A meeting of the Planning and Economic Development Committee was held on Tuesday, January 17, 2017, at 7:00 p.m. in the City Hall Auditorium.

Alderwoman Mary Ann Melizzi-Golja, Chair, presided.

Members of Committee present:  
Alderman-at-Large Daniel T. Moriarty, Vice Chair (Arrived at 7:05 p.m.)  
Alderman-at-Large Brian S. McCarthy  
Alderman Tom Lopez  
Alderman Benjamin M. Clemons

Also in Attendance:  
Alderman Richard A. Dowd  
Ms. Sarah Marchant, Director of Community Development

PUBLIC COMMENT

Attorney Brad Westgate, Weiner & Bennett

I represent Crimson Properties, LLC. and Randy Turmel. I have a couple of questions regarding the proposed O-16-020, I believe it’s in what is probably final form based on the committee’s action of two weeks ago and is simply set up for the two public hearings, is that where that stands?

Chairwoman Melizzi-Golja

I would say that it’s been amended and it’s coming back to us. It’s going to the Planning Board for comment and for public hearing so depending upon the feedback we get it may or not be final.

Attorney Westgate

Regarding O-17-029, the proposed legislation regarding the setback elements of the land/use code, did that have a first reading with the Board of Aldermen last week and then there was a public hearing set up?

Chairwoman Melizzi-Golja

Both of the public hearings will be on February 7th at the Planning and Economic Development Committee and both of those pieces of legislation have also been referred to the Planning Board for feedback. You should be able to find that on-line.

COMMUNICATIONS

From: Sarah Marchant, Director of Community Development  
Re: Changes to RSA 674:71-73 Accessory Dwelling Units

MOTION BY ALDERMAN CLEMONS TO ACCEPT AND PLACE ON FILE  
MOTION CARRIED

DISCUSSION

Discussion of New State Accessory Dwelling Unit Law with Director Marchant

Ms. Marchant

This is a discussion to talk about the changes in state law on accessory dwelling units and where Nashua is at now. I’d like to get some of your ideas and thoughts and talk to the Planning Board as well and see what the
feedback is from the community as well and form some changes to the ordinance based on that. This is the very first, high level discussion. What is an accessory dwelling unit? The state has defined an accessory dwelling unit as something that is attached to a single family residential unit and it provides independent living accessories which include sleeping, cooking, eating and sanitation. Right now Nashua has had in place since 2008 an ordinance that allows for accessory dwelling units. Our current ordinance allows them by special exception in most areas, downtown they are permitted by right and they are permitted in some of our industrial districts by special exception as well. They have just a couple of standards, they have to be incidental and subordinate to the primary structure, they have to match with the character of the neighborhood. Their maximum size is 700 square feet and they have to, by a deed restriction, be for familial only. They cannot be rented out to anybody and the property shall be owner occupied. That’s the grand total of our current ordinance. I think we have granted six or seven. I think the deed restriction that is required that they are only allowed to be used by familial relations is something that is pretty restrictive. The legislature last year enacted HB 146 which requires that as of June 1st, 2017, every single family residence in New Hampshire in every community by right, special exception or conditional use permit has the ability to add an accessory dwelling unit. They mandated several standards for this. They must be allowed but they have to have the same standard lot provisions as a single-family residential unit so you can’t say that there has to be more lot coverage or that they require larger setbacks or that there is a greater frontage requirement for houses that have an accessory dwelling units. Everything has to be held to the exact same standard as a single-family residence. There has to be an interior door between the attached accessory dwelling units and the single-family residential. That’s actually not right, it should say locks. You can’t mandate that the interior door be unlocked which is what municipalities have done in the past. There has to be a door but you can’t say that it has to be unlocked. Adequate supply for water and sewer; you can’t limit it to only one bedroom anymore and you cannot require familial relationships only so there are no more deed restrictions that it is only for family. You cannot make the size less than 750 square feet.

Alderman Dowd

So if have a house that’s one septic and the house is designed for a three bedroom house and now you are adding two bedrooms, how does that work?

Ms. Marchant

It would mean that you would have to get a new septic plan prior to issuing a building permit. On a standard lot they run between $6,000 and $9,000. That would be to install a new one, I think to get a plan updated is about $700 to $1,500.

Alderman Dowd

You would have to have the land to dissipate the discharge.

Ms. Marchant

Correct.

Alderman McCarthy

We require 40,000 if you have a septic or well and 60,000 if you have both.

Ms. Marchant

We don’t have too many lots with septic. It also allows the community to say you can only have one accessory dwelling unit per a dwelling unit. It allows provisions for adequate parking. The design and esthetic standards to support neighborhood character. A lot of communities are looking at what some of the surrounding
communities in Portsmouth and others have done. You can't have a second front door facing the street; it has to be one the side or finding ways to make it look like the rest of the neighborhood and you can require the property owner to live on the property. Some other communities are allowing larger sizes, for example, Amherst is allowing 1,100 square feet, Bedford allows for 1,000 square feet, Portsmouth is 750 square feet but on larger lots, the 40,000 square foot plus or minus 1,000. There are different nuances that we can talk about and look it but we do have a June 1st deadline of this year.

Alderman Clemons

This would not allow deed restrictions anymore, is that correct?

Ms. Marchant

That's correct.

Alderman Clemons

What would happen if someone was to apply to do this and they meet all of the requirements and the house essentially becomes a two-family house and then they move three months later after the construction is done.

Ms. Marchant

If our ordinance says that one of the two shall be owner occupied. You can't require that it has to be the main house that is owner occupied but one of the two. If we found out that it was no longer owner occupied then we would have code enforcement go in and we could certainly ticket them under the ticketing ordinance and bring them to court over it.

Alderman Clemons

I mean more of like after the sale; if they are living there and then they decide that they decide to sell it.

Ms. Marchant

Once it is granted it's with the property. They wouldn't have to take it out. Because its' not familial in nature there is no limitation to it. We would be taxing it as...it's actually a special category to the best of my knowledge and we will verify with the Assessing Office, but I did talk with the assessor and it's not taxed as a duplex, it’s taxed as a single-family with an accessory unit, it’s a special code and that tax rate; the value of the property would be included in that and it would continue that way. There would be no requirement to remove the unit.

Alderman Clemons

But what if the new owner rented out the whole thing?

Ms. Marchant

I would recommend that we put something in that says one of the two units has to be owner occupied.

Alderman McCarthy

If they don't meet that we can revoke the certificate of occupancy.
Alderman Clemons

I guess I am of the opinion that we shouldn’t do that. I wouldn’t want to see properties restricted like that; I think it goes against the spirit of the law.

Alderman Dowd

So is the special exception process still the best option? If it’s allowed by the state and we can’t refuse it, to have to go in for special exception costs the owner money to get something that they are entitled to so why would we have a special exception requirement?

Ms. Marchant

I think the value of the special exception process is allowing a format for neighbors and other people to listen to the design and the conversation about it and give public input. Many communities because of this ordinance and requirement have changed away from a special exception or conditional use permit and are allowing them by right. That is certainly something that is an option in crafting this ordinance.

Alderman Dowd

If it’s allowed by right, the special exception process, how much is that going to cost somebody?

Ms. Marchant

I would say over $1,000.

Alderman Dowd

So something that is allowed by right by the state we are going to say yes, but…even if you do the special exception process you can’t say no.

Ms. Marchant

You can if it’s outside of the character of the neighborhood or the criteria of the special exception.

Alderman Dowd

But is the state law set up for that to be an administrative decision?

Ms. Marchant

The state law does not require it to be either a special exception or a conditional use permit, the state law allows a community to elect to choose that route but it prefers it by right.

Alderman Dowd

As I understand it if it is an administrative decision, yes or no, somebody in the public can challenge it and then go before the Zoning Board and say it doesn’t meet the criteria.

Alderman McCarthy

The person challenging it has to pay the fees to cover the appeal to the Zoning Board.
Alderman Dowd

I understand that but that is more in line, I think, with the state is trying to do. Not that I agree with what the state’s doing.

Alderman McCarthy

The applicant is the one that benefits from it; it shouldn’t be up to the neighbors to pay to fight it if they have complaints.

Alderman Dowd

I understand that but it’s being allowed by the state so if you have to…

Alderman McCarthy

The state could have said it must be allowed by right, they did not do that. They allowed the option for the municipality to choose. I suspect they did that because if it were allowed by special exception before, as it is now, and they said it must be allowed by right, you now have an unfunded mandate to get rid of the reviews and the revenue goes away. I think we can do it either way. If you have a decent ordinance that has the criteria correct then doing it by right may be the easiest thing to do, however, if you don’t…if you want to put stuff in there that says it must be esthetically of the same character as the neighborhood you almost have to take that to the Planning Board.

Alderman Dowd

So if it’s allowed by right you go through the special exception and the Zoning Board says no but there’s no real criteria against the way the state law is written. Now someone is going to have to challenge it in court.

Alderman McCarthy

They could simply turn it down. It would have to be approved with stipulations no matter what.

Alderman Dowd

So if it met all of the criteria going through administrative review then…

Ms. Marchant

Then we would grant the building permit.

Alderman Dowd

Right and you wouldn’t have to get a special exception. The only way you would need a special exception is if there is something that is in question.

Ms. Marchant

You would need a variance. If the zoning administrator decided that it doesn’t meet the letter of the law then you would need a variance.

Alderman McCarthy

I don’t think that’s the case that you have to be concerned about. If it’s allowed by right and administrative review and there is a criteria of esthetics in it, it’s going to get approved virtually every time and anytime there is a complaint the neighbors will have no redress and will come to this Board to complain.
Alderman Dowd

I’ve had a lot of people complain about how expensive it is to go before the Planning Board and Zoning Board.

Alderman McCarthy

To put a rental unit on that’s going to generate $1,000 per month in revenue?

Alderman Dowd

Not necessarily if you have one of your kids live there you are not going to charge them so there’s no revenue there. I would have more of a problem if people start doing this on their own so they can rent out space, that’s just creating an entire city full of rooming houses.

Alderman McCarthy

That is in large part the intent of the legislation.

Alderman Lopez

Well we could use more housing but remember there will be a door that opens into their house.

Alderman McCarthy

Have we ever been challenged on the familial relation?

Ms. Marchant

Not to my knowledge. Again, in the almost ten years that the ordinance has been in place we’ve only had six or seven approved.

Alderman McCarthy

Basically there is case law that says you can’t even define what a family is. I think the thing that has kept them down since we put that in place is the requirement that you not have a stove.

Ms. Marchant

That isn’t the case in our current law.

Alderman McCarthy

Sure it is.

Ms. Marchant

No.

Alderman McCarthy

We don’t allow some part of kitchen facilities and that was done specifically to disallow the case of turning it into a duplex.
Ms. Marchant

It’s not part of the existing law.

Alderman McCarthy

I don’t know when they took it out.

Ms. Marchant

It does say that if you were to sell the house it does have to be used only by familial. I think what slows them down is that this is not an inexpensive proposition. You are talking between $60,000 and $100,000. There are certainly more accessory dwelling units elsewhere than there are in Nashua and we certainly have the vast majority of all housing in the origin.

Alderman Lopez

I think particularly the neighborhoods that I represent could use more owner occupied dwellings so I wouldn’t necessarily hate to see something in there. I think this is also a good potential for people who have aging parents or people that has a brother or sister who is disabled.

Alderman Moriarty

What was it before and what is now regarding can you turn it into a self-sufficient rental unit?

Ms. Marchant

Right now it is a self-sufficient unit with a stove and everything; however, you can’t rent it. You can only rent it or let people use it for familial relation, there is a deed restriction that goes with the allowance because its state law that you are no longer allowed to limit who can use it.

Alderman Moriarty

Does the City of Nashua have any authority to put any restriction on it in that regard?

Ms. Marchant

No, not after June 1st.

Alderman Dowd

I can see in south Nashua, Manchester and Bedford people that are struggling that would add onto their house with one of these units so they could house a college student paying rent and I’m sure there would be tax advantages to that as well. The consideration would be is it cost advantageous.

Ms. Marchant

I can tell you that Manchester pretty strongly opposed this at the state legislative level but it is what it is and they are having to make accommodations as well. They had not started discussing this yet. Portsmouth seems to have embraced it. They have some major aging and placement issues. There are a lot of people who can’t afford the taxes. They have done some interesting things depending on the size of the accessory dwelling units, the number of parking spaces, they have also vivicated a bit to allow for something they created, a garden cottage instead of an attached accessory dwelling unit which are existing structures that
don’t meet the setbacks on a single-family house but it does when you convert it so that they can’t detract from the privacy of the neighbors so windows and doors can’t more than 8 feet high.

Alderman Dowd

What is the next step?

Ms. Marchant

The next step would be to have a discussion at the planning level and stir up any discussion at the elderly housing discussion. I think we will get some legislation going in March. The feedback tonight is I’m kind of hearing both sides of yes, owner occupied and not.

Alderman McCarthy

Basically, my own house I could rent and it doesn’t need to be owner occupied so it’s not clear that’s any different. Where we care about it is where someone is not necessarily meeting the standards for rental properties and I would assume that is going to happen less in an owner occupied property. In a four-unit or more case we know that it’s a rental property because we have a site plan and it’s a commercial site. How do we know now what the entire rental two-family inventory is in the city?

Ms. Marchant

We know which properties are two-families or assessed as a two-family but we don’t know if they are owner occupied or not. I mean we could look at the assessing records and see if the person we mail the taxes to lives there too but that’s our best guess.

Alderman Lopez

What would happen in the case of someone running a group home and decided that they would live in the accessory dwelling unit as a manager or landlord and have the house have multiple residents in it. Would this impact this?

Ms. Marchant

That would be a different zoning code classification and they would need a site plan.

Alderman Clemons

I would support the owner occupied idea that if you own the house and you want to do this for whatever reason that as the applicant who is doing this, you have to live in one of the units. I think that we should make it clear in our ordinances that once the house is put on the market for sale that requirement is no longer. What I can picture in my mind is something like for example, my aunt and uncle who live in Nashua, they put on a unit for my grandmother and right during the middle of construction she was diagnosed with cancer so they built the property and she moved in and it was a matter of a month when she passed away. In that situation if my aunt and uncle decided that they wanted to downsize because now they are living in this huge house that they just expanded, they couldn’t do that if we restricted it to you have to be an owner occupied. The market for someone to buy a house like that is much smaller. That restriction, if it had to be put into a purchase & sales I think would prohibit the marketability of the house and that’s what I don’t want to see happen because there are plenty of situations like that out there where you have an intent for the property and then something unexpected happens and life changes. I think we need to be more clear about that. I also think that this is good in the sense that we would also have an understanding of where these properties are and I think it would help code enforcement as well. I’m not necessarily against the idea of having to go before a Board to get this
approved either. My biggest concern would be once this is built that the property be marketable to its full extent after the fact.

Alderman McCarthy

So if it's not, why would we want to allow this? What that says is that we are establishing something that dilutes property values.

Alderman Clemons

What do you mean?

Alderman McCarthy

If the property is less marketable with the accessory dwelling unit than without it, it’s always marketable at the right price so you are basically depressing property values if you do that. I don’t think that it is less marketable because part of the reason for this is that there single-family homeowners who want to put accessory dwelling units in. You can always just not rent it and use the space. I’m not sure that it does detract from it and I’m still not sure whether we ought to have the owner occupancy restriction or not. We don’t have it now on duplexes so what difference would it make on this? I don’t think it’s going to make a difference one way or the other on whether a property is sellable or not.

Alderman Clemons

I think it does. If you are creating a situation where you always have to have an owner in living in the building you are putting a burden on the property owner. You could buy a single-family home now and rent it out.

Alderman McCarthy

Nobody does.

Alderman Clemons

Yes they do.

Alderman McCarthy

I would guarantee you that more than 90% of the single-family homes are owner occupied.

Alderman Clemons

I know of plenty of houses that are being rented as full family houses in Nashua and there are rental properties.

Alderman Dowd

There are a lot of condos.

Alderman Lopez

Wouldn’t you be able occupy the main house but you wouldn’t be able to occupy the accessory dwelling unit?

Chairwoman Melizzi-Golja

You could occupy either.
Alderman Clemons

You would be surprised where these houses are being rented. I had a friend who rented one right off of West Hollis Street. We don’t have a restriction on that and I don’t think that we should put any kind of restrictions like that. It would be my preference but certainly in a subsequent sale I would think that would be a really bad move.

Alderman Dowd

I would be shocked if somebody put one of these on and the tax collector didn’t re-assess the property to some significant increase because of the added living space. Whoever does this not only has to foot the burden of the building but the taxes going forward. If they are doing it for rentals then the rentals are going to have to be pretty high. If someone has a very large house with a large lot they could put an accessory dwelling unit on that has three or four bedrooms, right?

Ms. Marchant

Unless we limit the bedrooms to two. You can’t limit it to one bedroom by state law but you could say a maximum of two bedrooms or just be silent on the number of bedrooms.

Alderman McCarthy

We do have a restriction on size. A four bedroom 1,000 square foot unit, that would be some mighty small bedrooms.

Ms. Marchant

The state law says you can’t go less than 750 square feet and right now it is 700 square feet. That said that would certainly accommodate a 24’ x 24’ garage if someone wanted to convert it to an accessory dwelling unit.

Alderman Dowd

Our elderly housing is 1,000 square feet and at Stinson there are two bedrooms and that’s not a lot of living space. Could you make the square footage allowed predicated on the size of the house that it is being attached to?

Ms. Marchant

As long as you didn’t limit it to less than 750 square feet. It’s 30% right now but up to 700 square feet.

Alderman Clemons

So that state law says that the housing can’t be less than 750 square feet.

Ms. Marchant

It can’t mandate that, you can build one that is smaller. The municipality can’t limit it to less than 750.

Alderman Clemons

I agree that it is the bigger ones that are more concerning and I would agree to put some type of restriction on the size in that way.
Alderman Dowd

The discussion we had at the Ward 3 meeting was that it appeared that the state legislature said that it doesn't have to be attached.

Ms. Marchant

There is an allowance in here that a community can allow for detached but it would have to meet all of the setbacks of a single-family. It doesn't say you have to in any way, shape or form. We can add that if you want but I think that would be a very large change from where we are at and I'm kind of a fan of stepping into things and seeing their impact and then deciding if we want to go further.

Alderman McCarthy

I would want to see them be attached. You can't avoid changing the character of the neighborhood if they are not.

Alderman Clemons

Not necessarily though but I guess if they have to meet the setback requirements then yes. I'm thinking of detached garages. I thought this said you didn't have to meet the setback requirements.

Ms. Marchant

You shall meet the setback requirements for a single-family house so in Nashua our accessory dwelling units or garages have separate setbacks than the main dwelling so they wouldn't qualify and they would automatically need a variance. That's what Portsmouth did, the garden cottage thing, to allow some of the existing structures that were maybe 5' or 6' from the property line to be able to be converted and then they have that clause in there about not detracting from the privacy which I think would be a really difficult thing to achieve.

Alderman Clemons

Is the Portsmouth law in effect now?

Ms. Marchant

I think their City Council approved it.

Alderman Clemons

Is there any community interest yet?

Ms. Marchant

I will reach out to the director and see.

Alderman Clemons

It would be interesting to see what some of the projects are, if any.

Alderman Moriarty

Are the current setbacks different depending on what part of the city you are in?
Ms. Marchant

Absolutely.

Alderman Moriarty

I am certainly for the accessory dwelling unit having to conform with the main single-family setback and that automatically adjusts if you are in the urban area.

Alderman McCarthy

To me the larger issue is that you are more likely to run into situations where the water and or sewer is not adequately handled in the final product if it’s a detached structure.

Ms. Marchant

We can’t require it to be the same system by law but somebody could put in a separate water/sewer lines or a separate septic system.

Alderman Dowd

Could you take a house that is already existing if it’s configured right and put a wall up and a door and call it the accessory dwelling?

Ms. Marchant

It’s a little bit more complicated than that because under the building code, the ICC code, you actually have to follow the two-family code which would require complete separation of the unit so the wall would have to be separated. It’s costly to do that and it does have to be a complete independent living unit.

Alderman Dowd

I’m thinking about houses that I know where allowed an exemption for a family member to live with them; there was a separate wall and the house was just added on.

Alderman Lopez

I think a unit with an attached store which is separated wouldn’t be that hard to switch over.

Ms. Marchant

It’s easier to go from residential to residential than to go from mercantile to residential.

Chairwoman Melizzi-Golja

Could there be different plans for different zones. Do you know what Portsmouth has; do they have just one blanket?

Ms. Marchant

The maximum size of their unit is 750 square feet unless it is a large lot and then they allow up to 1,000. They also do one off-site parking space for up to 400 square feet and units over 400 square feet require two off-site,
off-street parking spaces. Portsmouth contends with a lot of rental housing. Bedford and Hollis say no new curb cuts, only one driveway but adequate off-street parking.

Alderman Dowd

Portsmouth has a lot of requirements for small living spaces for crews from the submarines being retrofitted at the shipyard.

Ms. Marchant

They built a new parking garage about one year ago and the whole exterior face have those micro units that are about 350 to 400 square feet units off the parking garage so it doesn't look like a parking garage.

Chairwoman Melizzi-Golja

With regard to the small living units they have, do they have anything that restricts the number of unrelated people per bedroom?

Ms. Marchant

Durham does. I think that’s a difficult road to go down.

Alderman McCarthy

The other thing that you can do that passes muster is to limit the number of people per square foot.

Committee Goals for Strategic Planning

UNFINISHED BUSINESS – RESOLUTIONS - None

UNFINISHED BUSINESS – ORDINANCES

O-16-020, Amended
Endorser: Mayor Jim Donchess
CLARIFYING AND UPDATING THE ELDERLY HOUSING SUPPLEMENTAL USE REGULATIONS AND RELATED PROVISIONS
• Withdrawn from Committee on 1/10/17; Amended; Re-Referred to PEDC & NCPB as Amended; and, Public Hearing scheduled for Feb. 7, 2017, at 7 PM in the Aldermanic Chamber

MOTION BY ALDERMAN CLEMONS TO TABLE O-16-020 PENDING THE PUBLIC HEARING SCHEDULED FOR FEBRUARY 7, 2017, AT 7 PM IN THE ALDERMANIC CHAMBER MOTION CARRIED

NEW BUSINESS – RESOLUTIONS – None
NEW BUSINESS - ORDINANCES

O-17-029
Endorser: Alderman-at-Large Brian S. McCarthy
        Alderman-at-Large Michael B. O'Brien, Sr.
        Alderman-at-Large Daniel T. Moriarty
        Alderwoman Mary Ann Melizzi-Golja

REGARDING SIDE AND REAR SETBACKS FOR A LOT WITH MULTIPLE PRINCIPAL BUILDINGS

- Also assigned to the Planning Board; Public Hearing scheduled for 2/7/17 at 7 PM in the Aldermanic Chamber

MOTION BY ALDERMAN CLEMONS TO TABLE O-17-029 PENDING THE PUBLIC HEARING SCHEDULED FOR FEBRUARY 7, 2017, AT 7:00 PM IN THE ALDERMANIC CHAMBER
MOTION CARRIED

GENERAL DISCUSSION

ADJOURNMENT

MOTION BY ALDERMAN CLEMONS TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 7:56 pm.

Alderman-at-Large Daniel T. Moriarty
Committee Clerk
What is the New Accessory Dwelling Unit Law?

On March 16, 2016, Governor Hassan signed Senate Bill 146, New Hampshire's Accessory Dwelling Unit (ADU) law, which takes effect on June 1, 2017. Under the new law, an “accessory dwelling unit” is defined 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.

The new ADU law requires municipalities to allow internal or attached accessory dwelling units in all zoning districts where single-family dwellings are permitted. It establishes in state law that an internal or attached ADU is part of single-family use of a parcel, not a separate use.

The law also gives municipalities the option of permitting detached ADUs, which is an accessory dwelling in a building not attached to the primary single-family dwelling, such as in a garage, barn or other separate structure.

The new law also repeals the sections of RSA 674:21 (Innovative Land Use Controls) that previously included and defined ADUs. If a municipality's ADU ordinance relies on RSA 674:21, it is recommended that the ordinance be amended to reference the new statute.

The ADU law will be found at RSA 674:71 through RSA 674:73.
What is the Purpose of the Accessory Dwelling Unit Law?

The reasons cited by the legislature for the ADU law are:

- A growing need for more diverse affordable housing opportunities for New Hampshire citizens;
- The desire of adult children to provide semi-independent living arrangements for aging parents;
- The need for independent living space for caregivers for elderly and disabled citizens;
- The need to increase the supply of affordable housing without the need for more infrastructure or further land development;
- Benefits for aging homeowners, single parents, college graduates with high student debt, caregivers and disabled persons;
- Integrating affordable housing into the community with minimal negative impact; and
- Providing elderly citizens with the opportunity to live in a supportive family environment with both independence and dignity.

How will Accessory Dwelling Units be Regulated?

A municipality that adopts a zoning ordinance which regulates ADUs must allow one ADU for any single-dwelling unit as a matter of right, or by conditional use permit, or by special exception in all zoning districts that permit single-family dwellings.

- **As a Matter of Right** – When allowed as a matter of right, a property owner is not required to obtain special permission from the municipality other than the normal building permit or zoning compliance permit, if required of all new development.

- **Conditional Use Permit** – Even though ADUs will be removed from the Innovative Land Use Controls statute (RSA 674:21) effective June 1, 2017, the new ADU statute allows municipalities to utilize the conditional use permit process authorized in RSA 674:21 whereby the planning board reviews an ADU application submitted by the property owner and grants a permit. A municipality that chooses to regulate ADUs in this manner should determine the conditions under which the permit will be issued, devise an application form, determine what information should be submitted by the property owner, and any other conditions the municipality wishes to impose.

“We must always be working to increase safe, affordable housing options so that all people can live independently and engage in their communities, empowering them to contribute to our economic and civic life. By requiring municipalities to allow one attached accessory dwelling unit to single-family homes in zones that allow those homes and establishing other important requirements for local regulation of these units, this bipartisan bill will help increase affordable housing options, helping to meet workforce demands and allowing more of our older citizens to live independently in their communities. I thank members from both parties in both chambers for their efforts on this legislation, and I am proud to sign this important bill to increase safe and affordable housing options into law.”

Governor Maggie Hassan
March 16, 2016
Planning for Accessory Dwellings

applicant, and follow the normal procedural requirements for completed applications as detailed in RSA 676:4. Municipalities may also want to review the planning board’s Rules of Procedure, if that is where the information is included on how conditional use permits are administered.

- **Special Exception** – Municipalities that choose to regulate ADUs through the special exception process should amend their zoning ordinance to include the criteria required for the grant of a special exception by the zoning board of adjustment (ZBA), as provided in RSA 674:33, IV.

Municipalities have some discretion in determining the conditions under which the planning board would issue a conditional use permit or the ZBA would issue a special exception for an ADU. The provisions to regulate the appearance of the ADU may include:

- Design standards that maintain continuity with the look of the primary dwelling unit;
- Location of parking for and access to the ADU so that they are not visible from the road;
- Owner occupancy of either the primary or accessory dwelling unit;
- Square footage of the ADU (not less than 750 square feet); and
- Limits on the number of unrelated persons, the number of persons per bedroom, and/or the number of bedrooms (cannot be limited to only one bedroom).

**What if a Current Ordinance Differs from the Provisions of the New Law?**

The provisions in a municipality's existing ADU ordinance that are not in compliance with the requirements of the new ADU law will become ineffective and unenforceable as of June 1, 2017.

**What if an Ordinance is Silent on Accessory Dwelling Units?**

If a municipality's zoning ordinance contains no provisions related to ADUs, then the minimum provisions of the new law shall apply beginning on June 1, 2017:

- One *internal* or *attached* ADU per single-family dwelling will be deemed a permitted accessory use for all single-family dwellings; and
- ADUs will be permitted as a matter of right, with no permits or conditions required other than a building permit or zoning compliance permit, if necessary.
## What Standards May, Must Be, or Must Not Be in Municipal ADU Regulations?

<table>
<thead>
<tr>
<th>ADU Standards that <strong>Must</strong> or May Be in Regulations</th>
<th>ADU Standards that <strong>Must Not</strong> Be in Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Must apply same regulations for single-family dwellings to the combination of the principal dwelling and the ADU, including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with U.S. Department of Housing and Urban Development (HUD) policy.</td>
<td>Must not include additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling.</td>
</tr>
<tr>
<td>Must have an interior door between the attached ADU and the primary dwelling.</td>
<td>Must not require internal doors to remain unlocked.</td>
</tr>
<tr>
<td>Must have adequate provisions for water supply and sewage disposal for the ADU, in accordance with RSA 485-A:38 (Approval to Increase Load on a Sewage Disposal System).</td>
<td>Must not require separate water and sewage systems for the principal dwelling and ADU.</td>
</tr>
<tr>
<td>May require the property owner to live in either the principal dwelling unit or ADU and/or demonstrate that one of the units is their primary dwelling unit.</td>
<td>Must not say which unit the owner must live in.</td>
</tr>
<tr>
<td>May limit the number of unrelated individuals that occupy the ADU or principal dwelling unit.</td>
<td>Must not require a familial relationship between the occupants of an ADU and the occupants of the principal dwelling unit.</td>
</tr>
<tr>
<td>May establish minimum and maximum sizes for ADUs.</td>
<td>Must not restrict the size of the ADU to less than 750 square feet.</td>
</tr>
</tbody>
</table>

### Other Standards That **May Be** in Regulations:

- May limit the number of ADUs to only one per single-family dwelling.
- May require adequate parking to accommodate the ADU.
- May establish design or aesthetic continuity standards for ADUs so their appearance fits in with the principal dwelling unit and/or neighborhood.
- May deem an ADU to be a unit of workforce housing for purposes of satisfying municipal obligations under RSA 674:59, if the unit meets the criteria in RSA 674:58, IV for rental units.
What About Detached Accessory Dwelling Units?

Municipalities may enact zoning regulations to permit *detached* ADUs, in addition to the *internal* or *attached* ADUs permitted by the ADU law. Such regulations may require a larger lot size for a principal dwelling unit and a *detached* ADU than for only a principal dwelling unit in the same zoning district. Otherwise, regulations for *detached* ADUs must comply with the same standards stated on the previous page.

What are the Next Steps?

A municipality’s next steps in regards to the new ADU law depend on whether the municipality has already adopted an ADU ordinance and whether the municipality wants to adopt certain standards for ADUs. The guidance below is offered for these various scenarios. In all of the scenarios below, municipalities should also consider whether or not to amend their ordinance to allow *detached* ADUs and the standards to apply to them.

1. If a **municipality has a current ADU ordinance**, officials should complete a review of the ordinance and determine if it complies with the standards of the new law. If changes are needed, the municipality should amend the ordinance before June 1, 2017.

   If the regulations rely on RSA 674:21, which the new law repeals, it is recommended that amendments be made to reference the new statute.

   If the regulations allow ADUs only on larger lot sizes or with greater frontage or other similar dimensional requirement than required for single-family dwellings in that district without ADUs, they will no longer apply under the new ADU law.

2. If a **municipality does not have a current ADU ordinance** and would like to adopt certain standards for ADUs, municipalities should develop an ordinance that complies with the new law and decide whether to allow ADUs by conditional use permit, or by special exception. If adopting ADU provisions, the municipality should do so before June 1, 2017.

3. If a **municipality does not wish to adopt an ADU ordinance**, the minimum provisions of the new law will still apply in the municipality beginning on June 1, 2017.
Accessory Dwelling Units

Planning and Economic Development Committee Discussion

January 17, 2017
What is an Accessory Dwelling Unit (ADU)?

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. RSA 674:71
Nashua’s Existing ADU Ordinance

- Allowed by Special Exception in most zoning districts
- Incidental and subordinate to primary structure
- Maximum size: 30% of gross floor area up to 700 SF
- Shall not alter the character or appearance of SFR
- Only allowed to be used by blood or marriage relatives or relatives of inhabitants of SFR – through deed restriction
- Property shall be owner occupied
State Law effective June 1, 2017 **Requires:**

- Allowing attached ADUs in all residential zoning districts, in all communities in NH
- Same lot standard provisions as SFR (setbacks, open space, frontage, etc)
- Interior door (unlocked) between attached ADU and SFR
- Adequate supply for water/sewer
- Shall not limit to one bedroom
- Shall not require familial relationship
- Shall not limit size to less than 750SF
State Law effective June 1, 2017 **Allows:**

- Limiting # of ADU’s to one per SFR
- Provisions for adequate parking
- Design or aesthetic standards to support neighborhood character
- Requiring property owner to live on the property
Discussion - Nashua needs to update its ordinance:

What standards and details are important?

Special Exception process still best option?

Questions and concerns?