

APPENDIX C

New Hampshire's ADU Law Explained (RSA 674:71 - 73)

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 town-houses, 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.



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<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.
<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.



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<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.
<p>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.</p>	<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.
<p>IX. A municipality may not limit an accessory dwelling unit to only one bedroom.</p>	<ul style="list-style-type: none">■ A municipality may limit an ADU to two bedrooms, but not to one.
<p>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.</p>	<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.



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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.

- 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.

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