BIG HOUSE, LITTLE HOUSE, BACK HOUSE...ADU?

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Roadmap for Today

- Background to ADUs and examples
- ADUs in the NH context
  - Demographic changes and market forces
  - The NH ADU Law
- The Broader Context
  - ADUs in the news!
  - State laws
  - Local laws
- Q & A
Background to ADUs
Big House, Little House, Back House, Barn

NH Farm Museum, Milton, NH
Photo by Ray Boas; https://shunpikingwithray.com
Living in Close Proximity

- It’s a really old and simple idea
ADUs – What Are They?

- A second, smaller **dwelling** on the same grounds as a single-family house – attached or detached
  - An apartment over the garage, in the basement, in an outbuilding
  - Also called granny flats, in-law apartments, family apartments, secondary units, etc.
- “Accessory” is a word that has legal meaning – customarily incidental and subordinate to the primary use
ADUs – Out West

ADUs in Eugene and Portland, OR
Benefits of ADUs

- Increases a community’s housing supply without further land development
- Facilitates efficient use of existing housing stock & infrastructure
- An affordable housing option for many low- and moderate-income residents
- Improves homeowner cash flow
- Helpful to elderly and/or disabled people who may want to live close to family members
  - or caregivers, empty nesters, young adults, etc.
ADUs – Back East

Converted Farmhouse
Hopkinton, New Hampshire
Photo: Roger Hawk

In-town ADU
Concord, New Hampshire
ADUs – Someplace You Could Live

Find the hidden ADU in Warner, New Hampshire
ADUs – History and Evolution

- Early 20th century – a common feature in SF homes
- With post-WWII suburbanization and deployment of “Euclidean” zoning, ADUs became far less prevalent
  - Baby boom/Car boom/ Sprawl
  - Less interest in efficient use of space
  - Easier mortgage financing

- But things are changing…
The New Hampshire Context
Living with a parent is the most common young adult living arrangement for the first time on record

% of 18- to 34-year-olds by living arrangement

- 1880: 30%
- 1940: 35%
- 1960: 20%
- 2014: 32.1%

Living in parent(s)' home

- Married or cohabiting in own household
  - 1880: 45%
  - 1940: 46%
  - 1960: 62%
  - 2014: 31.6%

- Living alone, single parents, and other heads
  - 1880: 3%
  - 1940: 2%
  - 1960: 14%

Young men are now more likely to live with a parent than to live with a spouse or partner; not so for women

% of 18- to 34-year-olds

**Men**
- Married or cohabiting
  - 1880: 56%
  - 1940: 23%
  - 1960: 28%
  - 2014: 35%

- Living in parent(s)' home
  - 1880: 23%
  - 1940: 35%
  - 1960: 17%
  - 2014: 17%

**Women**
- Married or cohabiting
  - 1880: 68%
  - 1940: 35%
  - 1960: 35%
  - 2014: 35%

- Living in parent(s)' home
  - 1880: 68%
  - 1940: 35%
  - 1960: 17%
  - 2014: 17%

**Median Age Belies Our Relative Youth**

**2016 Median Age**

1. Maine 44.5  
2. Vermont 43.1  
3. NH 42.7  
4. W. Virginia 42.3  
5. Florida 42.1  
...  
50. Utah 30.7  

US 37.9

By this measure, NH is closer to the middle of the pack.

American Community Survey
Expected Increase in Older Population

Total Population, 2010

United States  New Hampshire
Rents in NH: Up, Up, Up

2BR median gross rent increased 17% since 2013
NH Vacancy Rate: Down, Down, Down

Vacancy Rate of Rental Housing Units

Source: New Hampshire Housing's Annual Rental Cost Survey

2017: 1.7%
NH Home Prices Have Recovered
Overall, listing have declined, but the shortage of entry level homes in areas of high demand has become critical.

Between 2010 and 2017 the listings for homes for < $300K dropped by approximately 50% while homes for > $300K dropped only 10%.

Based on information from the Northern New England Real Estate Network for towns in New Hampshire, compiled by New Hampshire Housing. Excludes land, interval ownership, seasonal camps/cottages, multi-family property, mobile/manufactured homes and commercial/industrial property.
And NH Inventory Is Dropping
NH Starter Homes Disappearing

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Housing Needs and Preferences

- NH Center for Public Policy Studies 2014 reports: “Housing Needs and Preferences in New Hampshire”

**Common knowledge**
- Slower population growth
- Aging population

**Less Commonly Known**
- Mismatch of housing stock and needs and desires of changing population - young and old
  - Big single-family homes; small families
- Older adults want to “age in place” or “age in community”
  - “Golden Acres” not so golden
What Does It Mean?

- What are the housing implications of these demographic changes?
  - We need to house an aging population
  - We need to attract and retain a younger workforce

- What are the housing policy implications of these demographic changes?

- Do these different groups want the same things?
  - Urban(ish), walkable, transit, cultural amenities
  - Who will win in a bidding war? (Follow the money)
Better Living in Less Space?

NH ADU Law’s “Back Story”

- Demographic and market changes
- Homebuilders unable to fulfill homeowner requests to create ADUs for a family member or caregiver
  - Stymied by local land use restrictions
  - Sought legislative relief
NH ADU Law — The Basics

- **Defining Characteristics**
  - Independent living unit (sleeping, cooking, eating, sanitation)
  - Adequate water supply and sewage disposal required
  - Interior door between primary unit and ADU required

- **Municipal Role**
  - Municipalities must allow an *attached* ADU in any single-family zone by right, special exception, or conditional use permit
  - If the zoning ordinance is silent on ADUs, then they are allowed in any single-family home (regardless of zone)
  - Standards for a single-family home also apply to combined SF and ADU (e.g., setbacks and frontage)
NH ADU Law – Options

- Municipality *may*
  - Require adequate parking to accommodate an ADU
  - Require owner occupancy of one of the units (but can’t say which one)
  - Require demonstration that a unit is the owner’s principal place of residence
  - Control for architectural appearance (“look and feel”)
  - Limit the number of ADUs per single family dwelling
  - Limit the number of unrelated individuals that occupy a single unit (concern of college towns)
NH ADU Law – Prohibitions

- Municipality must not
  - Limit any ADU to 1 bedroom
  - Require minimum size to be less than 750 s.f.
  - Require a familial relationship between the occupants of principal dwelling and ADU
  - Require the interior door between primary unit and ADU to remain unlocked
  - Require additional lot area or other dimensional standards for ADU (but it may increase lot size for a detached ADU)
Other elements

Detached ADUs
- Municipalities may allow at their discretion
- A municipality may require increased lot size, but other statutory standards for attached ADUs will apply

Amends NH RSA 674:21 Innovative Land Use Controls
- ADUs are removed from list along with its definition – no longer a voluntary land use regulation
ADU Law – But Wait, There’s More!

- Effective date: June 1, 2017
- Bills passed in 2017 modified the law
  - HB 258: Require submission only of an application for a new septic design for ADU construction; new system not required, unless existing system was unlicensed or has failed (Ch. 238, effective September 16, 2017)
  - HB 265: Allow municipalities to limit ADUs in townhouses and manufactured housing, and to prohibit condo conversion of ADUs (Ch. 89, effective June 5, 2017)
NH ADU Law – FAQs

- Isn’t this just a duplex?
- Do we still need to care about workforce housing?
- Do impact fees apply to a new ADU?
- What does “attached” mean?
- What’s the purpose of an interior door?
- What about septic standards?
- Can HO associations or condo docs prohibit ADUs?
- Owner occupancy – what if the owner is a trust?
- What are the HUD occupancy standards?
- What about use as a short-term rental?
- What if we do nothing?
Guidebook contains sample zoning language.

NHHFA is also in the process of developing a homeowner’s guide to ADUs.

Available at www.nhhfa.org/accessory-dwelling-units
ADUs in a Broader Context
Why Aren’t Homes Being Built?

The Next Housing Crisis: A Historic Shortage of New Homes

- Strong economy
- Jobs are plentiful
- Wages are rising
- Millennials “aging into” home ownership
- Land & construction costs ↑x2 in 10 years
- Higher labor costs
- Tighter regulations
- Better profit margins in higher end homes

“There’s a tremendous mismatch between the places where people want to live and the places where it’s easiest to build,” says Edward Glaeser, a professor of economics at Harvard University who studies constraints on housing supply.
How Much Demand Is There?

JAPA Spring 2017 (vol. 83, no. 2) – Measuring Informal Housing Production in California Cities

“Informal housing” – built without permits (includes ADUs)
- “…flourishes in spite of ubiquitous land use regulation and building codes, and systematic efforts to enforce both.”
- Different analyses conclude that informal housing constitutes between 25-40% of all new housing units nationwide

Clearly a response to an unmet need

Problem: informal housing doesn’t meet codes and can pose safety hazards (and unaccounted municipal service burdens)
- Solutions: enforcement crackdown, or accommodation?
Tiny House Central
Your guide to living small

SMALL SPACE, BIG STYLE

13 Style-Packed Tiny Homes 45 Photos
Living small doesn't mean you have to sacrifice design details.

On TV

Fixer Upper
On Now
12pm | 11c
WATCH LIVE TV

Up Next
Flip or Flop Fort Worth
1pm | 12c

What's Hot
Flip or Flop

A small accessory dwelling unit—known as an ADU—is attached to an older single-family home in a Portland, Oregon, neighborhood. // Courtesy of Kol Peterson

The Granny Flats Are Coming
Kol Peterson’s new book for homeowners and others interested in creating ADUs. See BuildinganADU.com

Peterson also is one of the editors of www.accessorydwellings.org
State Law

- Foundation for action – state law
  - Home Rule vs. Dillon’s Rule state
  - Enabling or constraining legislation

- Most enabling statutes will give sufficient power to allow and regulate ADUs
- Are there barriers in your statutes, either overt or buried in some obscure statutory or regulatory corner (e.g., septic standards or utility connection requirements)
The greater the number and stringency of standards, the fewer units will be created

By right or special permit?
- Vary by district?

Attached vs. detached
- Vary by district?

Occupancy limitations?
- Owner; family member; caregiver; number of unrelated individuals

Additional dimensional standards?
- Lot size, setbacks, density, lot coverage

What is the purpose of your regulation?
- What are you trying to protect or encourage?
Lot A
2500 sf house
(inc. 750 sf ADU)
625 sf garage
1000 sf driveway
4125 sf total
20.6% coverage

Lot B
2500 sf house
625 sf garage
1000 sf driveway
750 sf ADU
4875 sf total
24.4% coverage

Lot C
2500 sf house
625 sf garage
1000 sf driveway
6500 b-ball bldg
10625 sf total
53.1% coverage

Lot D
2500 sf house
2700 sf garage
12200 sf total

20,000 sf lot size
Local Laws 2

- Separate utility connections?
  - Why not leave this up to the owner?

- Impact fee implications?

- Architectural controls
  - What could the owner do without the ADU?

- Limitation on short-term rentals (AirBnB, VRBO, etc.)

- Min/max size restrictions?
  - Absolute – square footage of heated space, or other
  - Proportional – percentage of the dwelling unit’s space
The 2015 International Residential Code eliminated the requirement that a dwelling must have a room of at least 120 s.f. and other rooms of at least 70 s.f.

R304.1 now reads: “Habitable rooms shall have a floor area of not less than 70 square feet (6.5 m²).”

In a media brief, the ICC said “...[the change] will accommodate alternatives for very small dwellings that would previously not be allowed under the IRC.”
ADU FAQs

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- What about septic standards?
- Can HO associations or condo docs prohibit ADUs?
- Owner occupancy – what if the owner is a trust?
- What are the HUD occupancy standards?
- What about use as a short-term rental?
Is an ADU a Duplex?

- Not really – duplexes tend to be two units of comparable size in a single structure.
- “Accessory” in ADU has real meaning – intended to be secondary to the main use of the building as a single family home, in the same way that a garage would be of secondary importance.
Owner Occupancy

- What if the owner is a trust, LLC, or corporation?
  - Purely legal entities that cannot occupy physical space
  - This is a question for state law and local interpretation
  - Some entities are transparent instruments – see through them to the beneficiary
  - Others closely controlled – e.g., a single-member LLC
  - How flexible do you want to be?
Partly a question of state law: what does your state’s condominium act say?

Generally, these are private contractual agreements among multiple owners — they can tell each other what not to do.

If a local law prohibits (or requires) ADUs, that would be enforceable.

If a local law allows ADUs, associations could still prohibit them.
Do HUD Occupancy Standards Apply?

  - 1991 Policy Statement
  - Applicable to “housing providers” but also may have implications for municipal regulation (pro & con)
  - Occupancy restrictions often used to exclude or unreasonably limit families with children
  - 2 persons per bedroom as a general rule is reasonable
  - Factors: number and size of sleeping area, size of overall unit, age of children, configuration of unit
Conclusion

- Need for more housing in many markets
- ADUs are becoming more popular
- ADUs can promote more efficient use of existing infrastructure
- ADUs can provide more housing without further land development
- ADUs can provide housing that’s more affordable, but without any public subsidy or public intervention
Questions?

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