

LEGALIZING ADUS AND DUPLEXES CAN HELP UNLOCK HOUSING AFFORDABILITY IN NEW HAMPSHIRE

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New Hampshire House Special Committee on Housing
Bill 1291, Relative to accessory dwelling unit uses allowed by right
Bill 1399, Allowing municipalities to permit 2 residential units in certain single-family residential zones

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Chairman Alexander, Vice Chairman Baroody, and members of the House Special Committee on Housing, thank you for allowing me to offer informational testimony relating to House Bill 1291, titled “Relative to accessory dwelling unit uses allowed by right,” and House Bill 1399, titled “Allowing municipalities to permit 2 residential units in certain single-family residential zones.” I am Charles Gardner, a research fellow at the Mercatus Center at George Mason University. I study housing policy and affordability across the country and how reforms like those proposed in this bill have affected housing market outcomes.

STRENGTHENING ACCESSORY DWELLING UNIT LAWS AND HOUSING AFFORDABILITY

New England states have been leaders in promoting accessory dwelling units (ADUs), with Maine, Vermont, Connecticut, and New Hampshire all passing statewide ADU legislation in recent years.¹ In 2023 alone, Maine, Vermont, and Massachusetts all proposed legislation strengthening their existing ADU laws, with Maine’s bill achieving passage.² The focus on ADU reform reflects growing recognition of the many benefits that ADUs can provide, including making efficient use of existing infrastructure, offsetting an owner’s high mortgage payments, allowing greater housing flexibility, and contributing to the stock of affordable rental units.

According to a 2023 Mercatus policy brief, the existing New Hampshire ADU law—enacted in 2017—was followed by the creation of hundreds of ADUs between 2017 and 2021 in eight towns for which data were available.³ Nonetheless, New Hampshire’s law allows localities to retain several regulatory barriers to ADU construction, including owner-occupancy requirements, subjective review processes, additional parking requirements, and mandates that ADUs be attached and not greater in size than 750

¹ Emily Hamilton and Abigail Houseal, “A Taxonomy of State Accessory Dwelling Unit Laws” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2023).

² Eli Kahn and Salim Furth, “Breaking Ground: An Examination of Effective State Housing Reforms in 2023” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, August 2023).

³ Emily Hamilton and Abigail Houseal, “Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study” (Mercatus Policy Brief, Mercatus Center at George Mason University, Arlington, VA, March 2023).

square feet.⁴ Limiting municipalities' ability to erect certain of these barriers, such as Maine has just done, would be expected to increase the rate of ADU production. In California, for instance, the elimination of owner occupancy requirements in 2017 coincided with a dramatic increase in overall ADU construction.⁵

House Bill 1291 would build upon New Hampshire's current ADU law by allowing the creation of a second accessory unit of up to 850 square feet, increasing the square footage for the first ADU to 1,000 square feet and allowing it to be detached, thereby somewhat limiting local barriers to ADU construction. Increasing the square footage for a primary ADU and allowing it to be detached would bring New Hampshire's ADU law closer to those of other New England states. Connecticut's law, for instance, provides that municipalities may not restrict ADUs to less than 1,000 square feet or 30 percent of the floor area of the primary dwelling or require that they be attached, while Vermont's law provides that they may not be restricted to less than 900 square feet or 30 percent of the floor area of the primary dwelling.⁶ Maine does not limit towns' ability to cap ADU size, but municipalities in the state commonly set a cap of up to 900 or 1,000 square feet without tying ADU size to the square footage of the primary residence.⁷

The changes proposed by the bill—an increase to the overall square footage of ADUs, the allowance of a second ADU under certain circumstances, and limitations on municipalities' ability to regulate or impose setbacks, aesthetic requirements, or design review requirements for ADUs—would be expected to further promote ADU construction in New Hampshire at a time when housing prices and rents in New Hampshire remain at or near record high levels.⁸

DUPLEX REFORM WOULD ASSIST HOUSING AFFORDABILITY IN NEW HAMPSHIRE

House Bill 1399 would return to property owners in certain areas of New Hampshire the right to build two homes where current local zoning rules allow only one house per lot. Allowing duplexes (two-family structures) in areas that localities have zoned for single-family use is a market-driven approach to improving affordability.⁹ It is also an approach that has been adopted by New Hampshire's neighbors: Maine (in 2022) and Vermont (in 2023) not only legalized duplexes in single-family districts, but also allowed up to four units per lot in urban areas served by city water and sanitary sewers.¹⁰

⁴ Hamilton and Houseal, "Legalizing Accessory Dwelling Units." See also N.H. Rev. Stat. § 674:72 et seq. (providing that an ADU "may not be restricted to less than 750 square feet" by a municipality).

⁵ Hamilton and Houseal, "Legalizing Accessory Dwelling Units."

⁶ See Conn. Gen. Stat. § 8-2o (2023) and 24 V.S.A. § 4414 (2024).

⁷ See, e.g., City of Saco Code § 230-701 (2023) (providing that "[t]he maximum size of any ADU is 1,000 square feet of total floor area"); Auburn Code of Ordinances § 60-43 (providing that "[t]he maximum first floor space of accessory buildings on lots under two acres is 1,000 square feet" and setting no cap for lots of over two acres); City of Biddeford Code of Ordinances § 78 (2023) (setting cap of 900 square feet or 35 percent of the floor area of the primary dwelling).

⁸ See Paul Briand, "Home Prices in New Hampshire Set Another New Record; Old Concerns Remain," *NH Business Review*, June 14, 2023; and Gene Martin, "Housing Crisis Is Harming New Hampshire's Economy and Its Communities," *New Hampshire Bulletin*, September 25, 2023.

⁹ Emily Hamilton, "Preempting Bans on Duplexes Can Improve Housing Affordability through Property Rights" (Mercatus State Testimony, Mercatus Center at George Mason University, Arlington, VA, January 2020).

¹⁰ See 24 V.S.A. § 4412 (2024) (providing that "[i]n any district that allows year-round residential development, duplexes shall be an allowed use with the same dimensional standards as a single-unit dwelling. In any district that is served by

Notably, Maine’s law even permits a second unit to be detached. In some cities, allowing flexibility in how two units may be situated on the same lot has encouraged creative and efficient architectural design, the re-use and improvement of neglected alleys and other service roads, and the offering of homes for sale as well as for rent, thereby increasing opportunities for homeownership.¹¹ An allowance for detached units would also avoid major disruptions to any existing dwellings on a property, such as the demolition of exterior walls to accommodate a second unit. Although the wording of House Bill 1399 is not completely clear, the current language does not appear to allow the second unit to be detached.

Legalizing attached second units in single-family zones, like allowing ADUs, is expected to promote construction of much-needed housing and is thus a key element of the zoning reform movement that is growing in popularity among the states. Changes going beyond those proposed in House Bill 1399, such as allowing up to four units on lots where infrastructure permits and requiring that localities allow additional units to be detached, would be expected to have an even larger impact on housing production while returning further property rights to New Hampshire homeowners.

THE STATE ROLE IN ALLOWING DUPLEXES AND ADUS TO BE BUILT

Local government authority to regulate housing density is based upon the state-granted power to protect health, safety, and the general welfare.¹² The effects of local rules that prevent homes from being built in one locality are not confined to that locality, however, but spill over to the next. Local land-use regulations that limit population growth, economic growth, and income mobility within one municipality limit growth and opportunity for New Hampshire as a whole.

When local authority is employed in a manner that interferes with state housing goals and the urgent housing needs of state residents, lawmakers have the responsibility to consider interventions tailored to advancing the welfare of all state residents. Legalizing ADUs and duplexes are two proven means of providing greater housing choice and allowing for a more abundant and flexible housing supply of affordable housing options.

municipal sewer and water infrastructure that allows residential development, multiunit dwellings with four or fewer units shall be a permitted use”) and M.R.S.A. § 4364-A (providing that “for any area in which residential uses are allowed . . . a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing dwelling unit and the lot is located in a designated growth area . . . or if the lot is served by a . . . water system and a . . . sewer system in a municipality without a comprehensive plan,” and also allowing two additional units even where a lot contains an existing dwelling).

¹¹ See Mark Kelly, “Why the Tall-skinny Is So Popular in Nashville,” WKRn.com, August 24, 2023. <https://www.wkrn.com/special-reports/why-the-tall-skinny-is-so-popular-in-nashville/>

¹² N.H. Rev. Stat. Ann. § 674:16 (2023).