

Proposed Amendments
ACCESSORY DWELLING UNITS AND ACCESSORY APARTMENTS
Durham, NH Zoning Ordinance – Chapter 175

November 9, 2016

- I recommend that the Planning Board discuss the proposed amendments below and give a preliminary okay for them or make changes. Once the document seems okay, then a public hearing should be set. After the public hearing, if the document is acceptable the Planning Board could initiate this zoning amendment. These amendments are proposed pursuant to the new statute shown at the bottom. I prepared the amendments in consultation with the Town Attorney.

❖ **Make the changes indicated below.**

Proposed additions are shown like this.

~~Proposed deletions are shown like this.~~

[Comments are shown like this]

Pertinent excerpts from the Durham Zoning Ordinance follow.

ARTICLE II
DEFINITIONS

175-7. Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated: ...

ACCESSORY ~~APARTMENT~~ DWELLING UNIT– A dwelling unit located in, or attached to, a single family residence as an accessory use. A single family residence with an accessory dwelling unit is considered a single family residence (not a duplex residence). (See Section 175-109(D))

ACCESSORY ~~DWELLING UNIT~~ APARTMENT (or “detached accessory dwelling unit”)– A dwelling unit located in an accessory structure in conjunction with a single-family residence as an accessory use. A single family residence with an accessory apartment is considered a single family residence (not a duplex residence). (See Section 175-109(D))

[These two terms – “dwelling unit” and “apartment” are swapped to make the definition for “Accessory dwelling unit” consistent with the definition of “accessory dwelling unit” under state law.]

... DWELLING UNIT – One (1) or more rooms arranged, designed or used for residential purposes for one (1) household and containing independent sanitary and cooking facilities. The presence of cooking and sanitary facilities conclusively establishes the intent to use for residential purposes.

**ARTICLE XII
ZONE REQUIREMENTS
TABLE OF LAND USES**

...Residence, single-family

P P P P | X P P X X | X CU CU X

...C. Uses Accessory To a Single Family Residential Use

Accessory ~~apartment~~ dwelling unit in accordance with the provisions of Article XX

P P P P | ~~P X~~ P P ~~P X~~ ~~P X~~/ ~~P X~~ P P X

Accessory ~~dwelling-unit~~ apartment in accordance with the provisions of Article XX

P X X P | X P P X ~~P X~~ | ~~P X~~ P P X

[It is recommended to not allow accessory units/apartments in any zone where single family is not allowed.]

**ARTICLE XX
PERFORMANCE STANDARDS**

175-109. Compliance Required.

This article establishes performance standards for specific uses. These standards must be met for all activities involving the specified uses. ...

D. ~~Accessory Apartments Dwelling Units and Dwelling-Units~~ Accessory Apartments.
Accessory ~~apartments~~ dwelling units and accessory ~~dwelling-units~~ apartments shall conform to the following standards:

1. Only one accessory ~~apartment~~ dwelling unit or one accessory ~~dwelling-unit~~ apartment shall be located on a lot with a single-family residence. The location of an accessory ~~apartment~~ dwelling unit and an accessory ~~dwelling-unit~~ apartment in conjunction with one single-family residence shall not be permitted.
2. An accessory ~~apartment~~ dwelling unit shall contain a minimum of 300 and a maximum of 850 square feet of floor space. ~~at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the dwelling in which it is located, and shall be an integral part of the dwelling.~~

[Using 850 square feet as a maximum complies with the prohibition in the RSA about not setting a maximum of 750 square feet plus it is easier to calculate than using a percentage of the total house size.]

3. An accessory ~~dwelling-unit~~ apartment shall contain a minimum of 300 and a maximum of 850 square feet of floor space. ~~at least three hundred (300) square feet of floor space, but shall not contain more than twenty-five (25) percent of the total floor space of the single-family residence to which it is accessory.~~
4. ~~If the occupancy of the single family dwelling, including the integral accessory apartment or accessory dwelling unit, becomes an unrelated household, the total occupancy is limited to three unrelated persons.~~ In zoning districts where no more than three unrelated persons may occupy a dwelling unit (as specified in subsection 175-53 General Use Regulations), there shall be no more than three unrelated occupants in total for the single family dwelling and the accessory dwelling unit combined or for the single family dwelling and the accessory apartment combined.

[The proposed language is intended to state the requirement more clearly.]

5. The location and design of the accessory ~~apartment~~ dwelling unit or ~~dwelling-unit~~ accessory apartment shall maintain the single-family character and appearance of the premises.
6. An interior door shall be provided between the single family dwelling and the accessory dwelling unit, but the door may be locked or not at the option of the property owner.
7. One parking space shall be provided for the accessory dwelling unit or accessory apartment, in addition to parking required for the single family dwelling. The parking space may be situated within a driveway along with other vehicles provided it is readily accessed.
8. The property owner shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit or accessory apartment in accordance with RSA 485-A:38. However, systems for the accessory dwelling unit or accessory apartment separate from those serving the single family dwelling are not required.
9. There are no additional requirements for lot size, frontage, space limitations, or other dimensional controls for an accessory dwelling unit or accessory apartment beyond what would be required for a single-family residence without an accessory dwelling unit or accessory apartment.

New Statute effective June 1, 2017

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.

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.

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.

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.

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.