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Barney S. Heath  
Director

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**MEMORANDUM**

**DATE:** August 5, 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:** August 9, 2022

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

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Introduction

At the April 8 and July 18 ZAP meetings, staff discussed targeted zoning amendments to the ADU Ordinance intended to remove barriers to ADU construction for the Committee's consideration. The memo for the April 8 meeting [can be found here](#), and the memo for July 18 [is available here](#).

Councilors also requested information about the rules regarding ADUs in other communities. An overview of the rules regarding ADUs from 2018 [is available here](#). It should be noted that several towns have created new ADU ordinances or made significant changes to reduce barriers since the release of this white paper.

At the upcoming August 9 meeting, staff will present the updated proposals based on feedback from the previous discussions, specifically the third proposal regarding setbacks. 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><del>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;</del></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.

#### **ZAP Discussion and Follow-Up from July 18 Meeting**

- While some Councilors raised concern that removing the lookback period would further incentivize teardowns, City staff explained that a) there was no evidence for this and b) the teardown incentive to build a larger single- or two-family home allowed under the existing zoning rules is significantly greater and much more attractive to developers
  - The [2018 White Paper](#) (pg. 13-14) lists nearby municipalities that allow ADUs by-right and the # permitted over a certain timeframe, which are relatively low
- The Chair brought this provision to a straw vote, which was approved 5-3

**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"> <li>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.</li> <li>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"> <li>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</li> </ol> </li> </ol>	<p>E. Rules for Detached Accessory Apartments.</p> <ol style="list-style-type: none"> <li>1. <del>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.</del> <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></li> <li>2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of <del>900</del><u>1,200</u> square feet or <del>50%</del><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"> <li>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.</li> </ol> </li> </ol>

**Description of change**

- Allow detached ADUs between 250 and 900 square feet by right, or up to ½ the size of the principal building, whichever is less
- 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 living 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 50% the size of the principal building

#### **ZAP Discussion and Follow-Up from July 18 Meeting**

- Some Councilors raised concerns that allowing detached-ADUs by-right is essentially allowing two-family homes everywhere by-right. City staff responded:
  - Internal ADUs are already allowed by-right everywhere in the City (Sec. 6.7.1.D.1.)
  - The requirement that an ADU cannot be held in separate ownership (Sec. 6.7.1.C.1.) and that the owner must occupy either the ADU or principal dwelling unit (Sec. 6.7.1.C.3.) makes this very different than typical two-family development we see
  - The size maximum on a detached-ADU is 900 sf by-right. Typical two-family developments have no unit-size cap other than FAR
- The Chair asked the committee who would support allowing detached by right under different circumstances, such as varying setback requirements for existing versus new construction. This proposal was supported by 6 Councilors, with 2 opposed
- City staff recommend that the proposed changes remain the same given the updates to the setback requirements proposal (#3 below)

### 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. <del>The</del>A Detached Accessory Apartment shall be no nearer to any side or rear lot line than 7.5 feet or half of the distance prescribed for the principal building, whichever is greater, and no nearer to any front lot line than the distance prescribed for the principal building. Notwithstanding the forgoing sentence, the setbacks for a Detached Accessory Apartment may be reduced by special permit. <del>must meet the requirements of the principal dwelling unit, as well as floor area and other applicable dimensional controls, except by special permit.</del><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"> <li><u>i. A strip of densely planted shrubs or trees which are at least 3 1/2 feet high at the time of planting and are of a type that may be expected to form a year-round screen;</u></li> <li><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</u></li> </ul>

	<p><u>ordinances. Such screening may be interrupted by entrances or exits.</u></p> <p>6. <del>Except as required above, a</del> 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>
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#### Description of change

- Allow detached ADUs with reduced setbacks, proportional to the zoning district, and with clear and prescriptive requirements for screening for ADUs closer to the lot line than the principal setbacks
- The absolute minimum setback is 7.5 feet, which the current absolute minimum for principal buildings as well for side lot lines

#### 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

#### ZAP Discussion and Follow-Up from July 18 Meeting

- Some Councilors were concerned that ADUs are a more intense use than an accessory building, like a garage, and therefore warranted more restrictive setbacks. This is even though the physical appearance from the outside would be nearly identical.
  - City staff explained that the Noise Ordinance would apply equally to ADUs as it does to anything else
  - City staff requested noise complaints from Inspectional Services for the ADUs that were granted setback relief, none were found.
  - To further mitigate this, detached-ADUs at less than the principal setbacks would require additional screening
- Based on the Councilor concerns, City staff revised this proposal so that the setbacks for ADUs could be up to half those required by the principal dwelling unit, but no less than 7.5 feet. 7.5 feet is the current minimum setback requirements for side yards in SR2, SR3, and MR districts.
- The FAR requirements remain in place, which would prevent, or make it difficult for, extremely small lots from developing a detached-ADU. See Attachment A below for more information.

#### 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> <del>must occupy either the principal dwelling unit or the accessory apartment;</del>

##### 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. Staff recommend that the Committee consider setting a Public Hearing for these amendments in September.

### Attachments

Attachment A            Lot Size and Detached ADU Feasibility

## Attachment A Lot Size and Detached ADU Feasibility

The tables below highlight the feasibility of developing a detached-ADU on smaller lots in Newton (3,000-5,000 square feet). The analysis looks at varying size principal buildings and the FAR requirements for SR1/2/3 and MR1/2/3. The analysis does not consider setbacks, which may further prevent a detached-ADU or reduce its size. The limiting factors were:

- There was no more FAR allowed (i.e. the principal building used all the FAR)
- The remaining FAR was less the 250 sf, which is the minimum detached-ADU size
- The remaining FAR was more than 50% of the principal building size or greater than 900 sf.
  - Detached-ADUs cannot be more than 50% of principal building, or
  - Detached-ADUs cannot be more than 900 sf

Lot Size = 3000 sf						
Principal Building Size (sf)	Detached ADU Allowed (Y/N)			Detached ADU Max. Size (sf)		
	SR1/2	SR3	MR1/2/3	SR1/2	SR3	MR1/2/3
1000	Yes	Yes	Yes	380	440	500
1200	No	No	Yes	#N/A	#N/A	540
1400	No	No	Yes	#N/A	#N/A	340
1600	No	No	No	#N/A	#N/A	#N/A
1800	No	No	No	#N/A	#N/A	#N/A

Lot Size = 4000 sf						
Principal Building Size (sf)	Detached ADU Allowed (Y/N)			Detached ADU Max. Size (sf)		
	SR1/2	SR3	MR1/2/3	SR1/2	SR3	MR1/2/3
1000	Yes	Yes	Yes	500	500	500
1200	Yes	Yes	Yes	600	600	600
1400	Yes	Yes	Yes	440	520	700
1600	No	Yes	Yes	#N/A	320	720
1800	No	No	Yes	#N/A	#N/A	520

Lot Size = 5000 sf						
Principal Building Size (sf)	Detached ADU Allowed (Y/N)			Detached ADU Max. Size (sf)		
	SR1/2	SR3	MR1/2/3	SR1/2	SR3	MR1/2/3
1000	Yes	Yes	Yes	500	500	500
1200	Yes	Yes	Yes	600	600	600
1400	Yes	Yes	Yes	700	700	700
1600	Yes	Yes	Yes	700	800	800
1800	Yes	Yes	Yes	500	600	900

Inputs:

Maximum FAR Allowed (district)		
SR1/2	SR3	MR1/2/3
0.46	0.48	0.58