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MEMORANDUM

DATE: September 9, 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: September 12, 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.

At multiple ZAP meetings held between April and August 2022, Planning staff presented on recommended zoning amendments to the ADU Ordinance. These targeted proposals are intended to remove barriers to ADU construction for the Committee's consideration. The memo for the April 8 meeting [can be found here](#), the memo for July 18 [is available here](#), and the August 9 memo [is available here](#). These linked memos provide information on the history of accessory apartments in Newton, the benefits of ADUs, and the barriers to ADU creation within the current rules.

Recommended Zoning Amendments

The proposed changes (Attachment A) fall into the following categories:

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.

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"> 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, 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. TheA 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 foregoing sentence, the setbacks for a Detached Accessory Apartment may be reduced by special permit. must meet the requirements of 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 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><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>

	<p>ordinances. Such screening may be interrupted by entrances or exits.</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>
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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 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; 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. Internal and detached A 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 the community feedback provided at the Public Hearing and subsequent ZAP discussion.

Attachments

Attachment A Proposed Redline ADU Ordinance

Redline Zoning Text – ADU Ordinance

Docket # 192-22: Request for review and amendments to Section 6.7.1

6.7. Accessory Uses

6.7.1. Accessory Apartments

- A. **Intent.** Accessory apartments are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit, meeting the requirements of the following section.

Accessory apartments are intended to advance the following:

1. Diversify housing choices in the City while respecting the residential character and scale of existing neighborhoods;
2. Provide a non-subsidized form of housing that is generally less expensive than similar rental units in multi-family buildings;
3. Create more housing units with minimal adverse effects on Newton's neighborhoods;
4. Provide flexibility for families as their needs change over time and, in particular, provide options for seniors to be able to stay in their homes and for households with disabled persons; and
5. Preserve historic buildings, particularly historic carriage houses and barns.

- B. **Accessory Apartment Defined.** A separate dwelling unit located in a Single-Family, Detached or a Two-Family, Detached building or in a detached building located on the same lot as a Single-Family, Detached or a Two-Family, Detached building, as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of this Sec. 6.7.1.

1. **Internal.** An accessory apartment located within a single- or two-family dwelling.
2. **Detached.** An accessory apartment not located within a dwelling unit but is located in a separate detached accessory building.

C. Rules for All Accessory Apartments

1. No accessory apartment shall be held in separate ownership from the principal structure/ dwelling unit; To permit redevelopment of existing office buildings into new office buildings.
2. No more than 1 accessory apartment shall be allowed per lot;
3. The property owner 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;
4. The total combined number of individuals residing in the principal and accessory dwelling units may not exceed the number allowed in the principal dwelling unit alone, under Sec. 3.4.2 and other applicable sections;
- ~~5. 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~~

Redline Zoning Text – ADU Ordinance

Docket # 192-22: Request for review and amendments to Section 6.7.1

~~the existing dwelling on or before a date at least 4 years prior to the date of application, except by special permit;~~

- ~~6.5.~~ Where the accessory apartment or the principal dwelling is occupied as a rental unit, the minimum occupancy or rental term shall be 30 days;
- ~~7.6.~~ No additional parking is required for the accessory apartment. If parking for the accessory apartment is added, however, screening is required sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination;
- ~~8.7.~~ Before a Certificate of Occupancy is issued the property owner of any accessory apartment shall record with the Registry of Deeds for the Southern District of Middlesex County, or with the land court, a certified copy of the decision or of the determination from the Commissioner of Inspectional Services 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;
- ~~9.8.~~ When ownership of the property changes, the new property owner shall notify the Commissioner of Inspectional Services within 30 days, at which time the Commissioner of Inspectional Services shall conduct a determination of compliance with this Section 6.7.1 and with 780 CMR; and
- ~~10.9.~~ The property owner shall file with the Commissioner of Inspectional Services a sworn certification attesting to continued compliance with the requirements of this Section 6.7.1 and all applicable public safety codes. Such certification shall be filed annually on the first business day of January or upon transfer to a new owner as provided above, and the property may be subject to inspection.

D. Rules for Internal Accessory Apartments

1. An internal accessory apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building. Lab Building (See Sec.6.2.10)
2. An Internal Accessory Apartment shall be a minimum of 250 square feet and a maximum of 1,000 square feet or 33 percent of the total Habitable Space in the principal dwelling, as defined in Sec. 8.3, whichever is less. The City Council may grant a special permit for a larger Internal Accessory Apartment up to 1,200 square feet or 40% of the total Habitable Space, whichever is less.
 - 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.
3. Exterior alterations are permitted provided they are in keeping with the architectural integrity of the structure, and the look, character and scale of the surrounding neighborhood as viewed from the street, including, but not limited to, the following considerations:
 - a. The exterior finish material should be the same or visually consistent in type, size, and placement, as the exterior finish material of the remainder of the building;
 - b. The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;
 - c. Trim should be consistent in type, size, and location as the trim used on the remainder of the building;
 - d. Windows should be consistent with those of the remainder of the building in proportion and orientation;

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- e. Exterior staircases should be designed to minimize visual intrusion and be complementary to the existing building;
 - f. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of the above criteria. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C)(4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.
4. Only one entrance may be located on the facade of the building facing a street unless the building had additional street-facing entrances before the accessory apartment was created, except by special permit.

E. Rules for Detached Accessory Apartments.

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. Design and management strategies achieve compatibility with the neighborhood and adjacent residential properties. A Detached Accessory Apartment is allowed by right as a use accessory to a Single-Family, Detached building and a Two-Family, Detached building.~~
2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of ~~9001,200~~ square feet or ~~50%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.
 - 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.
3. Exterior alterations to an existing accessory structure or the creation of a new accessory structure are permitted provided they are in keeping with the architectural integrity of the existing structure and/or the principal dwelling on the lot and the residential character of the neighborhood. The exterior finish material should be the same or visually compatible in type, size, and placement, as the exterior finish material of the principal dwelling unit on the site. The Commissioner of Inspectional Services, or the City Council in the case of a special permit, shall seek advice and counsel from the Director of Planning and Development and/or the Urban Design Commission where there is a question in the application of this requirement. Where a building is determined to be of historic significance and therefore subject to the procedures required under Section 22-50(C) (4) of the City of Newton ordinances, or where a building is located within a local historic district and therefore subject to the procedures required under Sections 22-40 through 44 of the City of Newton ordinances, any decisions of the Newton Historical Commission, or the local Historic District Commission, shall take precedence over the criteria and procedures set forth above, but may be guided by them in addition to their own criteria and procedures.
4. The Detached Accessory Apartment must meet the separation requirements from the principal dwelling unit on the subject lot in compliance with Sec. 3.4.3.A.2.b.
5. ~~A The~~ 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

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is greater, and no nearer to any front lot line that the distance prescribed for the principal building. Notwithstanding the forgoing sentence, the setbacks for a Detached Accessory Apartment may be reduced by special permit. 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:

- a. 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;
- b. 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.

~~5-6. The Detached Accessory Apartment must meet floor area dimensional controls of the principal dwelling unit, except by special permit. must meet the setback requirements of the principal dwelling unit, as well as floor area and other Article 6- Use Regulations | Sec. 6.7. Accessory Uses Chapter 30: Zoning Ordinance | Newton, Massachusetts 6-21 applicable dimensional controls, except by special permit.~~

~~6-7.~~ 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.

~~7-8.~~ Historic Carriage Houses and Other Historic Accessory Buildings. Under the following conditions, a Detached Accessory Apartment in an historic accessory building located outside of an historic district, may be allowed by right without requiring a special permit, and only subject to the rules in this subsection E.7.

- a. The proposed Detached Accessory Apartment will be located in a historic carriage house building or other historic accessory building such as an auto house, garage, stable, machine shop, or barn. To qualify under this subsection E.7, the structure must qualify and be deemed as “historically significant” under Section 22-50 of the City of Newton Ordinances, The Demolition Review Ordinance, as determined by the Director of Planning and Development and the Chair of the Newton Historical Commission;
- b. The proposed Detached Accessory Apartment will be greater than 15 feet from an existing residential dwelling on an abutting property, except by special permit; and
- c. Any exterior alteration of the building to permit the creation of the Detached Accessory Apartment will preserve the historic character and integrity of the building. Exterior alterations shall be subject to the jurisdiction of the Newton Historical Commission.

F. **Invalidity Clause.** If it shall be determined by a court of competent jurisdiction that any provision or requirement of Sec. 6.7.1 is invalid as applied for any reason, then Sec. 6.7.1 shall be declared null and void in its entirety.