The New Law on Accessory Dwelling Units

In March of this year, Governor Hassan signed into law Senate Bill 146, relative to accessory dwelling units. The new law is codified at RSA 674:71 to :73.

The New Law

The Basic Requirement. Every municipality with a zoning ordinance shall allow an attached accessory dwelling units as a matter of right or by conditional use permit or by special exception, in all zoning districts that permit single-family dwellings.

Definition. The new law defines an "accessory dwelling unit" (or "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."

Where to Begin?

Does your zoning ordinance already address ADUs?

- If your zoning ordinance expressly allows ADUs without limitation, then you may not need to do anything, because your ordinance may already comply with the new law. However, please keep reading, because your ordinance may contain a limitation that doesn't *seem* like a limitation.

- If your ordinance prohibits ADUs, that prohibition will be invalid once the new law takes effect. The ordinance must allow ADUs, although it may impose certain conditions, so you should plan to amend the ordinance.

- If your ordinance allows ADUs subject to conditions, you will need to determine whether those conditions comply with the new law, and plan to amend the ordinance if they do not.

- If your ordinance is silent on ADUs, they will automatically be deemed permitted without limitation under the new law, so you must amend the ordinance to maintain any control whatsoever. The new law allows limitations to be placed on ADUs, but *those limitations must be included in the ordinance*; otherwise one attached 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.

- It is strongly recommended that the zoning ordinance be amended to define "accessory dwelling unit" in a manner consistent with the new law's definition (see above). If you do not, the new statute will override the invalid provisions in your zoning ordinance.

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What *Can* You Do?

Here are some of the conditions a zoning ordinance may impose:

By Right, or by Special Exception or Conditional Use Permit. Under the new law, ADUs must be allowed either as a matter of right or by conditional use permit or special exception. One of the best ways to exercise control over ADUs is to allow them only by special exception or conditional use permit. If you want to limit ADUs in this manner, it will be necessary to state that in the ordinance.

One ADU per dwelling. A municipality is not required to allow more than one attached ADU per single-family dwelling. A one-ADU limit should be stated in the ordinance. Of course, the municipality may allow more than one ADU per principal dwelling unit, if it chooses.

Independent Living Facilities. The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation. There should also be an independent exterior access to the ADU, or access through a common space such as a hallway to an exterior door.

The ADU must be "attached." In order to be considered an "attached" ADU, there must be a common wall between the principal dwelling unit and the ADU.

Owner occupancy. The ordinance may require owner occupancy of either the principal or the accessory dwelling unit, but it cannot specify which unit the owner must occupy. An owner occupancy requirement is definitely recommended if you want to avoid turning a property into a duplex with an absentee landlord.

Minimum and maximum sizes. The ordinance may establish size limits for ADUs, but it may not limit the ADU to less than 750 square feet. A minimum size is probably unnecessary, but including a maximum size is a good idea, so that someone with a 1,500-square-foot residence cannot add a 5,000-square-foot ADU. Just make sure your maximum size is at least 750 square feet.

Setback Requirements. The same setback requirements that apply to the principal dwelling unit apply to an ADU. Thus, if the principal dwelling unit is already built to the ordinance's setback limit, the owner may not add an ADU that goes beyond that limit.

Lot Coverage Standards. A municipality could apply existing lot coverage standards that limit the proportion of a lot that may be covered by impervious surfaces (including pavement).

Adequate parking. The ordinance (or the ZBA, as a condition of a special exception) may require adequate parking to accommodate the ADU.

Aesthetic continuity. 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."

Detached ADUs. A municipality is not required to allow detached ADUs--for example, a unit that is above a detached garage or is a stand-alone building. If it does allow them, they are subject to other provisions of the law, except that an increased lot size ***may*** be required.

What *Can't* You Do?

Here are some conditions that the ordinance may not impose:

Family relationship. A municipality "may not require a familial relationship between the occupants of an accessory dwelling unit and the occupants of a principal dwelling unit." Some municipalities have this restriction built into their existing ADU definition; that will need to change.

Bedroom limit. A municipality "may not limit an accessory dwelling unit to only one bedroom." This means, of course, that it may impose a *two*-bedroom limit. It may also impose a maximum occupancy per bedroom "consistent with policy adopted by the United States Department of Housing and Urban Development."

Additional Dimensional Requirements. A municipality may not impose "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." For example, if the ordinance requires one-acre and 100 feet of frontage for a single-family dwelling, it cannot require two acres and 200 feet for a single-family dwelling with an ADU. (As noted above, however, increased requirements can be imposed for *detached* ADUs.).

Separate water and sewer systems. A municipality may not require a separate water or septic system for the ADU, although it may (in fact, must) require adequate provisions for water supply and sewage disposal in accordance with state law. Of course, if the New Hampshire Department of Environmental Services requires a separate septic system, or if a separate system is the only practical way to meet the state standards, then a separate system will be necessary.

Unlocked connecting door. "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." Some municipalities do require a door between the two units, and some require that it remain unlocked, as an indirect way to ensure a familial relationship between the occupants. That requirement will no longer be valid.

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The following suggested language will bring your zoning ordinance into minimum compliance with the statute. If your municipality wishes to exercise additional permitted controls, such as allowing ADUs by special exception or conditional use permit, you will need to consult with counsel to draft that language.

Proposed Zoning Amendment Language

Article _____. Accessory Dwelling Units

Section 1. Definitions: As used in this article, the following term shall have the meaning indicated:

Accessory Dwelling Unit. An "accessory dwelling unit" (or "ADU") is 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 2. Provisions.

An attached accessory dwelling unit shall be permitted in all zoning districts that permit single family dwellings, subject to the following:

A. Only one (1) ADU shall be permitted for each single-family dwelling.
B. The ADU must provide independent living facilities for one or more persons containing the four elements of sleeping, eating, cooking, and sanitation.
C. The ADU shall have an independent means of ingress and egress, or shall have ingress and egress through a common space such as a shared hallway to an exterior door.
D. The ADU shall be attached to the principal dwelling unit. In order to be considered an attached ADU there must be a common wall between the principal dwelling unit and the ADU. Detached accessory dwelling units are prohibited.
E. Either the ADU or the principal dwelling unit shall be the principal residence and legal domicile of the owner of the property.
F. The ADU shall not exceed 750 square feet in habitable floor area.
G. An ADU shall be provided a minimum of two (2) off-street parking spaces.
H. An ADU shall make provision for adequate water supply and sewage disposal service in compliance with RSA 485-A:38 and regulations adopted by the New Hampshire Department of Environmental Services.

Section 3. Minimum Lot Dimension Requirements: An attached ADU shall not be required to meet additional lot area requirements other than already provided for the principal dwelling unit. An ADU shall comply with all lot setback requirements.