buildings. For the purposes of this</p>

	section, the Commissioner of ISD may determine which lot line is the front on corner lots.
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Description of change

- Allow detached ADUs to use the same setback requirements as other detached accessory structures, but with clear and prescriptive requirements for screening for ADUs within the principal setbacks

Why?

- Side and rear setbacks can be very limiting, especially for new lots, and smaller lots
- Many of the projects that applied for special permits for detached accessory apartments needed some sort of setback relief which was granted

4. Owner occupancy provision

Section 6.7.1.C.3

Current	Proposed
3. The property owner must occupy either the principal dwelling unit or the accessory apartment;	3. The property owner <u>or an indirect property owner must occupy either the principal dwelling unit or the accessory apartment. Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property;</u> must occupy either the principal dwelling unit or the accessory apartment;

Description of change

- Minor language clarification

Why?

- This update includes no change in the substance of the ordinance, it simply clarifies the current procedure used by ISD, in consultation with the Law department, to make a determination of what indirect ownership is permitted for ADUs.

5. Update language for by right accessory use in Residential Districts

Section 3.4.2.A.6

Current	Proposed
6. Accessory apartments, subject to Sec. 6.7.1.	6. <u>Internal and detached A</u> accessory apartments, subject to Sec. 6.7.1.

Description of change

- Minor language clarification

Why?

- This update includes no change in the substance of the ordinance, it simply clarifies the text and aligns the language with that used in Section 3.4.2.B.1

Voting Threshold

The Housing Choice legislation amendments to Chapter 40A of the General Laws provides that an amendment to a zoning ordinance to allow accessory dwelling units as of right shall be adopted by a vote of a simple majority of the city council. The Law Department has reviewed the amendments and advised that the proposed changes satisfy the foregoing criteria.

Next Steps

Planning staff look forward to discussing these proposals with the Committee and identifying any remaining questions or areas of concerns. If needed, Planning staff can return to ZAP with additional information at their August meeting. Finally, staff recommend that the Committee consider setting a Public Hearing for these amendments in September.