



TOWN OF KITTERY
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REPORT TO TOWN COUNCIL

Meeting Date: June 10, 2019
From: Kendra Amaral, Town Manager
Subject: Title 16 – Accessory Dwelling Units
Council Sponsor: Vice Chairperson Matt Brock

OVERVIEW

The Housing Working Group was formed in the spring of 2018 to identify solutions and recommendations to address the town’s growing challenge of housing affordability. The Working Group is made up of volunteers including Councilor Matt Brock, Planning Board members Drew Fitch and Russell White, and interested residents, non-profit agencies, and business owners including Debbie Driscoll, Emily Flinkstrom, Stephen Kosacz, and Tom Emerson.

One of the Working Group’s goals is to recommend and advance ideas to increase housing supply that is accessible for people of low to moderate incomes. It coordinated with the Seacoast Workforce Housing to host a workforce housing workshop in October 2018. Early in 2019, the Working Group proposed an ordinance revision for the Accessory Dwelling Unit code. It is presently working on developing recommendations for an affordable housing overlay zone for Title 16.

ACCESSORY DWELLING UNITS

The Working Group decided to focus on Accessory Dwelling Units (ADUs) as a first step, as this form of housing stock growth tends to be more organic, fits with existing infrastructure fairly seamlessly, and is less complex than large housing projects. ADU ordinance applies to single-family residential parcels, and allows for an additional dwelling unit (not separately owned) to be added to the parcel.

The proposed ordinance revision was developed by the Working Group with assistance from town staff. It was reviewed and revised by the Kittery Land Issues Committee (KLIC). The revised version was supported by the Working Group and forwarded to the Planning Board for review and recommendation to the Council.

The Working Group focused on reducing barriers such as size, parcel applicability, caps on annual ADU development, and owner occupancy requirements. The Planning Board accepted the revisions to the design and performance standards, but added back owner occupancy requirements, and introduced an annual permitting process as they grappled with their concerns regarding short-term-rentals (which is not part of this ordinance).

NEXT STEPS

- June 10 – Workshop with Planning Board
- June 10 – Schedule Public hearing on proposed amendments
- July – Public hearing and vote on proposed amendments

ATTACHMENTS

- Proposed Title 16 Amendment – Accessory Dwelling Units
- Title 16 – Accessory Dwelling Unit Enactment
- Planning Board Public Hearing Notes – March 28, 2019

Video of the April 25, 2019 Planning Board Meeting is available at kitteryme.gov

AMEND Chapter 16.8.25 Accessory Dwelling Units as follows:

1 ACCESSORY DWELLING UNIT (ADU)

2 ~~An apartment which is part of an existing structure on the property where the owner of the~~
3 ~~property occupies one of the units. The accessory dwelling unit may be rented so that the owner-~~
4 ~~occupant may benefit from the additional income. The owner may also elect to occupy the~~
5 ~~accessory dwelling unit and rent the principal dwelling unit.~~

6 A secondary dwelling unit with facilities used or intended to be used for living, sleeping,
7 cooking, eating, and sanitary facilities for one or more persons, whether attached to the primary
8 dwelling unit, detached from it, or contained within it.

9 Article XXV. Accessory Dwelling Units

10 § 16.8.25.1. Purpose.

11 It is the intent of this article to ~~impose~~ provide standards that enable homeowners to create
12 accessory dwelling units that are compatible with this title and to (1) provide a means for
13 residents – including seniors, single parents, and families with grown children – to remain in
14 their homes and neighborhoods, and (2) increase the housing stock of existing neighborhoods in
15 a manner that is compatible with their size and scale, and (3) allow more efficient use of existing
16 housing stock and infrastructure, and (4) provide a broader range of affordable housing options.
17 The purpose of this article is not intended to create a new supply of short-term rental (STR)
18 units, such as those commonly advertised to tourists. ~~do not negatively impact the character of the~~
19 ~~existing neighborhood or overburden the existing infrastructure.~~

20 § 16.8.25.2. Applicability.

21 A. An accessory dwelling unit is allowed in all zoning districts where the use is permitted in
22 Chapter 16.3. The unit must be located:

23 (1) within an existing structure, either principal or accessory on the property; or

24 ~~(2) with a certificate of occupancy issued more than five years prior to the date of the~~
25 ~~ADU application, on the property where the owner of the property occupies one of~~
26 ~~the units. The accessory dwelling unit may be attached to the existing structure,~~
27 sharing a common wall; or

28 (3) within a new accessory structure constructed for this purpose on the property.
29 ~~detached from, the primary dwelling unit. No expansion of a building's footprint is~~
30 ~~allowed to accommodate an accessory dwelling unit.~~

31 B. No ADU may be owned separately from its primary dwelling unit.

32 C. All ADUs must comply with the provisions of this ordinance within 90 days of the
33 effective date of this ordinance.

34 § 16.8.25.3. Annual permit Application for accessory dwelling unit.

35 A. An annual permit ~~application~~ is required for an accessory dwelling unit which must be
36 renewed by January 1 of each year. An application to obtain an annual permit for an accessory
37 dwelling unit must be made by the owner of the parcel containing on which the primary
38 residential unit ~~sits~~. The completed permit application and associated fees must be submitted to
39 the Town Planner and Code Enforcement Officer for review.

40 B. Applications for an annual permit and the annual permit for an accessory dwelling unit that
41 meets the unit size standards and development standards contained in this article may be
42 approved administratively and require approval by both the Town Planner and Code
43 Enforcement Officer.

44 C. Permits must be renewed annually by the owner residing at the parcel containing the primary
45 unit.

46 D. An accessory dwelling unit that fails to meet the unit size standards and/or the development
47 standards provided in this article may not receive administrative approval; however, the
48 accessory dwelling unit may still be allowed. See § 16.8.25.4A and B below.

49 ~~D. The Town limits the number of new accessory dwelling unit permits to no more than 22 in the~~
50 ~~remainder of the calendar year of implementation and no more than 10 per calendar year on a~~
51 ~~first-come first-served basis.~~

52 E. One of the units on the property, either primary or secondary, must be occupied by the
53 property owner at all times during the period of permitting. Prior to the issuance of a certificate
54 of occupancy, the property owner must submit a recorded copy of deed restrictions to the Town
55 Planner, outlining the owner-occupancy requirement.

56 § 16.8.25.4. Accessory dwelling unit standards.

57 A. Lot standards.

58 (1) Legal lot/residence. An accessory dwelling unit is allowed only on lots within the
59 Town that contain a legal, single-family residence as the primary unit.

60 (2) Number of accessory dwelling units per lot. No more than one accessory dwelling
61 unit is permitted on a lot.

62 (3) Zone lot size and unit density. The property on which an accessory dwelling unit is
63 located must meet the size required by ~~a zone's~~ the applicable zoning standards for
64 principal residence except in the case of legally non-conforming lots. However, an
65 accessory dwelling unit is exempt from the density requirement of ~~such~~ the zone.

66 (4) Setbacks and Coverage. Yard setbacks for the zone must be met. However, for legally
67 non-conforming lots where a proposed accessory dwelling unit will be attached to a
68 principal dwelling unit and cannot meet the zone's side and rear yard setbacks, the
69 percentage by which a lot is smaller than the required lot size for the zone will dictate the
70 required setbacks for that lot. For example, a 30,000 square foot legally non-conforming
71 lot in a zone that requires 40,000 square feet would require side and rear yard setbacks
72 that are 75% of the zone's side and rear yard setbacks. Building coverage requirements
73 will remain as required by the zone.

74 (4~~5~~) Utility connections. Accessory dwelling units must be connected to ~~adequate~~ water
75 and ~~sewer-wastewater~~ services approved by the Town.

76 (a) Public sewer.

77 [1] Service: verification, in writing, of adequate service to support the
78 additional flow from the Superintendent of Wastewater Treatment
79 Facilities.

80 [2] Fees: Payment of appropriate fees for connection to the municipal
81 sewer system is required prior to obtaining the certificate of occupancy.

82 (b) Septic systems. Verification of adequate sewage disposal for subsurface waste
83 disposal is required. The septic system, existing or proposed, must be verified as
84 adequate or reconstructed as required. Plans for subsurface waste disposal must be
85 prepared by a Maine-licensed site evaluator in full compliance with the State of
86 Maine Subsurface Wastewater Disposal Rules, 10-144 C.M.R. 241.

87 (c) Public water. Verification in writing is required from the Kittery Water
88 District for volume and supply.

89 (d) Wells. Verification of the potable water supply for private wells is required.
90 Tests of the existing well or proposed well, if applicable, must indicate that the
91 water supply is potable and acceptable for domestic use and must conform to the
92 recommendations included in the "Manual for Evaluating Public Drinking Water
93 Supplies, Public Health Service No. 1180 (1969)."

94 (6) Parking. Each accessory dwelling unit must have one on-site parking space in
95 addition to the parking for the primary dwelling unit. Tandem parking is permitted.

96 (5) Private road or right-of-way access. Where an applicant seeks to locate an accessory
97 dwelling unit on a privately maintained road or right-of-way the following applies:

98 (a) Applicant must provide written consent from the association or parties
99 responsible for street maintenance; and

100 ~~(b) Road construction standards must support the additional trips generated.~~

101 B. Unit standards.

102 (1) Unit size. The size of an accessory dwelling unit must meet the minimum size for a
103 dwelling unit as set by building code standards adopted and amended from time to time
104 by Maine's Bureau of Building Codes and Standards and be no larger than 1,000 square
105 feet. For principal dwelling units 1,000 square feet or smaller, an accessory dwelling unit
106 may be no greater than 80% of the size, as measured in square feet, of the principal
107 dwelling unit. An accessory dwelling unit may have no more than two bedrooms.~~The~~
108 ~~habitable floor space of an accessory dwelling unit must be a minimum of 400 square feet~~
109 ~~and no larger than 800 square feet.~~

110 (2) Unit location.

111 (a) An accessory dwelling unit must meet one of the following conditions:
112 ~~(a)[1] Must be Be~~ fully constructed within the existing footprint of any
113 legal primary residence or accessory building; or-

114 ~~(b)[2] Will be allowed inside of the primary residence building where the~~
115 ~~building has nonconforming yard setbacks.~~Share a common wall with the
116 principal residence, providing yard setbacks can be met per 16.8.25.4.A(4); or

117 ~~(e)[3] Will not be allowed in accessory or detached buildings encroaching~~
118 ~~on yard setbacks.~~Be constructed as a new accessory building containing an
119 accessory dwelling unit, providing yard setbacks can be met for the zone.

120 (b) Accessory dwelling units will be allowed inside of the principal residence
121 even if the building does not meet yard setbacks.

122 (c) Accessory dwelling units will not be allowed in accessory buildings
123 encroaching on yard setbacks or Shoreland Overlay Zone or Resource Protection
124 Overlay Zone setbacks.

125 ~~(3) Building code compliance. An accessory dwelling unit must satisfy the requirements~~
126 ~~contained in the building code and fire code as currently adopted by the Town. See §~~
127 ~~16.5.3E, Conformance to standards.~~

128 C. Development standards. Should an accessory dwelling unit fail to meet the applicable unit
129 ~~development~~ standards listed in this article, the accessory dwelling unit may still be allowed if
130 the applicant obtains approval from the Board of Appeals under the provisions of a
131 miscellaneous variation request as outlined in 16.6.4C. The Board of Appeals shall review any
132 appeal decision in conformance with §16.6.6. "Basis for decision". Following Board of Appeals approval,
133 the owner must obtain an annual permit per 16.8.25.3 paragraphs A, B, and C.

**KITTERY TOWN CODE TITLE 16 –
ACCESSORY DWELLING UNITS**

1 **AN ORDINANCE** relating to the municipality's authority for Town governance to give due and
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers
7 that authorize the town, under certain circumstances, to provide for the public health, welfare,
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or
9 federal laws; and

10 **WHEREAS**, the Town is seeking to address the growing challenge of housing affordability in
11 Kittery; and

12 **WHEREAS**, Accessory Dwelling Units provide a potential for increasing available housing units
13 served by existing infrastructure, while providing a potential income source for single family
14 property owners; and

15 **WHEREAS**, the proposed ordinance amendments will eliminate barriers to developing
16 Accessory Dwelling Units, such as unit size, parcel applicability, and annual caps on new
17 Accessory Dwelling Units; and

18 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN
19 CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS TITLE 16, LAND USE and
20 DEVELOPMENT CODE, ACCESSORY DWELLING UNITS AMENDMENTS OF THE TOWN
21 CODE, AS PRESENTED.

22 **INTRODUCED** and read in a public session of the Town Council on the ____ day of _____,
23 20____, by: _____ {NAME} Motion to approve by Councilor
24 _____ {NAME}, as seconded by Councilor _____ {NAME} and
25 passed by a vote of _____.

26 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,
27 Maine on the ____ day of _____, 20____, {NAME}, _____, Chairperson

28 **Attest:** {NAME}, _____ Town Clerk

CALL TO ORDER

ROLL CALL

Present: Steve Bellantone, Member; Drew Fitch, Member; Russell White, Member; Mark Alesse, Member; and Karen Kalmar, Vice Chair

Absent: Ronald Ledgett, Member; Dutch Dunkelberger, Chair

Staff: Jamie Steffen, Town Planner; Adam Causey, Director of Planning and Development

Advisory: Earldean Wells, Conservation Commission

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – January 24, 2019

Vice Chair Kalmar announced that the Board needed Mr. Ledgett present to consider of approval of them. With his absence the approval of minutes was postponed.

PUBLIC COMMENT

Vice Chair Kalmar opened the public comment segment of the meeting. There being no comments, Vice Chair Kalmar closed the public comment segment.

PUBLIC HEARINGS

**Item 1 - Land Use and Development Code (Title 16) Amendments –
ARTICLE XXV Accessory Dwelling Units**

The Kittery Planning Board will consider proposed amendments to Section 16.2 DEFINITIONS and Section 16.8.25 Accessory Dwelling Units to allow for greater flexibility in the design and development of accessory dwelling units, including eliminating the annual limit and owner occupancy requirement, increasing the allowable ADU size, and restricting new ADUs to no less than 30-day rentals. Public Hearing, Vote to Recommend. Take public comment. Review and discuss proposed changes to ARTICLE XXV Accessory Dwelling Units. Vote to recommend to the Town Council.

Vice Chair Kalmar opened the public hearing.

Lindsay Blis, 4 Captain's Way, discussed a short-term rental issue in her development.

Tom Emerson, 10 Ox Point Drive, stated he was a member of the Housing Committee that worked initial draft of the proposed ADU amendments. He also disclosed that he has a short-term rental (STR) on his property. He stated that the purpose of this hearing was to talk about ADUs not STRs. He stated he was a strong proponent of ADUs. He further stated that he was not in favor of the 30 day period.

Niles Pinkham, 25 Pinkham Lane, spoke about a STR that is causing problems in his neighborhood.

Vice Chair Kalmar explained that the public hearing was input on the proposed ADU ordinance amendments not STRs. That topic will be considered by the Board at a later date.

Mara Lamstein, 35 Mill Pond Road, stated that she was a big supporter of ADUs.

Donald Gagnon, 33 Pinkham Lane, discussed the gray area between ADUs and STRs.

William Peirce, 53 Rogers Road, spoke in support of the ADU ordinance. He stated he has a two-family and would like to be able to have an ADU as well. He spoke to the vagueness of the definition of a ADU. He would like to see a workable ADU law.

Pamela Blodgett, 60 Old Dennett Road, discussed how Airbnb's would benefit Kittery.

Laurie Rowan, 115 Wilson Road, spoke in support of allowing Airbnb's.

Fred Kretchman, 46 Crockett Neck Road, spoke of support of ADUs but dislikes the 30 day limit.

Erin Brochu, 90 Government Street, spoke about the positives of renting her home on Airbnb. She stated that she and her husband would like to be able to do a ADU but can't afford it. She expressed concern with the 30 day restriction.

Tim Brochu, 90 Government Street, stated he Maine licensed architect. He spoke to specific points about STRs.

Cameron Wake, 19 Mendum Avenue, spoke to the ecological benefits of

allowing ADUs.

Vice Chair Kalmar closed the public hearing at 6:45 p.m.

Mr. White spoke to the ordinance being more flexible. His primary concerns are enforcement issues and improper use. He discussed looking into imposing local penalties on violations. Mr. Fitch spoke to his involvement as part of the Housing Working Group in spearheading the effort. He discussed the mission of creating affordable housing and that was why the proposed amendments were trying to discourage STRs.

Vice Chair Kalmar discussed enforcement of the under 30 day's restriction and asked staff for their input. Mr. Causey responded that the Department doesn't have the manpower to enforce. He spoke further to the intent of the proposed changes. He explained that the group was trying to come up with a compromise of being more flexible with ADUs but at the same time not creating a situation where it would lead to all STRs. He stressed the STRs would need to be addressed separately.

Vice Chair Kalmar questioned the fairness of denying current ADU owners the option to rent their units for fewer than 30 days since this rental restriction does not currently apply to any other type of dwelling. She also requested that the ordinance be amended to prohibit ADUs from being created within existing accessory structures that are in the Shoreland Overlay or Resource Protection Overlay zones' setbacks.

Mr. Alesse noted that he has a STR in his barn so he would not be voting on the item. He discussed his concern about wanting to protect the Kittery homeowners that have existing STRs on their properties. Mr. White expressed his concerns about the tie-in with STRs. He stated he would like to see the 30 day language removed. He further stated that the Town will need to tackle the STR issue – he recognizes that there are neighborhood issues but he hears more positive than negative. The Board discussed the need to remove the STR reference in the proposed amendment and addressed that a later date.

Kendra Amaral, Town Manager, spoke to STR reference and the 30 day language. She stated she and staff would be willing to compromise on that clause and remove it that was the desire of the Board. Her goal is to develop regulations that the community can get behind and support. She advised the Board on their options for moving the amendments forward.

Mr. White moved to continue the item until the Board's second meeting in April. Mr. Bellantone seconded the motion. It was acknowledged the staff would review whether to remove the 30 day restriction.