



To: Newton City Council
From: Councilor R. Lisle Baker
Re: Amendments to #192-22 regarding zoning for Accessory Dwelling Units
Date: October 14, 2022

Dear colleagues:

On Monday, I intend to propose two amendments to the changes to our zoning for Accessory Dwelling contained in the September 12 Zoning and Planning Committee Report. The language of my proposed amendments is attached. They would

1. Preserve the requirement that separate structure setbacks for the main structure also apply to any detached ADU, rather than be reduced to half that amount or 7.5 feet, whichever is greater. That setback could still be reduced by special permit in either case.
2. Preserve the "look back" provision of our existing ordinance which allows ADUs in existing homes which have been erected at least 4 years, which again can be waived by special permit.

Thank you.

- Lisle

Redline Zoning Text – ADU Ordinance

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

Possible amendments to be offered at the Council discussion – LB draft

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;
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 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.

Commented [LB1]: Amendment 1: Vote: Restore struck out subparagraph 5 proposed by ZAP Report for deletion.

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.
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;

Redline Zoning Text – ADU Ordinance

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

- 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 in a Two-Family, Detached building.~~
2. A Detached Accessory Apartment shall be a minimum of 250 square feet and a maximum of ~~900~~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. Whmakeere 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,~~ 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]~~

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

~~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.~~

~~5.6. A Detached Accessory Apartment shall be included in the floor area ratio calculation for the lot. 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.

Commented [LB2]: Amendment 2 :Vote: Delete certain language in the amendment in the ZAP Report so as to retain the main structure setbacks for detached ADUs while retaining special permit relief if a lesser distance is sought.