



Planning for Accessory Dwellings

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What is the New Accessory Dwelling Unit Law?

On March 16, 2016, Governor Hassan signed [Senate Bill 146](#), New Hampshire's Accessory Dwelling Unit (ADU) law, which takes effect on **June 1, 2017**. Under the new law, 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 new 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 in a building not attached to the primary single-family dwelling, such as in a garage, barn or other separate structure.

The new law also repeals the sections of [RSA 674:21](#) (Innovative Land Use Controls) that previously included and defined ADUs. If a municipality's ADU ordinance relies on [RSA 674:21](#), it is recommended that the ordinance be amended to reference the new statute.

The ADU law will be 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.

How will Accessory Dwelling Units be Regulated?

A municipality that adopts a zoning ordinance which regulates ADUs must allow one ADU for any single-dwelling unit as a matter of right, or by conditional use permit, or by 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** – Even though ADUs will be removed from the Innovative Land Use Controls statute (*RSA 674:21*) effective June 1, 2017, the new ADU statute allows municipalities to utilize the conditional use permit process authorized in *RSA 674:21* whereby the planning board reviews an ADU application submitted by the property owner and grants a permit. A municipality that chooses to regulate ADUs in this manner should determine the conditions under which the permit will be issued, devise an application form, determine what information should be submitted by the

“We must always be working to increase safe, affordable housing options so that all people can live independently and engage in their communities, empowering them to contribute to our economic and civic life. By requiring municipalities to allow one attached accessory dwelling unit to single-family homes in zones that allow those homes and establishing other important requirements for local regulation of these units, this bipartisan bill will help increase affordable housing options, helping to meet workforce demands and allowing more of our older citizens to live independently in their communities. I thank members from both parties in both chambers for their efforts on this legislation, and I am proud to sign this important bill to increase safe and affordable housing options into law.”

Governor Maggie Hassan
March 16, 2016

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.

- **Special Exception** – Municipalities that choose to regulate ADUs through the special exception process should amend their zoning ordinance to include the criteria required for the grant of a special exception by the zoning board of adjustment (ZBA), as provided in [RSA 674:33, IV](#).

Municipalities have some discretion in determining the conditions under which the planning board would issue a conditional use permit or the ZBA would issue 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 they are not visible from the road;
- Owner occupancy of either the primary or accessory dwelling unit;
- Square footage of the ADU (not 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 (cannot be limited to only one bedroom).

What if a Current Ordinance Differs from the Provisions of the New Law?

The provisions in a municipality's existing ADU ordinance that are not in compliance with the requirements of the new ADU law will become 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 new law shall apply beginning on 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 Standards May, Must Be, or Must Not Be in Municipal ADU Regulations?

ADU Standards that <u>Must or May Be</u> in Regulations	ADU Standards that <u>Must Not Be</u> 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. Must not limit an ADU to only one bedroom.
Must have an interior door between the attached 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/or demonstrate that one of the units is their primary dwelling unit.	Must not say which unit the owner must live in.
May limit the number of unrelated individuals that 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 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. 	

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 a principal dwelling unit and a *detached* ADU than for only a principal dwelling unit in the same zoning district. Otherwise, regulations for *detached* ADUs must comply with the same standards stated on the previous page.

What are the Next Steps?

A municipality's next steps in regards to the new ADU law depend on whether the municipality has already adopted an ADU ordinance and whether the municipality wants to adopt certain standards for ADUs. The guidance below is offered for these various scenarios. In all of the scenarios below, municipalities should also consider whether or not to amend their ordinance to allow *detached* ADUs and the standards to apply to them.

1. If a **municipality has a current ADU ordinance**, officials should complete a review of the ordinance and determine if it complies with the standards of the new law. If changes are needed, the municipality should amend the ordinance before June 1, 2017.

If the regulations rely on [RSA 674:21](#), which the new law repeals, it is recommended that amendments be made to reference the new statute.

If the regulations allow ADUs only on larger lot sizes or with greater frontage or other similar dimensional requirement than required for single-family dwellings in that district without ADUs, they will no longer apply under the new ADU law.

2. If a **municipality does not have a current ADU ordinance** and would like to adopt certain standards for ADUs, municipalities should develop an ordinance that complies with the new law and decide whether to allow ADUs by conditional use permit, or by special exception. If adopting ADU provisions, the municipality should do so before June 1, 2017.
3. If a **municipality does not wish to adopt an ADU ordinance**, the minimum provisions of the new law will still apply in the municipality beginning on June 1, 2017.

