



Planning for Accessory Dwellings

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What is the Accessory Dwelling Unit Law?

Under the law, which went into effect on June 1, 2017, an “accessory dwelling unit” is defined as a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

The Accessory Dwelling Unit (ADU) law requires municipalities to allow *internal* or *attached* accessory dwelling units in all zoning districts where single-family dwellings are permitted. It establishes in state law that an *internal* or *attached* ADU is part of single-family use of a parcel, not a separate use.

The law also gives municipalities the option of permitting *detached* ADUs, which is an accessory dwelling as a stand-alone building on the same parcel as the principal dwelling or in a building such as a garage or a barn not attached to the primary single-family dwelling.

The ADU law also repeals the sections of [RSA 674:21](#) (Innovative Land Use Controls) that previously included and defined accessory dwellings. During the 2017 Town Meeting season, most municipalities amended their zoning ordinances to reference the new statute and to include other provisions included in the law as options for municipalities.

The ADU law is found at [RSA 674:71](#) through [RSA 674:73](#).

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What is the Purpose of the Accessory Dwelling Unit Law?

The reasons cited by the legislature for the ADU law are:

- A growing need for more diverse affordable housing opportunities for New Hampshire citizens;
- The desire of adult children to provide semi-independent living arrangements for aging parents;
- The need for independent living space for caregivers for elderly and disabled citizens;
- The need to increase the supply of affordable housing without the need for more infrastructure or further land development;
- Benefits for aging homeowners, single parents, college graduates with high student debt, caregivers and disabled persons;
- Integrating affordable housing into the community with minimal negative impact; and
- Providing elderly citizens with the opportunity to live in a supportive family environment with both independence and dignity.



Example of an attached Accessory Dwelling Unit

How Are Accessory Dwellings Regulated?

A municipal zoning ordinance that regulates ADUs must allow one attached or internal ADU for any single-family dwelling either as a matter of right, or by conditional use permit or special exception in all zoning districts that permit single-family dwellings.

- **As a Matter of Right** – When allowed as a matter of right, a property owner is not required to obtain special permission from the municipality other than the normal building permit or zoning compliance permit, if required of all new development.
- **Conditional Use Permit** – The state ADU law allows municipalities to utilize the conditional use permit process authorized in paragraph II of [RSA 674:21](#) whereby the planning board reviews an ADU application submitted by the property owner and grants a permit, based on criteria included in the zoning ordinance. Under the conditional use permit statute, a municipality could designate the zoning board, the board of selectmen or an administrator, such as the code enforcement officer or building inspector to review conditional use permits. However, the majority of municipalities seem to designate this task to the planning board. Some zoning

ordinances refer to the permit issued as a special use permit instead of a conditional use permit. A municipality that chooses to regulate ADUs in this manner determines the conditions under which the permit will be issued, and includes them in the zoning ordinance. The municipality should devise an application form, should determine what information should be submitted by the applicant, and follow the normal procedural requirements for completed applications as detailed in [RSA 676:4](#). Municipalities may also want to review the planning board’s Rules of Procedure, if that is where the information is included on how conditional use permits are administered. In addition, [RSA 674:21, II](#) allows the conditional use permit process “when supported by the Master Plan.” Therefore, municipalities should update their Master Plans to include a discussion on housing options, including accessory dwellings, with reference to the benefits of accessory dwellings as well as to the importance of appropriate design standards.

- **Special Exception** – Another option municipalities have under the ADU law is to regulate ADUs through the special exception process, which is a function of the Zoning Board of Adjustment. As with conditional (or special) use permits, the criteria for special exception approval by the ZBA for an ADU should be included in the zoning ordinance, as provided in [RSA 674:33, IV](#).

Municipalities have some discretion in determining the conditions under which it would issue a conditional use permit or a special exception for an ADU. The provisions to regulate the appearance of the ADU may include:

- Design standards that maintain continuity with the look of the primary dwelling unit;
- Location of parking for, and access to, the ADU so that it is not visible from the road;
- Owner occupancy of either the primary or accessory dwelling unit;
- Minimum and maximum square footage of the ADU (but the ordinance cannot require that the ADU be less than 750 square feet); and
- Limits on the number of unrelated persons, the number of persons per bedroom, and/or the number of bedrooms (but the ordinance cannot require that there be only one bedroom).



What if a Municipal Ordinance Differs from the New Law?

If there are provisions in a municipality’s ADU ordinance that are not in compliance with the requirements of [RSA 674:71 through RSA 674:73](#), they are ineffective and unenforceable as of June 1, 2017.

What if an Ordinance is Silent on Accessory Dwelling Units?

If a municipality's zoning ordinance contains no provisions related to ADUs, then the minimum provisions of the state law apply as of June 1, 2017:

- One *internal* or *attached* ADU per single-family dwelling will be deemed a permitted accessory use for all single-family dwellings; and
- ADUs will be permitted as a matter of right, with no permits or conditions required other than a building permit or zoning compliance permit, if necessary.

What About Detached Accessory Dwelling Units?

Municipalities may enact zoning regulations to permit *detached* ADUs, in addition to the *internal* or *attached* ADUs permitted by the ADU law. Such regulations may require a larger lot size for the combination of a principal dwelling and a *detached* ADU than for only a principal dwelling in the same zoning district. Otherwise, regulations for *detached* ADUs must comply with the same standards stated on the previous page.

What were the 2017 Legislative Updates to the ADU Law?

House Bill 258 – Septic Load Requirements

[House Bill 258](#), which becomes effective on September 16, 2017, requires the property owner to submit an application for approval of a newly designed sewage disposal system to the NH Department of Environmental Services prior to adding an ADU. The newly designed system does not have to be installed unless the property's existing sewage disposal system is in failure or never received state approval. Although the law doesn't expressly say so, it is understood that properties served by municipal sewer systems are exempt from this requirement. The new legislation amends [RSA 674:72, V](#), which requires all property owners who want to add an ADU to make adequate provisions for water supply and sewage system disposal for the ADU, in accordance with [RSA 485-A:38](#).

House Bill 265 – Condominium Conveyance, Townhouses, and Manufactured Housing

[House Bill 265](#) clarifies the ADU law to prohibit condominium conveyance of the accessory dwelling separate from the principal dwelling, unless the municipal zoning ordinance expressly allows separate conveyance. Note that if condominium conveyance is permitted and if the structure is served by a septic system, the conveyance must receive DES approval according to Individual Sewage Disposal System Design administrative rules ([Env-Wq 1005.08](#)). HB 265 also allows municipalities to prohibit accessory dwellings for multiple single-family dwellings, such as townhouses, and for manufactured housing (mobile homes).

What Standards May, Must, or Must Not Be in Municipal ADU Regulations?

ADU Standards that Must or May Be in Regulations	ADU Standards that Must Not Be in Regulations
Must apply same regulations for single-family dwellings to the combination of the principal dwelling and the ADU, including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with U.S. Department of Housing and Urban Development (HUD) policy.	Must not include additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling. However, increased lot size may be required for detached ADUs. Must not limit an ADU to only one bedroom.
Must have an interior door between the <u>attached</u> ADU and the primary dwelling.	Must not require internal doors to remain unlocked.
Must have adequate provisions for water supply and sewage disposal for the ADU, in accordance with RSA 485-A:38 (Approval to Increase Load on a Sewage Disposal System).	Must not require separate water and sewage systems for the principal dwelling and ADU.
May require the property owner to live in either the principal dwelling unit or ADU and demonstrate that one of the units is the owner’s primary dwelling unit.	Must not say which unit the owner must live in.
May limit the number of unrelated individuals who occupy the ADU or principal dwelling unit.	Must not require a familial relationship between the occupants of an ADU and the occupants of the principal dwelling unit.
May establish minimum and maximum sizes for ADUs.	Must not restrict the maximum size of the ADU to less than 750 square feet.
<p>Other Standards That <u>May Be</u> in Regulations:</p> <ul style="list-style-type: none"> ○ May limit the number of ADUs to only one per single-family dwelling. ○ May require adequate parking to accommodate the ADU. ○ May establish design or aesthetic continuity standards for ADUs so their appearance fits in with the principal dwelling unit and/or neighborhood. ○ May deem an ADU to be a unit of workforce housing for purposes of satisfying municipal obligations under RSA 674:59, if the unit meets the criteria in RSA 674:58, IV for rental units. 	