

ACCESSORY DWELLING UNIT MODEL ORDINANCE

I. Authority

This section is enacted in accordance with the provisions of RSA 674:71 – 73 and RSA 674:21.

II. Purpose

The purposes of the accessory dwelling unit ordinance are to:

- (a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
- (b) Provide flexible housing options for residents and their families.
- (c) Integrate affordable housing into the community with minimal negative impact.
- (d) Provide elderly citizens with the opportunity to retain their homes and age in place.

III. Definition

An “accessory dwelling unit” means a residential living unit that is within or attached to a single-family dwelling [OPTIONAL: or is located in a detached structure} 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.

IV. Conditional Use Permit Required

Pursuant to RSA 674:21 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory dwelling units in accordance with the restrictions and requirements of this section.

EXPLANATION

RSA 674:71-7341 is the new statutory reference for accessory dwelling units (ADU) and RSA 674:21 Innovative Land Use Controls is the statutory reference for administering conditional use permits.

These purposes are based on the purposes from the State law. The municipality may add additional purposes as desired.

An ADU 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.

This is the State definition for an ADU. Because the State law allows the use of detached structures for an accessory dwelling unit, the ordinance definition should be expanded to state such, if a municipality wishes to allow accessory dwelling units in or as detached structures.

Accessory Dwelling units can be permitted by right, as: 1) a Conditional Use Permit by the Planning Board (appeal to Superior Court); 2) a Special Exception by the Zoning Board of Adjustment (appeal to the ZBA); or 3) a building permit approved and issued by the Building Inspector. This model recommends approval as a Conditional Use Permit by the Planning Board. If a municipality uses the Conditional Use Permit or Special Exception process items in section IV, (a)-(g) are recommended as criteria for approval of an ADU application.

V. Criteria for Approval

All of the following criteria must be met in order for the zoning board/planning board/building inspector to approve the construction of an accessory dwelling unit:

- (a) A maximum of one (1) accessory dwelling unit may be permitted on property located in zoning districts that allow single-family dwellings and must be located within or attached to the principal single family dwelling unit [OPTIONAL: or be located in a detached structure on the property].
- (b) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.
- (c) All municipal regulations 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 and building dimensional requirements. A minimum of two parking spaces shall be provided for the accessory dwelling unit.
- (d) The applicant for a conditional use permit shall demonstrate adequate provisions for water supply and sewage disposal for the accessory and primary dwelling units in accordance with RSA 485-A:38. Water and wastewater systems for the principal and accessory dwelling units may be combined or separate.
- (e) Either the principal dwelling unit or the accessory dwelling unit must be owner occupied. The owner must demonstrate that one of the units is their principal place of residence. Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership. Transfer of either dwelling unit to condominium ownership is not permitted.
- (f) Accessory dwelling units shall maintain an aesthetic continuity with the principal dwelling unit as a single-family dwelling.

Provision (a) in State law indicates clearly that an accessory unit is expected to have a direct physical connection to the original single family unit. A local ordinance can offer some flexibility (i.e., connection through a breezeway) but the combined structures are intended to maintain the appearance of a single family dwelling.

OPTIONAL: include a definition of “attached”. Example: An attached accessory dwelling unit shall be connected to the principal dwelling unit by a shared wall or roofed and enclosed structure with doors to both units.

A municipality may require an applicant to upgrade an existing septic system so that the existing system is designed and constructed to provide the septic capacity required for the total number of bedrooms on site after the ADU has been constructed.

*A municipality **may not** require a familial relationship between the occupants of an ADU and the occupants of a principal dwelling unit. Both units must be in common ownership and condominium ownership is not permitted.*

In considering detached ADUs, municipalities are required to determine if such uses are appropriate for their community. This model encourages the use of detached structures but requires additional lot size and prohibits more than one ADU per single family lot.

- (g) An accessory dwelling unit size may not be restricted to less than 750 square feet.
- (h) [OPTIONAL]: Detached Accessory Dwelling Units. Detached accessory dwelling units are permitted. Detached accessory dwelling units shall require that the lot be 20 percent larger than the minimum lot size required in the residential zone it is proposed.}

Provision (g) allows the municipality to prepare regulations outlining the aesthetic values necessary to comply with this section. The municipality can also mandate maximum and minimum unit sizes as long as the minimum is no less than 750 square feet. (Note: This does not mean an applicant cannot build an ADU smaller than 750 sq. feet, but the municipality cannot require it to be smaller.) A common requirement is to limit the accessory unit to no larger than one-third the size of the combined square footage of living space in the principal dwelling unit and proposed accessory dwelling unit.

- (i) The accessory dwelling unit shall have no more than 2 bedrooms.

State law prohibits a municipality from limiting ADUs to less than two bedrooms. However, an applicant may propose a one bedroom ADU. This model advocates no more than two (2) bedrooms. The municipality should choose a number of bedrooms that emphasizes the new unit is secondary to the primary dwelling unit on site.

VI. Occupancy Permit Required

Prior to occupancy of the accessory dwelling unit, the homeowner shall obtain an occupancy permit from the Building Inspector.

Note on Application Requirements: A municipality may wish to specify submission requirements for ADU applications, perhaps creating a new application form with a checklist of items, and add a note to their ordinance referencing that completion of such an application is required.