

**#164-09 Draft Language (As Voted By ZAP April 12, 2010)**

**Sec. 30-1 Definitions.**

*Accessory apartment:* A separate dwelling unit located in a building originally constructed as a single family or two family dwelling or in a detached building located on the same lot as the single family or two family dwelling, provided that such separate dwelling unit has been established pursuant to the provisions of section 30-8(d) and 30-9(h) of this ordinance.

**Sec. 30-8. Use Regulations for Single Residence Districts.**

(d) In single residence districts, an accessory apartment shall be a permitted use according to Table 30-8 and the following provisions:

- (1) An accessory apartment is allowed in an owner occupied single family dwelling in accordance with the procedures of section 30-22, as applicable, and subject to section 30-15, provided that:
  - a) ~~The accessory apartment is located within a single family dwelling and the owner of the single family dwelling occupies either the main dwelling unit or the accessory apartment; The building in which the accessory apartment is located is an owner occupied single family dwelling;~~
  - b) ~~The single family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a Certificate of Occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application; on or before January 1, 1989;~~
  - c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of one thousand (1000) square feet or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is less;\*
  - d) Exterior alterations required to meet applicable building, fire or health codes are permitted as listed here: doors; windows; no more than two exterior landings which may be covered, which do not exceed fifty (50) square feet in area, and are not within the setback area; stairs which are not within the setback; roof and wall venting;\*
  - e) Additions and exterior alterations to the structure made within four (4) years prior to application may not be applied towards meeting the requirements of Table 30-8;\*
  - f) No more than one accessory apartment shall be allowed per lot;
  - g) There shall be no lodgers in either the original dwelling unit or the accessory apartment;
  - h) ~~Parking as required by sections 30-19(d)(19) and 30-19(g), and landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof; as required by section 30-19(i)(1) shall be provided, regardless of the number of parking stalls;~~
  - i) The apartment shall comply with all applicable building, fire and health codes.

\* Requirements marked with an asterisk may be altered by a Special Permit. See Section 30-8(d)(2).

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

- (2) The board of aldermen may grant a special permit in accordance with the procedure in section 30-24 for an accessory apartment in an owner-occupied single family dwelling or a legal nonconforming two-family dwelling or a detached structure provided that the provisions of section 30-8(d)(1) and Table 30-8 are met, except as amended below:
- a) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet, or thirty-three percent (33%) of the total building size in the dwelling structure, whichever is more;
  - b) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in an owner-occupied single family dwelling or a legal nonconforming two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this subsection, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of receipt of a special permit hereunder from the board of aldermen.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the board order 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.

When ownership of the property changes, the new owner shall notify the commissioner of inspectional services at which time the commissioner of inspectional services shall conduct a determination of compliance with the board order, the Newton Zoning Ordinance and the State Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

- (3) An accessory apartment is allowed in an Overlay District according to the provisions of Section 30-8(d) and Table 30-8. The following land is placed in an Overlay District as specified:
- a) Single Residence 1 zoned land in real estate section 63 is placed in Overlay District A.
  - b) Single Residence 2 zoned land in real estate section 32 is placed in Overlay District B.
  - c) Single Residence 3 zoned land in real estate section 71 is placed in Overlay District C.
  - d) Single Residence 1 zoned land in real estate section 61 is placed in Overlay District D.
- (4) Pre-existing Units. Notwithstanding the terms of section 30-8(d)(1)-(3) above, an accessory apartment (second dwelling unit) in a single-family dwelling or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional criteria of Table 30-8 provided the following criteria are fulfilled:

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

- a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:
- i) A valid building alteration permit for the premises indicating the construction of the aforesaid second dwelling unit; or
  - ii) Assessing department records for the premises indicating the existence of the aforesaid second dwelling unit; or
  - iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid second dwelling unit; or
  - iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid second dwelling unit; or
  - v) Sworn affidavits by former or present tenants of the aforesaid second dwelling unit, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or
  - vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said dwelling unit as of December 31, 1979 and forward.
- b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the dwelling unit as of December 31, 1979 and forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

- c) Requirements. The requirements of section 30-8(d)(1)a), b), c), d), f), g), h) and i) must be satisfied.
- d) Procedure. Application for the validation of the second dwelling unit under this section 30-8(d)(4) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-8(d)(4)c) above.

Within sixty (60) days of receipt of the completed section 30-8(d)(4) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-8(d)(4)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-8(d)(4) application for the lawful use of the second dwelling unit. Upon expiration of said one (1) year, if the applicant has not secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the second dwelling unit under the provisions of section 30-8(d)(4). Upon request by the applicant prior to expiration of the aforesaid one year, the commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the certificate of occupancy for the accessory apartment which states that before ownership of the property changes, the current owner must apply to the commissioner of inspectional services for a new occupancy permit. Before issuing such occupancy permit, the commissioner of inspectional services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are satisfied.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

- (5) If it shall be determined by a court of competent jurisdiction that any provision or requirement of section 30-8(d) is invalid as applied for any reason, then section 30-8(d) shall be declared null and void in its entirety. (Ord. No. T-41, 8-14-89; Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; V-120, 7-14-97; V-156, 1-5-98; V-173, 5-18-98; V-246, 6-7-99; Ord. No. X-37, 12-2-02; Ord. No. Y-10,4-17-07

**TABLE 30-8 DIMENSIONAL REQUIREMENTS FOR ACCESSORY APARTMENTS**

	LOT SIZE (s.f.)	BUILDING SIZE (s.f.)
SR1		
RAAP	25,000	4,000
SPECIAL PERMIT	15,000*	3,200
SR2		
RAAP	15,000	3,100
SPECIAL PERMIT	10,000*	2,600
SR3		
RAAP	10,000	2,500
SPECIAL PERMIT	7,000*	1,800
OVERLAY A		
RAAP	43,500	4,400
SPECIAL PERMIT	15,000*	3,200
OVERLAY B		
RAAP	16,000	3,600
SPECIAL PERMIT	10,000*	2,600

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

OVERLAY C		
RAAP	10,000	3,100
SPECIAL PERMIT	7,000*	1,800
<hr/>		
OVERLAY D		
RAAP	30,000	4,000
SPECIAL PERMIT	15,000*	3,200
<hr/>		
LEGAL NON-CONFORMING TWO-FAMILY IN SR1, SR2, SR3		
SPECIAL PERMIT	25,000*	2,600
<hr/>		
MR1, MR2		
SPECIAL PERMIT	8,000	2,600
<hr/>		

\*If building constructed on lot created prior to December 7, 1953.

**Sec. 30-9. Use Regulations for Multi-Residence Districts.**

(h) *Additional Provisions Applicable in Multi-Residence 1 and 2 Districts.* In all multi-residence 1 and 2 districts, land and buildings may be used for the following purpose subject to the dimensional controls set forth in Table 30-8:

- (1) The board of aldermen may grant a special permit for an accessory apartment in a two-family structure or in a detached structure associated with either a single family or two family structure in accordance with the procedure in section 30-24 provided that: \*
  - a) ~~The accessory apartment is located in a two family dwelling or detached structure, and the owner of the dwelling occupies either one of the main dwelling units or the accessory apartment; building in which the accessory apartment is located is an owner occupied two family dwelling;~~
  - b) ~~The two family dwelling was constructed ten or more years prior to the date of application for permit to construct an accessory apartment under this section as evidenced by a Certificate of Occupancy for the original construction of the dwelling, or, where no such certificate is available, provided that there is other evidence of lawful occupancy of the existing structure on or before a date at least ten years prior to the date of application on or before January 1, 1989;~~
  - c) The accessory apartment shall be a minimum of four hundred (400) square feet and a maximum of twelve hundred (1,200) square feet;
  - d) Exterior alterations required to meet applicable building, fire or health codes are permitted if in keeping with the architectural integrity of the structure and the residential character of the neighborhood. Prospective additions or exterior alterations for the purpose of satisfying the gross floor area requirements for the creation of a proposed accessory apartment in the owner-occupied two-family dwelling which is altered, reconstructed or redesigned for the purpose in whole or in part of satisfying the gross floor area requirements for the creation of a proposed accessory apartment may be allowed, but shall not exceed 250 square feet in area or 25 percent of the final gross floor area of said accessory apartment as provided in this sub-section, whichever is greater. No additions or exterior alterations beyond those in the final grant of a petition may be proposed to enlarge the accessory apartment within two (2) years of the receipt of a special permit hereunder from the board of aldermen;
  - e) Additions and exterior alterations to the structure made within two (2) years prior to application may not be applied towards meeting the requirements of Table 30-8;
  - f) No more than one accessory apartment shall be allowed per lot. This shall include instances where the two dwelling units in a two family structure are separately owned and instances where more than one habitable structure occupy a single lot;
  - g) There shall be no lodgers in either the original dwelling units or the accessory apartment;

#164-09 Draft Language (As Voted by ZAP April 12, 2010)

- h) Parking as required by sections 30-19(d)(19) and 30-19(g), and landscape screening in the area between the parking space required for the accessory unit and the nearest side lot line sufficient to minimize the visual impact on abutters, such as evergreen or dense deciduous plantings, walls, fences, or a combination thereof; as required by section 30-19(i)(1) shall be provided, regardless of the number of stalls;
- i) The apartment shall comply with all applicable building, fire and health codes.

The petitioner shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the board order 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.

When ownership of the property changes, the new owner shall notify the commissioner of inspectional services at which time the commissioner of inspectional services shall conduct a determination of compliance with the board order, the Newton Zoning Ordinance and State Building Code.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

\* A single-family dwelling located in a Multi-Residence 1 or Multi-Residence 2 district may be divided into a two-family dwelling to accommodate a second dwelling unit, subject to compliance with the relevant requirements of the zoning ordinance.

- (2) Pre-existing Units. Notwithstanding the terms of section 30-9(h)(1) above, an accessory apartment (~~third dwelling unit~~) in a two family dwelling or detached accessory structure shall be considered a lawful use and shall not be required to meet the dimensional criteria of Table 30-8 nor obtain a special permit subject to section 30-24 provided the following criteria are fulfilled:
  - a) Proof of Existence. An owner-occupant seeking validation of an existing accessory apartment unit as described herein shall have the burden of proof to demonstrate by a preponderance of evidence the existence of said dwelling unit as of December 31, 1979 and ongoing from that date forward by submission of probative documentary evidence to the commissioner of inspectional services. Records including, but not limited to the following, may be submitted:
    - i) A valid building alteration permit for the premises indicating the construction of the aforesaid accessory apartment ~~third dwelling unit~~; or
    - ii) Assessing department records for the premises indicating the existence of the aforesaid accessory apartment ~~third dwelling unit~~; or
    - iii) Records of Internal Revenue Service tax returns for the owner(s) of the premises including Form 1040 and Form 1040 Schedule E indicating items such as reported rental income, deductions for improvements to real estate, reported losses on rental income, and casualty losses, all related to the aforesaid accessory apartment ~~third dwelling unit~~; or

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

- iv) Permits from the department of inspectional services, other than the actual building alteration permit which provided for construction of the aforesaid dwelling unit, such as other building permits, plumbing, electrical and gas fitting permits, which explicitly indicate the existence of the aforesaid ~~accessory apartment~~third dwelling unit; or
  - v) Sworn affidavits by former or present tenants of the ~~accessory apartment aforesaid second dwelling unit~~, or a previous or present owner-occupant of the premises, providing a sworn, notarized attestation as to the existence of the said unit; or
  - vi) Any other documentary evidence which is material and relevant and demonstrates the existence of said ~~accessory apartment dwelling unit~~ as of December 31, 1979 and forward.
- b) Standard of Proof. Conflicting Evidence. If the documentary evidence available is conflicting, the commissioner of inspectional services shall determine after weighing all the evidence if the existence of the ~~dwelling unit~~accessory apartment as of December 31, 1979 and ongoing forward from that date is supported by a preponderance of evidence.

If no department of inspectional services records or assessing department records are available for a given premises, then sworn, notarized affidavits as provided above in section 30-8(d)(4)a)v) shall be presumed to be reliable, unless there is substantial evidence to the contrary.

- c) Requirements. The requirements of section 30-9(h)(1)a), b), c), f), g), h) and i) and section 30-8(d)(1)d) must be satisfied.
- d) Procedure. Application for the lawful use of the ~~third dwelling unit~~accessory apartment under this section 30-9(h)(2) shall be made in accordance with section 30-22(b). The director of planning and development shall review the application for compliance with all the requirements of section 30-9(h)(2)c) above.

Within sixty (60) days of receipt of the completed section 30-9(h)(2) application, the director of planning and development shall indicate in writing to the commissioner of inspectional services whether there has been compliance with all the requirements of section 30-9(h)(2)c) and section 30-22(b).

Upon receipt of notification of compliance from the director of planning and development, the commissioner of inspectional services shall review the application for compliance with all zoning, building, health, fire and safety codes on the premises.

The owner-occupant applicant must secure a certificate of occupancy from the department of inspectional services within one (1) year of the date of the completed section 30-9(h)(2) application for the lawful use of the ~~third dwelling unit~~accessory apartment. Upon expiration of said one (1) year, if the applicant has not secured said certificate of occupancy, the applicant shall be precluded from any lawful use of the ~~third dwelling unit~~accessory apartment under the provisions of section 30-9(h)(2). Upon request by the applicant prior to expiration of the aforesaid one (1) year, the

**#164-09 Draft Language (As Voted by ZAP April 12, 2010)**

commissioner of inspectional services may grant a six (6) month extension if the commissioner deems it appropriate and justified due to extenuating circumstances.

The applicant shall record with the Registry of Deeds for the Southern District of Middlesex County a certified copy of the certificate of occupancy for the accessory apartment which states that before ownership of the property changes, the current owner must apply to the commissioner of inspectional services for a new occupancy permit. Before issuing such occupancy permit, the commissioner of inspectional services must assure that the provisions of the Newton Zoning Ordinance and the State Building Code are met.

The owner of the subject property shall file with the commissioner of inspectional services an affidavit attesting to the continued residence of the owner on the subject property. Such affidavit shall be filed annually from the date of the issuance of the certificate of occupancy.

- (3) If it shall be determined by a court of competent jurisdiction that any provision or requirement of section 30-9(h) is invalid as applied for any reason, then section 30-9(h) shall be declared null and void in its entirety. (Ord. No. T-114, 11-19-90; Ord. No. T-247, 10-5-92; Ord. No. T-306, 11-1-93; Ord. No. V-173, 5-18-98; Ord. No. V-246, 6-7-99; Ord. No. X-37, 12-2-02; Ord. No. Y-10, 4-17-07)