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ACCESSORY DWELLING UNITS IN NEW HAMPSHIRE

A Guide for Municipalities

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ACCESSORY DWELLING UNITS IN NEW HAMPSHIRE: A GUIDE FOR MUNICIPALITIES

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TABLE OF CONTENTS

New Hampshire Accessory Dwelling Units Law | page 4
RSA 674:71 - 73

INTRODUCTION | page 6

ADUs: Expanding Housing Opportunities in New Hampshire Communities

PART 1 | page 8

Understanding New Hampshire's Accessory Dwelling Units Law

- 1.0 New Hampshire Accessory Dwelling Units Law Explainer Table
- 1.1 What is an ADU?
- 1.2 How ADUs Benefit Homeowners
- 1.3 Financial Impact of ADUs on Communities
- 1.4 ADU Technical and Legal Considerations
 - 1.4.1 Model ordinances
 - 1.4.2 Zoning ordinances and compliance with the ADU law
 - 1.4.3 Blending ADUs into the character of a neighborhood
 - 1.4.4 State and municipal codes and standards
 - 1.4.5 Differences between a house with an ADU and a two-family house
 - 1.4.6 Who may live in an ADU

PART 2 | page 16

Implementing the ADU Law

- 2.0 Requirements for Municipalities
- 2.1 Options for Municipalities: Building Your Own Ordinance
- 2.2 Adding to Your Zoning Ordinance
- 2.3 Community Acceptance and Approval

PART 3 | page 23

ADU-Related Resources

- 3.0 Frequently Asked Questions about ADUs
- 3.1 Learn More about ADUs
- 3.2 Appendices - Examples of New Hampshire town and city ADU ordinances
 - 3.2.1 Town of Hebron Ordinance
 - 3.2.2 Town of Hollis Ordinance
 - 3.2.3 Town of Londonderry Ordinance
 - 3.2.4 City of Portsmouth Ordinance
 - 3.2.5 City of Portsmouth ADU Permit Application
 - 3.2.6 Town of Warner Ordinance



RSA 674:71 - 73

ACCESSORY DWELLING UNITS LAW

TITLE LXIV - PLANNING AND ZONING CHAPTER 674 - LOCAL LAND USE PLANNING AND REGULATORY POWERS

Accessory Dwelling Units *effective June 1, 2017*

Section 674:71 Definition

As used in this subdivision, “accessory dwelling unit” means 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.

Section 674:72 Accessory Dwelling Units

- I. A municipality that adopts a zoning ordinance pursuant to the authority granted in this chapter shall allow accessory dwelling units as a matter of right or by either conditional use permit pursuant to RSA 674:21 or by special exception, in all zoning districts that permit single-family dwellings. One accessory dwelling unit shall be allowed without additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling without an accessory dwelling unit. The municipality is not required to allow more than one accessory dwelling unit for any single-family dwelling. The municipality may prohibit accessory dwelling units associated with multiple single-family dwellings attached to each other such as townhouses, and with manufactured housing as defined in RSA 674:31. Subsequent condominium conveyance of any accessory dwelling unit separate from that of the principal dwelling unit shall be prohibited, notwithstanding the provisions of RSA 356-B:5, unless allowed by the municipality.
- II. If a zoning ordinance contains no provisions pertaining to accessory dwelling units, then one accessory dwelling unit shall be deemed a permitted accessory use, as a matter of right, to any single-family dwelling in the municipality, and no municipal permits or conditions shall be required other than a building permit, if necessary.
- III. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked.
- IV. Any municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with policy adopted by the United States Department of Housing and Urban Development. A municipality may require adequate parking to accommodate an accessory dwelling unit.

- V.** The applicant for a permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable.

The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced.

- VI.** A municipality may require owner occupancy of one of the dwelling units, but it shall not specify which unit the owner must occupy. A municipality may require that the owner demonstrate that one of the units is his or her principal place of residence, and the municipality may establish reasonable regulations to enforce such a requirement.
- VII.** A municipality may establish standards for accessory dwelling units for the purpose of maintaining the aesthetic continuity with the principal dwelling unit as a single-family dwelling. A municipality may also establish minimum and maximum sizes for an accessory dwelling unit, provided that size may not be restricted to less than 750 square feet.
- VIII.** A municipality may not require a familial relationship between the occupants of an accessory dwelling unit and the occupants of a principal dwelling unit.
- IX.** A municipality may not limit an accessory dwelling unit to only one bedroom.
- X.** An accessory dwelling unit may be deemed a unit of workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units.

Section 674:73 Detached Accessory Dwelling Units

A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72, IV through IX. If a municipality allows detached accessory dwelling units, it may require an increased lot size.

Statute text includes amendments adopted by the Legislature in 2017.

INTRODUCTION

Accessory Dwelling Units: Expanding Housing Opportunities in New Hampshire Communities

With a limited supply of affordable apartments and houses in New Hampshire to meet the needs of a growing economy and changing demographics, accessory dwelling units (ADUs) are an important component of expanding the availability of housing in the state.

The New Hampshire Accessory Dwelling Units statute (RSA 674:71 - 73) became law on June 1, 2017. As expressed by the Legislature, the intent of the law is to expand the supply of housing in New Hampshire communities without further land development, as well as to encourage efficient use of existing housing stock and infrastructure, and provide an affordable housing option in communities.

Accessory dwelling units are residential living units attached to or associated with a single-family dwelling, providing independent living facilities for one or more persons (e.g., an apartment over a garage, in a basement, in an outbuilding). Under the law, homeowners statewide now have the right to create an ADU for a family member, caregiver, or as a rental unit, in accordance with local ordinances.

As demographics, commuting patterns, and economics change, so do people's needs and desires for housing options. Recent studies demonstrate that millennials and baby boomers alike increasingly are looking for housing that reflects a more compact, urban setting. The New Hampshire Legislature recognized this trend, as indicated in the preamble to the ADU law:

- There is a growing need for more diverse affordable housing opportunities for the citizens of New Hampshire
- Demographic trends are producing more households where adult children wish to give care and support to parents in a semi-independent living arrangement
- Elderly and disabled citizens are in need of independent living space for caregivers

Also, there are societal benefits associated with the creation of accessory dwelling units. ADUs can:

- Increase the supply of affordable housing without the need for more infrastructure or further land development
- Benefit aging homeowners, single parents, recent college graduates (who can be saddled with heavy student loan debt), caregivers, and disabled persons
- Integrate affordable housing into the community with minimal negative impact
- Provide elderly citizens with the opportunity to live in a supportive family environment

ADUS AND YOUR MUNICIPALITY

The ADU law was initiated by the New Hampshire Home Builders Association. It heard from its members that they were having difficulty meeting client requests to construct ADUs in many communities because of local zoning restrictions. When the bill was introduced in 2015, a large coalition that included real estate professionals, AARP, disability rights advocates, young professionals, and housing advocates expressed a desire for greater flexibility in housing options – which ADUs offer.

All New Hampshire municipalities are now faced with a choice: either pro-actively address the law's requirements and utilize its flexibility, or let the law override any conflicting local zoning provisions. We encourage you to be proactive and do at least two things:

- Utilize this guide and other information about ADUs, such as that provided by the New Hampshire Office of Strategic Initiatives and the New Hampshire Municipal Association.
- Plan for the unique needs of your community. Know what you would like your regulations to achieve, in light of the ADU law's requirements and options.

Working with public officials and partner organizations, New Hampshire Housing provided technical assistance as the state's new ADU law was developed, and continues to provide support to communities as they implement this law.

While municipalities are not required to report ADU and workforce housing permits to the New Hampshire Office of Strategic Initiatives, NHOSI annually collects building permit and land use regulation information from the state's cities and towns.

Municipalities are strongly urged to submit information about permits to create ADUs to the NHOSI in order to more thoroughly document New Hampshire's housing market and long-term affordability.

This ADU guide for municipalities, along with a new ADU guide for homeowners that will be available in fall 2018, is part of the service and outreach provided by New Hampshire Housing to support the ongoing development of affordable housing in the state.

Dean J. Christon
Executive Director
New Hampshire Housing Finance Authority



A house in Hollis, NH, with an ADU constructed to the left of the front door.

PART I

Understanding New Hampshire's Accessory Dwelling Units Law

Individual and family needs, along with traditional notions of homeownership, are evolving. The millennial generation (now in their 20s and 30s) has surpassed the baby boomers (at or nearing retirement age) to become the largest generational group in America. This creates new housing challenges for our communities.

As the largest group of potential homeowners, millennials may face student debt burdens and more stringent credit requirements that hinder their ability to purchase a home. At the same time, boomers may have difficulty staying in their homes and communities – aging in place – due to rising ownership costs, fixed incomes, home maintenance, and age-related physical limitations.

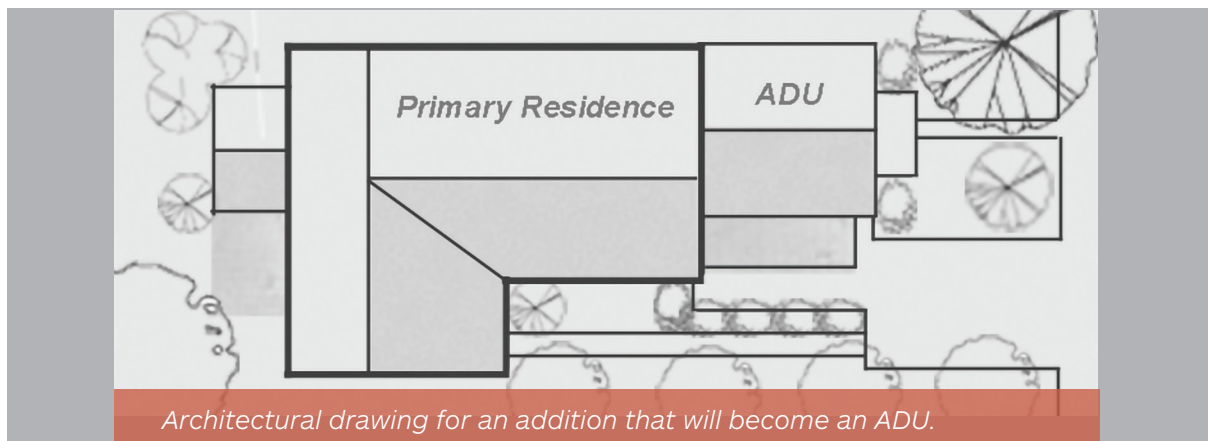
While there are many different ways to tackle this problem, one of the simplest involves local land use regulations. Many communities have revised their zoning ordinances to allow accessory dwelling units. Sometimes called “in-law” apartments, ADUs foster neighborhood diversity, increase the supply of workforce housing, and provide homeowners with additional income.

Certain groups in New Hampshire communities may especially benefit from the ADU law, such as empty nesters and retirees, young professionals, employers, and single parents.

EMPTY NESTERS AND RETIREES

Almost three-quarters of the homes in America are owned by people 45 years or older. In many cases, these people are discovering that their home has outgrown their needs, and they have a lot of unused space. Some homeowners will choose to downsize and move, while others prefer to stay connected to the communities where they've lived for many years. The familiarity of the physical setting and the social networks they've developed are the things that make them want to “age in place.”

ADUs can allow homeowners to convert unneeded personal space for a unit in which a caregiver can live and help with personal care and household work. These arrangements might enable older homeowners to stay in their homes longer and maintain an independent lifestyle for many years.



Or, by remodeling and creating an ADU, they can convert unused living space into a rent-producing unit, provide independent living space for themselves, or for a relative.

YOUNG PROFESSIONALS

For recent college graduates, finding an affordable place to live once they've found a job can be daunting. Many young workers move back to their parents' homes or may settle for a less desirable job due to location and housing affordability concerns.

An even greater challenge for young adults is the ability to become a homeowner. The median age of first-time homebuyers nationally is 32 years, the highest it's ever been. Part of millennials' delay in purchasing a home is based on a choice to form families later in life; part of it is economic circumstances that make saving for a downpayment difficult.

Renting an ADU could be a housing option for some young adults. While ADU rents may be similar to those of units in apartment complexes, tenants may be able to negotiate terms, such as agreeing to do property maintenance (like shoveling snow or mowing the lawn) in exchange for a lower rent. ADUs are often located in safe, established neighborhoods, close to stores and amenities such as public transportation. ADU renters can live and work in the same town, enabling them to become part of the community and to develop their own social networks faster. ADUs can also be a satisfactory arrangement where the homeowner and a relative wish to have both proximity and privacy.

EMPLOYERS

ADUs not only benefit owners and renters but also local employers. Finding employees and housing for them has become a serious challenge in New Hampshire's housing market. This is especially true in established communities that have a shortage of affordable rental units. If employees cannot find affordable places to live, companies may be compelled to relocate, hindering economic development in the area.

A healthy rental market, complete with a ready supply of ADUs, can provide the opportunity for young workers to move into a community where businesses are established or growing, and help satisfy the need for affordable housing for employees.

SINGLE PARENTS

Out of all families with children in New Hampshire, almost 21% are headed by single women. The average income of single mothers is about one-third of those of married couple families, and about two-thirds of single fathers. This income gap indicates single mothers are at a significant disadvantage in their ability to afford homeownership or even a decent apartment.

ADUs may provide an opportunity for single mothers to find affordable housing for their families in good communities. Additionally, if they purchase a home with an ADU, the rental income could help them qualify for a mortgage.

1.0 | New Hampshire Accessory Dwelling Units Law Explainer Table

Section of Law	Explanation
<p>674:71 Definition</p> <p>As used in this subdivision, “accessory dwelling unit” means 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.</p>	<ul style="list-style-type: none"> • The four defining elements – provisions for sleeping, eating, cooking, and sanitation – must be allowed by the municipality for the unit to constitute an ADU. • This may all be done in a relatively small space, such as a studio apartment or “tiny home,” or it may be in a larger unit with multiple rooms.
<p>674:72 Accessory Dwelling Units</p> <p>I. A municipality that adopts a zoning ordinance pursuant to the authority granted in this chapter shall allow accessory dwelling units as a matter of right or by either conditional use permit pursuant to RSA 674:21 or by special exception, in all zoning districts that permit single-family dwellings. One accessory dwelling unit shall be allowed without additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling without an accessory dwelling unit. The municipality is not required to allow more than one accessory dwelling unit for any single-family dwelling. The municipality may prohibit accessory dwelling units associated with multiple single-family dwellings attached to each other such as townhouses, and with manufactured housing as defined in RSA 674:31. Subsequent condominium conveyance of any accessory dwelling unit separate from that of the principal dwelling unit shall be prohibited, notwithstanding the provisions of RSA 356-B:5, unless allowed by the municipality.</p>	<ul style="list-style-type: none"> • The municipality needs to choose how it will allow ADUs: by right (generally requiring only a building permit), by special exception (board of adjustment), or by conditional use permit (often the planning board, but other officials can be involved; see RSA 674:21, II). • The municipality must allow at least one attached ADU wherever single-family residences are also allowed by zoning. • Regardless of how ADUs are allowed, the municipality cannot impose greater dimensional standards on homes with ADUs than it does for homes without ADUs. • Municipalities may restrict ADUs from being built with manufactured housing or town-house-style units. • ADUs may not be sold as condominiums unless the municipality explicitly allows it; such sales may be allowed either through zoning or subdivision regulations.
<p>II. If a zoning ordinance contains no provisions pertaining to accessory dwelling units, then one accessory dwelling unit shall be deemed a permitted accessory use, as a matter of right, to any single-family dwelling in the municipality, and no municipal permits or conditions shall be required other than a building permit, if necessary.</p>	<ul style="list-style-type: none"> • If a municipality’s zoning ordinance is silent on the topic of ADUs, the municipality must allow at least one attached ADU in any single-family home.
<p>III. An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit, but a municipality shall not require that it remain unlocked.</p>	<ul style="list-style-type: none"> • The requirement for an interior door only applies to attached ADUs. • This requirement may suggest that there must be a common wall between the units, but local interpretation could allow ADUs above attached garages where there might be more than one intervening door between the ADU and the main house.



1.0 | New Hampshire Accessory Dwelling Units Law Explainer Table

Section of Law	Explanation
<p>IV. Any municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with policy adopted by the United States Department of Housing and Urban Development. A municipality may require adequate parking to accommodate an accessory dwelling unit.</p>	<ul style="list-style-type: none"> • There can be no additional dimensional requirements for an ADU. • Reference to HUD occupancy standards means that a municipality can limit per-bedroom occupancy in ADUs only if it is also doing so in single-family homes. Check with legal counsel about limitations before trying this. • A municipality can require off-street parking or some other demonstration of parking adequacy for an ADU.
<p>V. The applicant for a permit to construct an accessory dwelling unit shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit in accordance with RSA 485-A:38, but separate systems shall not be required for the principal and accessory dwelling units. In order to comply with this paragraph and prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced.</p>	<ul style="list-style-type: none"> • The property owner must demonstrate the adequacy of water supply and sanitary disposal. • The municipality cannot require water or sanitary disposal systems for the ADU that are separate from those of the principal dwelling. • The owner may be required to have a new septic system designed and approved if the existing system does not meet NH Department of Environmental Services standards for the house including the addition of the ADU. This may be true even if the overall number of bedrooms using the system is unchanged by the ADU's construction. • A new septic system does not need to be built unless the existing system is unlicensed or has failed.
<p>VI. A municipality may require owner occupancy of one of the dwelling units, but it shall not specify which unit the owner must occupy. A municipality may require that the owner demonstrate that one of the units is his or her principal place of residence, and the municipality may establish reasonable regulations to enforce such a requirement.</p>	<ul style="list-style-type: none"> • The municipality may require owner occupancy of one of the units; if it does this, the municipality should consider what it means by "owner": does the owner need to be a physical person, or can it be (1) a member of an LLC that owns the property; (2) a beneficiary of a revocable trust that owns the property; or (3) a person with an interest in another legal entity (e.g., partnership or corporation) that owns the property. • Residency of the owner may also be required, and could be demonstrated through voter registration, automobile registration, or similar indicators of domicile.
<p>VII. A municipality may establish standards for accessory dwelling units for the purpose of maintaining the aesthetic continuity with the principal dwelling unit as a single-family dwelling. A municipality may also establish minimum and maximum sizes for an accessory dwelling unit, provided that size may not be restricted to less than 750 square feet.</p>	<ul style="list-style-type: none"> • Standards to perpetuate the "look and feel" of a single-family home may be required by the municipality, and this may best be done through a permit by special exception or conditional use permit. • ADU minimum and maximum size may be specified, but the municipality cannot require ADUs to be smaller than 750 s.f. The owner, however, may build a unit smaller than that, subject to local ADU unit size minimum, if any.



1.0 | New Hampshire Accessory Dwelling Units Law Explainer Table

Section of Law	Explanation
VIII. A municipality may not require a familial relationship between the occupants of an accessory dwelling unit and the occupants of a principal dwelling unit.	<ul style="list-style-type: none"> Despite the colloquial name “in-law apartment,” a municipality may not limit ADU occupancy to family members of the owners of the main dwelling.
IX. A municipality may not limit an accessory dwelling unit to only one bedroom.	<ul style="list-style-type: none"> A municipality may limit an ADU to two bedrooms, but not to one.
X. An accessory dwelling unit may be deemed a unit of workforce housing for purposes of satisfying the municipality’s obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units.	<ul style="list-style-type: none"> This section only means that if an ADU meets the rental price standards of the Workforce Housing Law, then the municipality may count the unit as part of its “fair share” calculation. The reference to workforce housing does not confer upon a municipality the authority to impose affordability restrictions on the ADU.
<p>674:73 Detached Accessory Dwelling Units</p> <p>A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72, IV through IX. If a municipality allows detached accessory dwelling units, it may require an increased lot size.</p>	<ul style="list-style-type: none"> A municipality may choose to allow detached ADUs wherever attached ADUs are allowed, in a more limited geographical area, or not at all. Only regarding detached ADUs may a municipality require an increased lot size, but it is not necessary to do so. Perhaps more important for a municipality to consider is a proximity requirement, so that the detached ADU is somehow physically associated with the main home, instead of being in a remote location on the lot.
<i>Statute text includes amendments adopted by the Legislature in 2017.</i>	<i>Explanation column written by Benjamin D. Frost, Esq., AICP New Hampshire Housing Finance Authority</i>



An ADU is seen attached to the left side of this home in Hollis, NH.

1.1 | What is an ADU?

An ADU is an additional dwelling unit that is secondary to the primary unit. It is not an equal or duplicate unit, which would result in the creation of a duplex. An ADU may be an interior part of an existing building, an attached extension of an existing building, a conversion of an out-building (such as a garage, barn, or shed), built as part of a new single-family home, or as a new detached building.

RSA 674:71 defines an ADU 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. *Refer to pages 4 - 5 for the full RSA 674:71 - 73 text.*

The state statute only requires municipalities to allow attached ADUs; it is up to local officials as to whether to allow detached ADUs.

1.2 | How ADUs Benefit Homeowners

First-time – and post-retirement – homeownership can be challenging. An ADU can help offset the financial pressures associated with homeownership for a young family just starting out, and for homeowners in their retirement years.



For example, consider a young couple who has saved for a downpayment on their first home, but the mortgage will strain their finances. In phase 1, they purchase the home and finance the creation of an ADU. By renting it to a local teacher, the income makes their mortgage payments affordable.



Several years later, this family has grown and needs the additional space of the ADU. Their salaries have increased and the mortgage is manageable without the ADU rental income. They enter phase 2 and convert the ADU into family living space.



Fast-forward 20 years. The kids have grown and the homeowners have retired, and they no longer need a spacious house. Entering phase 3, they convert the addition back into an ADU and move into it. By renting the main house out, they supplement their retirement income.

1.3 | Financial Impact of ADUs on Communities

- ADUs can aid economic development by helping to attract and retain a workforce.
- ADUs can help reduce demand on healthcare facilities by providing living space for caregivers to look after elderly homeowners who otherwise would have to leave their homes.
- ADUs can increase property values, and thus add to the tax base.
- By allowing ADUs by Conditional Use Permit or by Special Exception, a municipality will need to plan for staff time to review and act on applications.
- If a municipality requires owner-occupancy, it will need to provide a definition, methods and standards in order to certify and enforce this requirement.

1.4 | ADU Technical and Legal Considerations

1.4.1 | Model Ordinances

Both the New Hampshire Municipal Association and the Rockingham Planning Commission have created simple model zoning provisions for ADUs, but neither includes full consideration of the options available for municipal adoption, such as “aesthetic continuity” (design standards that will maintain the look and feel of a single-family home).

Refer to Part 3.2 - Examples of ordinances from New Hampshire municipalities.

1.4.2 | Zoning ordinances and compliance with the ADU law

Your planning board should conduct a review of your ordinance and determine how it does – and does not – comply with the standards of the law. Based on that assessment, it should propose amendments to the ordinance. If your zoning ordinance does not comply with the ADU statute, the ADU law supersedes it. If your zoning ordinance is silent on the subject of ADUs, an attached ADU must be allowed in any single-family home.

The municipality can enact different ADU standards in different zoning districts and neighborhoods as it deems appropriate. For example, ADUs might be allowed by right in rural areas where neighborhood impact is unlikely, but by special exception in more densely built areas and in historic districts, where the neighborhood impact of an ADU might be of greater concern.

Refer to Part 2.2 - Crafting ADU Provisions for Your Zoning Ordinance.

If you address ADUs in your zoning ordinance, you have a variety of choices. First, communities may allow ADUs through different zoning mechanisms. They may be allowed:

- “By right” as a permitted use without additional requirements,
- By conditional use permit (usually the planning board), or
- By special exception (zoning board of adjustment).

In addition, the ADU law gives municipalities discretion to decide:

- Whether to limit the number of ADUs per lot
- What parking standards should apply to ADUs, if any
- Whether to allow detached ADUs, and if allowed, whether to require additional lot size for them
- Whether to require owner occupancy of properties containing ADUs, and to determine methods and standards for verification and enforcement
- The minimum and maximum ADU sizes, except there cannot be a requirement that an ADU be less than 750 square feet
- Whether to impose design standards on ADUs to maintain the appearance of a single-family house
- Whether to limit the number of bedrooms in an ADU to no more than two

1.4.3 | Blending ADUs into the character of a neighborhood

You may set neighborhood compatibility standards for ADUs, and set them differently for different zoning districts. Examples include:

- Being subsidiary to the principal dwelling unit in size and function
- Being consistent with the principal dwelling in appearance, design, colors, and materials
- Not having its entry face the street as a second front door
- Requiring a single driveway for use by both units
- Requiring that any second-floor egress from an ADU should not be visible from the public way

1.4.4 | State and municipal codes and standards

As with any other new construction or residential occupancy, ADUs must comply with health, building, mechanical, safety, environmental, accessibility, emergency response, and similar codes and requirements for single-family residential housing.

1.4.5 | Differences between a house with an ADU and a two-family house

Some zoning districts allow two-family homes. This is not the same as a single-family home with an ADU. A two-family home might not have a connecting interior door between the units, whereas an ADU must have one. Also, a two-family home commonly will have units of roughly equal size, whereas an ADU must be smaller than (accessory, meaning secondary or subservient to) the principal dwelling.

1.4.6 | Who may live in an ADU

How many people may live in an ADU?

The ADU law does not specify limits on the number of occupants in an ADU and does not prevent municipalities from doing so. However, the municipal occupancy standards must comply with federal law. *Refer to Part 3.1 - HUD Bedroom Occupancy Standards.*

Occupancy guidelines established by the U.S. Department of Housing and Urban Development suggest that while a municipality may generally limit occupancy to two people per bedroom, whether such a limitation is appropriate will depend on the circumstances (such as family composition or the size of a room).

Must the owner reside on the property?

Not necessarily, but the municipality may require owner occupancy of one of the units. It may require that the owner occupy a unit as his/her principal dwelling – generally meaning that the owner will live in the unit for a majority of the year.

Must the homeowner reside in the principal dwelling unit?

No. Although the ADU law allows municipalities to require owner occupancy, the municipality cannot specify in which unit the owner must live.

Must the occupants of the principal unit and the ADU be related to one another?

No. The ADU law prohibits municipalities from requiring a familial relationship between the occupants of the units.

PART 2

Implementing the ADU Law

The ADU law (*refer to pages 4 - 5 for the full text of RSA 674:71 - 73*) requires that every municipality that adopts a zoning ordinance pursuant to the authority granted in RSA Chapter 674 shall also allow accessory dwelling units (ADUs) as a matter of right or by either conditional use permit pursuant to RSA 674:21 or by special exception, in all zoning districts that permit single-family dwellings. The ADU legislation adds three new sections to state statute:

- 674:71 Definition of Accessory Dwelling Units
- 674:72 Accessory Dwelling Units
- 674:73 Detached Accessory Dwelling Units

It is important to recognize that the word “accessory” has a specific legal meaning in the context of zoning ordinances. Through a variety of cases, the New Hampshire Supreme Court has stated that accessory uses are those that are customarily associated with and are secondary to the primary use of the property, such as a garage on the same lot as a house.

Here, the legislature has eliminated the need to inquire whether ADUs are customarily associated with a single-family home, but has left it generally open for municipalities to decide how to determine whether an ADU is secondary to the single-family home. In most cases, this would be done by comparing the relative sizes of the housing units. For example, if a house has 2,000 sq. ft. of living space, an associated ADU of 1,000 sq. ft. probably could be considered “accessory.”

ADUs Exist in a Wide Variety of Forms and Types:

- Within the existing footprint of a house
- As an addition to a house
- In a detached structure, such as a garage, barn, or carriage house
- As a group of small structures containing ADUs

2.0 | Requirements for Municipalities

The basic requirement of the ADU law is simple: through its zoning ordinance, your municipality must allow at least one ADU for any single-family home in a district in which single-family homes are a permitted use.

If your zoning ordinance doesn't address ADUs, the law still applies – and your community must allow an ADU in any single-family home, regardless of zoning restrictions.

If your zoning ordinance has provisions that are not compatible with the ADU law, then they will be unenforceable.

These are some examples of zoning provisions that are nonconforming and unenforceable:

- Not permitting ADUs in all zoning districts in which single-family dwellings are allowed
- Allowing an attached ADU only with additional requirements or standards for lot size, frontage, height and setback or other dimensional controls, space limitations, lot coverage, maximum occupancy per bedroom, or other controls beyond what would be required for a single-family dwelling without an ADU
- Counting an ADU as a separate dwelling for purposes of computing land use density
- Prohibiting an interior door between the principal dwelling unit and the ADU
- Requiring that an interior door remains unlocked
- Requiring separate water and septic systems for the principal and accessory dwelling units
- Specifying which unit the owner must occupy, if owner occupancy is required
- Requiring a familial relationship between the occupants of an ADU and the occupants of a principal dwelling unit
- Requiring an ADU to be smaller than 750 sq. ft.
- Limiting an ADU to only one bedroom
- Requiring an ADU to meet workforce housing standards, such as rent restrictions, long-term affordability requirements, and income targeting of tenants



This property in Hollis has an ADU separate from the main house.

2.1 | Options for Municipalities: Building Your Own Ordinance

The ADU law gives municipalities considerable discretion to adopt zoning standards. The sample language in this section can be adapted to fit your own ordinance.

Defining an ADU. In addition to providing a definition of ADUs, the law also requires an interior door connecting the two dwelling units. How the ADU is deemed to be “attached” to the principal dwelling unit is a matter of local discretion. Some communities might require a common wall between the units, while others might require connection through heated space.

Example:

“An Accessory Dwelling Unit shall contain fully self-sufficient living quarters, consisting of adequate sleeping, bathing, cooking, and eating accommodations, and shall be connected to the principal dwelling through an interior door.”

Standards may vary by zoning districts. While an attached ADU must be allowed in any zoning district that permits single-family homes, there is flexibility in how this might be achieved. For example, your community could allow attached and detached ADUs by right in outlying, rural districts, but only allow attached ADUs by right in village districts; in “thickly settled” areas you could require a special exception with architectural standards as a condition of approval.

Some other factors that could be varied by zoning district include:

- Form of approval: by right, conditional use permit, or special exception
- How many ADUs per house lot
- If an ADU is required to be owner-occupied

Septic System Requirements. Property owners who want to create an ADU must demonstrate the adequacy of their septic system. Even if the number of bedrooms remains the same (for example, changing a four-bedroom home to a three-bedroom home with a one-bedroom ADU), standards of the N.H. Department of Environmental Services (NHDES) assume that there will be increased discharge into the septic system from the creation of the ADU. A 2017 amendment to the ADU law states that a new septic design may be required in such situations, but construction of a new system cannot be required unless the existing system has failed or was never approved by DES.

Example:

“Adequate water supply and sewage disposal for an Accessory Dwelling Unit shall be provided in accordance with RSA 485-A:38. If the existing septic system does not have a NHDES permit or is in a state of failure, replacement will be required; otherwise, a new approved design may be required if the establishment of the Accessory Dwelling Unit would increase system load beyond its design capacity.”

2.2 | Adding to Your Zoning Ordinance

ADU Appearance Standards - Architecture. The ADU law says that municipalities can adopt standards that required “aesthetic continuity” between the primary dwelling unit and the ADU. This can apply both to attached and detached ADUs. Size, scale, and external appearance are significant factors that affect how an ADU will fit into a neighborhood.

Your ordinance can require ADUs to be consistent with the principal building in appearance, design, colors, materials, fenestration, door location or number of apparent front doors, massing, height, decoration, and other visible single-family house characteristics.

Examples:

“The ADU shall be secondary in size and function to the principal dwelling and be consistent with the principal dwelling in appearance, design, colors, and materials.”

“Exterior entry to the accessory dwelling shall not face the street as a second door or shall be set back from the front of the building.”

Parking and Driveways. Your ordinance may require adequate parking for an accessory dwelling unit. The number and location of parking spaces, driveways, and curb cuts on residential lots can generate neighborhood concern, and your ordinance should respect these concerns.

Example:

“There shall be one parking space in the rear or side yard for the accessory dwelling and no additional curb cut.”

Owner Occupancy. Although the ADU law prohibits municipalities from requiring the owner to occupy a specific unit, owner occupancy of one of the units can be required. Owner occupancy can help ensure property maintenance and orderly conduct of tenants.

In addition to requiring owner occupancy, a municipality can also require the owner to demonstrate that the unit is the owner’s principal place of residence, or domicile. This can be shown by the owner by automobile registration, voter registration, or other similar legal and permitting processes.

You may wish to make provisions that allow short-term lapses in owner-occupancy, for instances of family difficulties, sabbatical leaves, temporary out-of-town employment, and extended absences.

You may require as a condition of obtaining a zoning or building permit that the owner sign a statement declaring understanding and acceptance of the owner-occupancy requirement. Also, you could require a periodic verification by the owner of continuing owner occupancy.

Examples:

“The owner of a property containing an Accessory Dwelling Unit shall reside in either the principal or the accessory dwelling, as of the date of the permit approval.”

“As part of an application for an owner to obtain a [building or occupancy] permit to build an Accessory Dwelling Unit, the owner shall certify that the property is to remain owner occupied at all times, and agrees to provide written certification of continuing owner occupancy prior to the end of each calendar year.”

Condominium conversions. The Legislature amended the law in 2017 to expressly prohibit condominium conversion of ADUs, unless the municipality chooses to allow it. This would need to be permitted through the zoning ordinance or subdivision regulations.

Townhouses and manufactured housing. The ADU law was amended in 2017 to allow municipalities to prohibit ADUs with townhouses and manufactured housing.

Workforce housing. The ADU law's reference to the Workforce Housing Law is relevant only when a municipality is evaluating its existing housing stock to determine whether it has met its obligation to provide its fair share of the region's need for housing that is affordable to low- and moderate-income families.

A municipality may deem an ADU as workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59 if the unit meets the standards in RSA 674:58, IV for rental units. This does not mean that municipalities can impose rent restrictions or income limits on ADUs or their occupants – this is not a power granted by the ADU law. Other laws may enable such controls, such as an inclusionary zoning ordinance adopted pursuant to RSA 674:21.

Minimum and maximum ADU sizes. A municipality could specify that ADU sizes be some proportion of the size of the principal unit as long as it does not result in a restriction to less than 750 sq. ft.

Minimum and maximum sizes for an accessory dwelling unit may be established, provided that ADUs shall not be required to be smaller than 750 sq. ft. (they may be allowed to be smaller than that, at the owner's discretion).

Example:

“An ADU shall have an area of no less than 200 sq. ft. and no more than 1,000 sq. ft.”

Number of bedrooms. Your ordinance must allow ADUs to have more than one bedroom, but owners may want to provide some “studio” or one-bedroom ADUs.

Building code occupancy standards specify minimum square footage for bedrooms, so building size and ADU size in practice can govern or limit the number of bedrooms in an ADU.

Detached ADUs. It is up to the municipality to decide whether to allow detached ADUs. Detached ADUs must comply with the requirements of any municipal ordinances or regulations adopted pursuant to RSA 674:72, IV - IX.

If a municipality allows detached ADUs, it may require an increased lot size. You may wish to allow detached ADUs in some or all of your zoning districts based on the character of various districts. For instance, in rural districts that have existing accessory buildings (barns, milk houses, etc.), or in older in-town neighborhoods with existing accessory buildings (carriage houses or detached garages), ADUs can restore or enhance their economic viability.

Depending on the size of the lot, you can allow more than one detached ADU and specify where it may be located.



2.3 | Community Acceptance and Approval

One way or another, the ADU law requires towns and cities to permit ADUs more extensively than most municipalities previously allowed. When it enacted the ADU law, the legislature cited a variety of social, demographic, economic, and environmental benefits to communities provided by ADUs.

For the benefits to be fully realized, an open public process that engages citizens; respects their interests, fears, and concerns; and achieves consensus is recommended.

The planning board should undertake a public process to achieve an operable public consensus on how to accommodate ADUs in ways that are appropriate and compatible with the community. An open, inclusive, and well-publicized public process would cover these areas:

- What are ADUs?
- What benefits do ADUs provide to the community?
- What types of ADUs are possible?
- What does the law require?
- What are the differences between any current Accessory Dwelling or Accessory Apartment regulations that your ordinance contains?
- What are some problems that might be associated with ADUs and how can they be avoided or mitigated?
- Which of the choices enabled by the law would be appropriate to the entire community and to its various neighborhoods and districts?

A community information and decision process should use public meetings, possibly augmented through your municipal website, publicity through newspapers and other media, and discussions with various civic organizations. It will certainly be a major topic of informal discussion with your community. A deliberation and action scenario could comprise:

- At least one initial public forum to begin the above discussion, and
- A follow-up public session to review, and if need be revise, the conclusions from the initial session or sessions.
- The planning board may draft a set of recommendations about which options should be pursued by the municipality.

Final steps to adopting an ADU ordinance include:

- Planning board public discussion and action on recommendations
- Planning board drafts a zoning amendment
- Planning board holds a public hearing on the final amendment and the recommendation of it to Town Meeting, Town Council, City Council, or other governing body
- Town Meeting or Council action on adoption of zoning amendment



An ADU was added to the back of this home in Warner, NH.

PART 3

ADU-Related Resources

3.0 | Frequently Asked Questions about ADUs

1. Isn't a house with an ADU just a duplex?

No, a duplex is two units of comparable size in a single structure – think of a structure that has mirror-image housing units. The word “accessory” in ADU has real meaning – the unit is intended to be secondary to the main use of the building as a single family home, in the same way that a garage would be of secondary importance.

2. What's the meaning of the workforce housing provision in the ADU Law?

There's a section in the ADU law that says that ADUs may be considered units of workforce housing if they meet the requirements of the Workforce Housing Law. This may sound like circular logic – it is. The only implication of this part of the ADU law is that a municipality can include an ADU with a rental price that meets the standards of the Workforce Housing Law, if the municipality is attempting to determine whether its existing housing stock provides its fair share of the region's need for such housing. This provision of the ADU law does not enable municipalities to impose rent limits on ADUs or to require occupancy of such units by people of low or moderate incomes.

3. Do impact fees apply to a new ADU?

It depends on how the impact fee ordinance is written. As an innovative land use control (see RSA 674:21), if adopted impact fee ordinances are a part of a municipality's overall zoning ordinance. The ADU law says that municipalities can't impose greater zoning requirements on a home simply because it has an ADU associated with it. So if the impact fee ordinance imposes a fee based on the number of residential units, then the ordinance would not apply to an ADU. But if the impact fee ordinance is based on the number of bedrooms in a structure or some other measure associated with the size of the structure, and creating an ADU increases that impact, then it is possible that the impact fee ordinance would apply.

4. Why is there a requirement for an interior door between units?

The requirement for an interior door ensures that, in the future, the ADU can easily be re-integrated into the principal dwelling. You should assume that the intention is to have an interior door that is functional – that is, not one that has had its handle removed and been sheet-rocked into a wall.

5. What does “attached” mean in reference to ADUs?

While the ADU law requires municipalities to allow attached ADUs in any zoning district that allows single-family homes, the law doesn't define “attached.” It's up to the individual municipality to determine what it thinks it means. The requirement for an interior door between the primary dwelling unit and the ADU suggests that there must be a common wall between them. Could a long, enclosed breezeway meet that standard? Possibly. It might be appropriate to include a limitation on the length of the breezeway to avoid abuse (e.g., a 300-foot-long breezeway leading to a lakeside structure that suddenly becomes an ADU). Should any structural space between the units be heated space?

Possibly, but that could serve to eliminate some appropriate uses, such as converting space over an attached garage into an ADU – the intervening garage would likely be unheated space.

6. What is the impact of the NHDES septic standards?

As of October 1, 2016, the N.H. Department of Environmental Services (NHDES) promulgated new administrative rules for Individual Sewage Disposal Systems (Env-Wq 1000). These rules call for increased minimum system design standards where ADUs are being created. This means, for example, that for a 4-bedroom house to be converted into a 3-bedroom house with a 1-bedroom ADU, the minimum design standard will be greater – even though the number of bedrooms has not increased. But the legislature’s enactment in 2017 of HB 258 prohibits any requirement for construction of a new system in such circumstances – unless the existing system is unlicensed or has already failed. A property owner wishing to create an ADU must demonstrate the adequacy of the current system design to handle the increased flow of septage (based on the NHDES standards), or must submit a new design for approval by NHDES.

7. Can homeowners’ associations or condominium documents prohibit ADUs?

Yes. These are private contractual arrangements between and among homeowners. While the municipality cannot prohibit ADUs, a developer can create a new housing development that has covenants banning ADUs. Such restrictions are only privately enforceable, and not by the municipality.

8. ADU owner occupancy: What if the owner is a trust, LLC, or corporation?

If a municipality requires that either the principal dwelling unit or ADU must be occupied by the owner, a strict reading of the law suggests that the owner must be a natural person. Trusts, LLCs, and corporations are purely legal entities and have no physical presence on Earth. Therefore, they cannot occupy space. A more relaxed reading of the law suggests that whoever controls such an entity could be deemed the owner. This is a matter for local interpretation – at least until a court decides on it!

9. What are the HUD occupancy standards?

RSA 674:72, IV requires any local standards that limit the number of occupants per bedroom to be “consistent with policy adopted by the United States Department of Housing and Urban Development.” This refers to a Fair Housing Enforcement Statement of Policy from HUD published in the Federal Register on December 22, 1998 (FR Vol. 63, No. 245, page 70982). That statement outlines the factors that HUD will consider when evaluating the legality of occupancy policies. Many people consider a maximum of two people per bedroom to be the rule of thumb. However, HUD indicates that there are different factors to consider, such as: the size and configuration of the housing unit; the size and configuration of the bedroom; the age of the occupants (i.e., it’s not unusual for new parents to keep an infant in their bedroom). Before considering any such limitations on occupancy, consult with your legal counsel. *Refer to Section 3.1*

10. What about the use of ADUs as short-term rentals?

The ADU law does not refer to or limit in any way their use as short-term rentals (consider the widespread use of Airbnb, VRBO, and similar services). Some New Hampshire municipalities (e.g., Portsmouth) are moving ahead with regulations limiting short-term rentals, but this doesn’t mean that an owner can’t create an ADU. They are separate issues. There are various initiatives in the legislature to study or regulate short-term rentals, but the state of these efforts are in flux.

11. What if we do nothing?

If your municipality chooses to do nothing in the face of the ADU law and your zoning ordinance is silent on the subject, then ADUs will be allowed by right in any single-family home in your community. The better approach is to develop reasonable regulations that are enabled by this law.

3.1 | Learn More About ADUs

NEW HAMPSHIRE HOUSING FINANCE AUTHORITY

The NHHFA website has links to the resources and information listed below, and a PDF of this guide.

- NHHFA.org/accessory-dwelling-units

NEW HAMPSHIRE MUNICIPAL ASSOCIATION ADU GUIDANCE

NHMA produced a useful and brief document, *The New Law on Accessory Dwelling Units* (September 2016) to guide municipal implementation of the law's requirements. (Note that it does not incorporate the statute's 2017 amendments.)

- www.nhmunicipal.org/Resources/ViewDocument/74

Also included here is the supporting material for the 2016 NHMA Municipal Law Lecture Series presentation on the ADU law by Benjamin Frost of NHHFA.

- NHHFA.org/accessory-dwelling-units/NHMA ADU Law Lecture 2016.pdf

NEW HAMPSHIRE OFFICE OF STRATEGIC INITIATIVES ADU TECHNICAL BULLETIN

The NHOSI (formerly the Office of Energy and Planning) technical bulletin on ADUs provides a helpful explanation of the law and various issues that municipalities should consider when developing their regulatory response to the ADU law. (The version included here does not incorporate the statute's 2017 amendments.) Additionally, OSI annually collects building permit and land use regulation information from the state's cities and towns. *Municipalities are strongly urged to include data on ADU permits to the NHOSI.*

- www.nh.gov/osi/planning/resources/accessory-dwellings.htm

HUD BEDROOM OCCUPANCY STANDARDS

The ADU law requires that municipalities can only impose bedroom occupancy standards on ADUs if they are also doing the same for single-family homes, and in either circumstance they must comply with U.S. Department of Housing and Urban Development (HUD) policy. This policy is not perfectly clear-cut, but rather provides guidance for any municipality or landlord that is seeking to limit the number of people occupying a dwelling unit.

While the HUD policy states that a limit of two people per bedroom as a general rule is reasonable, there are other factors that must also be considered such as household composition, size of rooms, and other special circumstances.

*Federal Register / Vol. 63, No. 245 / Tuesday, December 22, 1998 / Notices
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [Docket No. FR-4405-N-01]
Fair Housing Enforcement—Occupancy Standards; Notice of Statement of Policy (Keating Memo, 3/20/91)*

- www.hud.gov/sites/documents/DOC_7780.PDF

WEBSITE SPECIALIZING IN ALL THINGS ADU

This website was created by three ADU advocates from Portland, Oregon. It contains many useful examples of ADUs, including costs of construction and permitting issues in different jurisdictions.

- www.AccessoryDwellings.org



3.2 | Appendices 3.2.1 - 3.2.6

EXAMPLES OF NEW HAMPSHIRE TOWN & CITY ADU ORDINANCES

- **TOWN OF HEBRON** (2016 population: 621). Hebron's zoning ordinance allows ADUs by special exception and exercises much of the discretion allowed by the state law, including a requirement for off-street parking, owner occupancy of one of the units, architectural consistency, and limitation to no more than two bedrooms. The septic design provision in the ordinance is consistent with the amendment to the 2017 amendment to the state statute on ADUs, as it does not require installation of a new system unless DES requires it. The statement that all ADUs will be deemed units of workforce housing is not consistent with the law, as the ordinance does not consider the actual rental prices of the ADUs. The occupancy limitation to no more than four persons does not clearly comply with HUD occupancy standards, as the state ADU law requires. [Appendix 3.2.1](#)
- **TOWN OF HOLLIS** (2016 population: 7,775) The ADU provisions in the Hollis zoning ordinance served as a model for some of the state law's provisions. Hollis allows ADUs by special exception, and its provisions exercise much of the discretionary authority of the law, including a requirement for off-street parking, maintenance of the structure's appearance as a single-family home, and allowing only one ADU per property. Hollis provides an operational definition of "attached" by stating that the principal unit and the ADU "must share internal heated living space access through a common wall." Hollis also allows detached ADUs with an increase in lot size. The town's requirement that a new or upgraded septic system shall be required if the existing system is inadequate probably is inconsistent with the 2017 amendment to the ADU law that requires only that a new septic design must be approved by DES in such circumstances, unless the system is unlicensed or has already failed. [Appendix 3.2.2](#)
- **TOWN OF LONDONDERRY** (2016 population: 25,361) Londonderry's ordinance allows both attached and detached ADUs by right, but also calls for architectural consistency with the principal dwelling unit. This is probably enforced at the staff level during the building permit process. The ordinance also exercises much of the discretionary authority of the ADU Law, such as requiring owner occupancy, off-street parking, no additional curb cuts, limitation of ADUs to two bedrooms. The statement that all ADUs will be deemed units of workforce housing is not consistent with the law, as the ordinance does not consider the actual rental prices of the ADUs. [Appendix 3.2.3](#)
- **CITY OF PORTSMOUTH** (2016 population: 21,524). Portsmouth adopted an ADU ordinance which, in addition to attached and detached ADUs, includes provisions for garden cottages. Portsmouth's ordinance allows both attached and detached ADUs by conditional use permit granted by the planning board. The ordinance requires off-street parking for ADUs that varies based on the size of the unit, requires owner occupancy of one of the units, requires the appearance of ADUs to be consistent with that of a single-family dwelling, limits ADUs to no more than 2 bedrooms, and sets the ADU size maximum at 750 s.f. In addition, Portsmouth created a special type of ADU called a "garden cottage" to provide greater flexibility dealing with detached ADUs that did not meet primary structure setback requirements in the zoning ordinance. [Appendices 3.2.4 and 3.2.5](#)
- **TOWN OF WARNER** (2016 population: 2,888) The Warner zoning ordinance allows attached ADUs by right in all residential districts. The ordinance also requires owner occupancy of one of the units and limits the number of ADUs to one per lot. Warner also allows ADUs to be established in existing detached accessory structures. The septic design provision in the ordinance is consistent with the amendment to the 2017 amendment to the state statute on ADUs. [Appendix 3.2.6](#)

3.2.1 | TOWN OF HEBRON ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS

Purpose

In accordance with NH RSA 674:71 – 73, this provision allows for the creation of an Accessory Dwelling Unit (ADU) as an accessory use to existing single-family detached dwellings.

Definition

An Accessory Dwelling Unit means a subordinate dwelling residence with complete and independent living facility on the same lot attached to or contained within an existing single-family dwelling. Every accessory dwelling unit shall be deemed a unit of workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59.

Requirements and Standards:

1. One ADU is permitted per lot provided the lot is an existing legal lot of record and the lot contains no more than one detached dwelling;
2. The ADU shall comply with all the zoning regulations for a single-family detached dwelling including, but not limited to, setbacks, height limits, and lot coverage;
3. The ADU shall not increase any nonconforming aspect of any existing structure;
4. An ADU shall require Special Exception approval from the Hebron Zoning Board of Adjustment and Select Board approval of a Residential Building Application;
5. An ADU shall not be considered to be an additional dwelling unit for the purposes of determining minimum lot size or development density of the property;
6. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the principal single-family dwelling;
7. The applicant shall make adequate provisions for water supply and sewage disposal in accordance with NH RSA 485-A: 38. Separate utility connections are not required;
8. Both the ADU and the primary residence shall comply with the state Building Code and Fire Code regulations for construction, minimum living space, fire exits and smoke alarms;
9. The owner of an ADU shall reside in either the principal dwelling or the ADU;
10. The maximum size of an ADU shall not exceed 800 sq. ft. area;
11. There shall be no more than two bedrooms in an ADU;
12. No more than four persons shall occupy an ADU;
13. An interior door shall be provided between the principal dwelling unit and accessory dwelling unit. There is no requirement for said interior door to remain unlocked;
14. The architecture of the ADU shall match that of the primary residence;
15. There shall be no exterior stairway leading to the ADU on the front of the house;
16. The main exterior entrances shall not be on the same side of the building;
17. One off-street parking space shall be provided in addition to those required for the primary residence for a minimum total of three.

Excerpted from the 2016 Hebron Town Report at www.hebronnh.org



3.2.2 | TOWN OF HOLLIS ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS

Section IX: General Provisions

K. ACCESSORY DWELLING UNITS (Adopted March 1993, Amended March 2017)

1. PURPOSE: For the purpose of providing expanded housing opportunities and flexibility in household arrangements, accessory dwelling units (in-law apartments) shall be permitted by special exception granted by the Board of Adjustment in any district in conformance with these regulations.
2. DEFINITION: As defined by RSA 674:71 as amended “Accessory Dwelling Unit” means 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.
3. REQUIREMENTS/LIMITATIONS:
 - a. Accessory dwelling units are intended to be secondary and accessory to a principal single-family dwelling unit. In granting a special exception, the Board of Adjustment must find that the secondary dwelling unit is developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single-family residence. Only one accessory dwelling unit shall be allowed per principal dwelling unit and/or lot. The accessory dwelling unit shall have a separate house number from the principal dwelling.
 - b. There shall be no exterior alterations, enlargements, or extensions of the structure which alter its character or appearance as a single-family residence (or other detached accessory structure, when applicable). Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.
 - c. An accessory dwelling unit shall not be considered to be an additional dwelling unit for the purposes of determining minimum lot size.
 - d. Detached accessory dwelling units are only allowable when located on a lot that has twice the minimum lot size required in the applicable district for that type of lot (e.g., backland lot). Detached accessory dwelling units cannot be converted to a principal dwelling unit.
 - e. An accessory dwelling unit shall have an area of no less than 300 square feet and no greater than 800 square feet measured by the outside dimension of the exterior wall or the interior dimension of a common wall. An attached accessory dwelling unit shall occupy no more than 30% of the total heated, above grade floor area of the total dwelling unit, including the accessory dwelling unit.
 - f. Attached accessory dwelling units shall be designed to allow for re-incorporation into the principal dwelling units. Internal access to the principal dwelling unit shall be maintained or constructed. The accessory dwelling units and principal dwelling units must share internal heated living space access through a common wall.
 - g. The existing or proposed septic systems must be certified by a licensed septic designer or engineer as adequate to handle and treat the increased waste volumes generated by the accessory dwelling unit in accordance with New Hampshire RSA 485-A:38 and the Town of Hollis septic regulations. If the existing septic system is not capable of adequately handling and treating the waste of the principal dwelling unit and the accessory dwelling unit in accordance with New Hampshire RSA 485-A:38 and the Town of Hollis septic regulations, a new or upgraded septic system conforming to the most recent state and local septic standards and regulations shall be required.
 - h. Adequate off-street parking shall be provided.
 - i. Adequate provisions must exist or be made for ingress, egress and turning of vehicles within the site.
 - j. The use of an ADU shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses. This limitation includes short-term rentals (less than four weeks at a time) of dwelling units. Short-term rentals are only authorized as specifically provided for Bed and Breakfast (Inn) establishments.

Excerpted from <http://hollisnh.org/regulations/HZO2017.pdf>



3.2.3 | TOWN OF LONDONDERRY ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS

2.3.1.7 Accessory Dwellings

To increase housing alternatives while maintaining neighborhood aesthetics and quality, one accessory dwelling is permitted on any property containing an owner-occupied single-family dwelling, provided the following conditions are met:

- A. Accessory Dwellings shall be permitted only on properties containing an owner-occupied single-family dwelling.
- B. There shall be not more than one accessory dwelling per lot.
- C. An accessory dwelling shall not be considered to be an additional dwelling unit for the purposes of determining minimum lot size (of Section 2.3.1.3) or development density of the property.
- D. The owner of a property containing an accessory dwelling shall reside in either the principal or the accessory dwelling, as of the date of the permit approval.
- E. The accessory dwelling shall contain fully self-sufficient living quarters, consisting of adequate sleeping, bathing, and eating accommodations.
- F. The maximum size for an Accessory Dwelling shall not exceed 40% of the living area of the principal dwelling, and shall include no more than 2 bedrooms.
- G. The accessory dwelling shall be subsidiary in size and function to the principal dwelling and be consistent with the principal dwelling in appearance, design, colors, and materials.
- H. The accessory dwelling may be located within or added to the principal structure, or attached to an accessory structure such as a free-standing garage, or may itself be a free-standing accessory structure.
 - 1. If contained within or added to the principal structure, exterior entry to the accessory dwelling shall not face the street as a second door.
 - 2. If a free-standing structure or attached to a free-standing structure, the accessory dwelling shall be located only in the side or rear yard of the property.
- I. All required setbacks shall be complied with.
- J. If the accessory dwelling is not on public water and sewer, then well and septic provisions shall comply with New Hampshire Department of Environmental Services regulations.
- K. There shall be one parking space in the rear or side yard for the accessory dwelling and no additional curb cut.
- L. The structure and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the principal single-family dwelling.
- M. Every Accessory Dwelling shall be deemed a unit of workforce housing for purposes of satisfying the municipality's obligation under RSA 674:59.

Amended through September 11, 2017. Excerpted from <http://londonderry.org>.



3.2.4 | CITY OF PORTSMOUTH ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS

10.814 Accessory Dwelling Units

- 10.814.10 One, and only one, accessory dwelling unit shall be allowed on any lot containing a single-family dwelling. An accessory dwelling unit shall not be allowed under this Section 10.814 on a lot that contains more than one dwelling unit.
- 10.814.20 Except as provided in elsewhere in this Section 10.814, all land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit.
- 10.814.30 All accessory dwelling units shall comply with the following standards:
- 10.814.31 The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).
 - 10.814.32 Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner of the dwelling. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.
 - 10.814.33 Neither the principal dwelling nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.
 - 10.814.34 In addition to the two off-street parking spaces required for the single-family dwelling, one parking space shall be provided for an ADU up to 400 sq. ft. gross floor area, and two parking spaces shall be provided for an ADU larger than 400 sq. ft.
- 10.814.40 An attached accessory dwelling unit (AADU) shall comply with the following additional standards:
- 10.814.41 An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
 - 10.814.42 The accessory dwelling unit shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area.
 - 10.814.43 Any exterior changes to the single-family dwelling shall maintain the appearance of a single-family dwelling. If there are two or more doors in the front of the dwelling, one door shall clearly be the principal entrance and the others shall be designed to appear to be secondary.
- 10.814.50 A detached accessory dwelling unit (DADU) shall comply with the following additional standards:
- 10.814.51 In a General Residence district, the combination of the principal dwelling and the DADU shall comply with the minimum lot area per dwelling unit specified for the district.
 - 10.814.52 The DADU shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area; except that the maximum gross floor area shall be 1,000 sq. ft. if the lot area is 2 acres or more.
 - 10.814.54 The DADU shall be separated from the single-family dwelling by at least 20 feet.
- 10.814.60 Before granting a conditional use permit for an attached or detached ADU, the Planning Board shall make the following findings:
- 10.814.61 Exterior design of the ADU is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.
 - 10.814.62 The site plan provides adequate open space and landscaping that is useful for both the ADU and the primary dwelling.
 - 10.814.63 The ADU will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.
 - 10.814.64 The ADU will not result in excessive noise, traffic or parking congestion.
- 10.814.70 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy requirement. Said certificate shall be renewed annually.
- 10.814.80 In granting a conditional use permit for an accessory dwelling unit, the Planning Board may modify a specific dimensional or parking standard set forth in this Section, provided that the Board finds such modification will be consistent with the required findings in Section 10.814.60.

10.815 Garden Cottages

An accessory building existing on the effective date of this ordinance may be converted to a garden cottage through a conditional use permit granted by the Planning Board, subject to the following provisions and limitations.

- 10.815.10 One garden cottage, and only one, shall be allowed on any lot containing a single-family dwelling.

3.2.4 | CITY OF PORTSMOUTH ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS *(cont'd)*

- 10.815.20 Relationship to other provisions of this Ordinance:
- 10.815.21 No garden cottage shall be allowed on the same lot as an accessory dwelling unit authorized under this Ordinance.
- 10.815.22 The establishment of a garden cottage results in two dwelling units on the property and thus makes the property ineligible to establish an accessory dwelling unit under RSA 674:72-73 and this Ordinance. As a condition of receiving a conditional use permit for a garden cottage, the property owner shall waive all rights under RSA 674:72 and RSA 674:73.
- 10.815.23 A garden cottage that complies with the standards of this section is exempt from the residential density standards of the Zoning Ordinance. A second dwelling unit on a lot that does not comply with the standards of this section shall be considered to be either a second primary dwelling or an accessory dwelling unit and shall comply with the applicable standards and provisions of the Ordinance.
- 10.815.30 Garden cottages shall comply with the following standards:
 - 10.815.31 The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.
 - 10.815.32 A garden cottage shall not be larger than 600 sq. ft. gross floor area.
 - 10.815.33 A garden cottage that is within a required yard for the zoning district shall not have any windows or doors higher than eight feet above grade facing the adjacent property.
 - 10.815.34 One parking space shall be provided for a garden cottage in addition to the two off-street parking spaces required for the single-family dwelling.
 - 10.815.35 The principal dwelling unit and the garden cottage shall not be separated in ownership (including by condominium ownership); and either the principal dwelling unit or the garden cottage shall be occupied by the owner of the property. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.
- 10.815.40 Before granting a conditional use permit for a garden cottage, the Planning Board shall make the following findings:
 - 10.815.41 Exterior design of the garden cottage is compatible with the existing residence on the lot through architectural use of building forms, scale and construction materials.
 - 10.815.42 The site plan provides adequate open space and landscaping that is useful for both the garden cottage and the primary dwelling.
 - 10.815.43 The garden cottage will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.
 - 10.815.44 The garden cottage will not result in excessive noise, traffic or parking congestion.
- 10.815.50 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner occupancy requirement. Said certificate shall be renewed annually.
- 10.815.60 In granting a conditional use permit for a garden cottage, the Planning Board may modify a specific dimensional or parking standard set forth in this Section, provided that the Board finds such modification will be consistent with the required findings in Section 10.815.40.

Definitions

Accessory dwelling unit (ADU)

A subordinate building located on the same lot with the principal building, occupied by or devoted to an accessory use. Where an accessory building is attached:

Attached accessory dwelling unit (AADU)

An accessory dwelling unit that is constructed within or attached to a single-family dwelling. For the purpose of this definition, "attached" means sharing a common wall for at least 25 percent of the length of the side of the single-family dwelling.

Detached accessory dwelling unit (DADU)

An accessory dwelling unit that is constructed within an accessory building on a lot containing one single-family dwelling.

Garden cottage

A dwelling unit that is constructed through conversion of an accessory building on the same lot as a single-family dwelling and complies with the standards for garden cottages set forth in the Ordinance.

Excerpted from www.cityofportsmouth.com, as amended through June 19, 2017.



3.2.5 | CITY OF PORTSMOUTH ADU CONDITIONAL USE PERMIT APPLICATION

CITY OF PORTSMOUTH
New Hampshire

CONDITIONAL USE PERMIT APPLICATION:
Accessory Dwelling Unit & Garden Cottage

<i>Department Use Only</i>		
Assessor Plan # _____	Lot # _____	Date _____
Zone _____	Lot area _____	Fee _____
		By _____

Applicant _____ Owner of Record _____

Applicant Street Address _____ Owner Street Address _____

Applicant City / State / Zip _____ Owner City / State / Zip _____

Applicant phone (____) _____ Owner phone (____) _____

Applicant e-mail _____

Location (street address) of proposed work: _____

Existing Use is Single-Family Residence: Yes: No:

All applications must file an [online building permit application](https://portsmouthnh.viewpointcloud.com/#/1071) as well at (<https://portsmouthnh.viewpointcloud.com/#/1071>).

Building Permit Application # _____

Please Note: Accessory Dwelling Units & Garden Cottages are permitted on lots containing one existing single family dwelling unit. Only one Accessory Dwelling Unit or Garden Cottage is permitted per lot.

Proposed Use:

Attached Accessory Dwelling Unit (AADU) (See Article 8, Section 10.814.40)

Detached Accessory Dwelling Unit (DADU) (See Article 8, Section 10.814.50)

Garden Cottage (See Article 8, Section 10.815)

_____ Total Number of Bedrooms Proposed for AADU, DADU, or Garden Cottage

The undersigned certifies that all the required conditions exist for granting of this request according to the terms of the Zoning Ordinance as demonstrated in the attached submittals.

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application form with original signatures, the application fee, twelve (12) packets of required plans and any supporting documents or photos, and an electronic file in PDF format of application and all submissions. Incomplete applications will not be accepted. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Planning Board Public Hearing for the above Conditional Use Permit.

Signature of Property Owner (If not owner, authorization to file on owner's behalf is required) _____ Date _____

Please PRINT name here _____



**Applicant's Responsibilities
& Submission Requirements**

1. All applications for Conditional Use Permits (CUP) must be submitted to the Planning Department prior to the published deadline.
2. An online Building Permit application must also be filed for the project in order for the CUP application to be considered complete.
3. An applicant shall only be the owner of the property or the owner's authorized representative.
4. It is the obligation of the applicant to submit adequate plans and exhibits to demonstrate compliance with Sections 10.814 & 10.815 of the Zoning Ordinance. Such materials shall include:

<ul style="list-style-type: none"> <input type="checkbox"/> Scaled Site Plan(s) (no greater than 11"X17") showing existing and proposed conditions including: <ul style="list-style-type: none"> - Scale legend, title, address of project, date, source of displayed data - Front, side and rear setback / yard dimensions (this is the distance from a building to the lot line) and distance between buildings - Lot dimensions - Abutting street(s) and street names - Location and dimensions of driveways / accessways - Dimensions (size and height) of buildings - Dimensions, number, and location of parking spaces both existing and proposed - Location and description of open space and landscaping <input type="checkbox"/> Labeled photo(s) of existing structures/buildings on property <input type="checkbox"/> Labeled photo(s) of adjacent properties <input type="checkbox"/> Scaled interior floor plans of the proposed dwelling unit including total gross floor area <input type="checkbox"/> Scaled building plans and elevations of any proposed new construction or renovations of existing buildings including any proposed exterior lighting 	<ul style="list-style-type: none"> <input type="checkbox"/> A detailed written statement explaining how the proposed project will support the following findings: <ul style="list-style-type: none"> - The principal and accessory dwelling units will remain under common ownership (included in condominium ownership) - The principal or accessory dwelling will be occupied by the owner of the property - Neither the principal nor accessory dwelling shall be used for any business, except that the owner may have a home occupation use in the unit that he or she occupies - The accessory dwelling will not result in excessive noise, traffic, or parking congestion <input type="checkbox"/> If applicable, a detailed explanation for any requests to the Planning Board to modify a specific dimension and/or parking standard
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5. The applicant shall submit one (1) original and eleven (11) copies of the application and any plans, exhibits, and supporting documents.
6. The applicant shall provide electronic files in Portable Document Format (PDF) of all submittals.
7. The Planning Department reserves the right to refuse applications which do not meet these minimum requirements. The Planning Department may also require additional information and/or exhibits as needed to illustrate the scope of the project.

I have read the above list of responsibilities, have provided all required information, and such information is current, accurate, and complete to the best of my knowledge.

(Applicant's Signature, date)

The Applicant is encouraged to consider the following when completing the application:

- Provide neat and clearly legible plans and copies
- Use of color or highlights is encouraged in order to identify pertinent areas on plans
- Applicants are encouraged to review the application with a member of the Planning Department staff prior to submittal
- All applicants are encouraged to discuss the project with impacted neighbors



3.2.6 | TOWN OF WARNER ZONING ORDINANCE FOR ACCESSORY DWELLING UNITS

ARTICLE XIV-B ACCESSORY APARTMENT

Requirements for Accessory Apartment:

1. The accessory apartment shall be clearly incidental to the primary use of the property. The apartment shall be a completely separate housekeeping unit that can be isolated from the primary dwelling unit but shall have an interior door connecting it to the primary dwelling unit. [Amended March 2017]
2. Only one accessory apartment may be created within or attached to a single-family dwelling or accessory building per lot.
3. Any accessory apartment whether an addition to or contained within the single-family dwelling or accessory building, shall have an area of no less than 300 square feet, no more than 50% of the heated and finished floor area of the primary dwelling unit, and a maximum of 1,000 square feet of gross floor area.
4. All applicable regulations of the Town of Warner shall be met before an accessory apartment is permitted. The capacity/design of the septic system shall be verified.
5. Accessory apartments are not intended for individual ownership. The title shall be inseparable from the primary dwelling.
6. Accessory apartments may be located in a detached accessory building where allowed in TABLE 1 – USE REGULATIONS of this Zoning Ordinance only if the detached accessory building contains another use by the primary dwelling such as a garage with an apartment loft or section of a storage/barn building.
7. The owner shall not separately lease both the primary dwelling unit and the accessory apartment at the same time.

Excerpted from www.warner.nh.us; adopted March 2012.



New Hampshire Housing

P.O. Box 5087 | Manchester, NH 03108
603-472-8623 | 800-640-7239 | TDD: 603-472-2089
NHHFA.org | comments@NHHFA.org

As a self-supporting public benefit corporation created by the New Hampshire legislature, New Hampshire Housing Finance Authority promotes, finances and supports affordable housing.

