

Legalizing Duplexes Can Help Unlock Housing Affordability in New Hampshire

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New Hampshire Senate Election Law and Municipal Affairs Committee
Allowing municipalities to permit 2 residential units in certain single-family residential zones

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Chairman Gray, Vice Chairman Murphy, and members of the Senate Committee on Election Law and Municipal Affairs, thank you for allowing me to offer informational testimony relating to 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.

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 home per lot. Allowing two homes, whether in the form of a duplex (two-family home) or detached structures, in areas that localities have zoned for single-family use is a market-driven approach to improving housing affordability.¹ 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.²

¹ 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).

² 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 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).

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.³ 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 appear to allow the second unit to be detached.

Legalizing attached second units in single-family zones, like allowing ADUs (accessory dwelling units), 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 many 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 AN ADDITIONAL UNIT IN CERTAIN ZONES

Local government authority to regulate housing density is based upon the state-granted power to protect health, safety, and the general welfare.⁴ 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. Moreover, New Hampshire’s neighboring states have already enacted similar legislation.

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 an additional unit on a single residential lot is a proven means of providing greater housing choice and allowing for a more abundant and flexible housing supply of affordable housing options.

³ 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/>

⁴ N.H. Rev. Stat. Ann. § 674:16 (2023).