



TOWN OF KITTEERY
Planning and Development
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TO: KITTEERY PLANNING BOARD
FROM: ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT
SUBJECT: ACCESSORY DWELLING UNIT AMENDMENT FOLLOW-UP
DATE: FEBRUARY 21, 2018
CC: KENDRA AMARAL, TOWN MANAGER; JAMIE STEFFEN, TOWN PLANNER

At the January 24, 2019, Planning Board meeting, Town staff presented proposed changes to Title 16 Land Use & Development Code pertaining to accessory dwelling units, or ADUs. An ADU is typically defined as a smaller, independent residential dwelling unit located on the same lot as a stand-alone single-family home. ADUs can serve many purposes, but the most common are to generate additional income for the homeowner or to house a family member.

The effort to amend the Town's current codes regulating ADUs went through the Housing Working Group and the Kittery Open Space Advisory Committee (now named the Kittery Land Issues Committee). Those committees reported out that overly restrictive ADU regulations could make Kittery a more expensive place to live, given today's climate of rising housing costs and limited housing supply. Considerable debate on the merits of various amendments occurred at each committee meeting.

Likewise, there was much discussion and debate at the Planning Board meeting in January. The below questions were posed to staff by Planning Board member Ron Ledgett. Staff hopes that answering these questions will be helpful to any further discussions.

1. Question: Why is the change to the existing code Purpose not shown as a strike out? The requirements to "not negatively impact the character of the existing neighborhood or overburden existing infrastructure" are removed.

That was an inadvertent formatting mistake. The updated amendments include proposed strikethroughs of existing code.

2. Question: Is the intent of this proposed deletion to set-aside impact on the character of the existing neighborhood in favor of increasing the housing stock in existing neighborhoods?

The committees worked to amend the purpose statement to read as more supportive of ADU creation. The "character" of a neighborhood, which is open to interpretation, is affected by zoning standards like yard setbacks, building heights, and the size of structures. ADUs are developed either inside an existing single-family unit, attached to an existing single-family dwelling, or in an accessory building (like a detached garage). These physical improvements – accessory buildings and expansions to existing structures – are already allowed

in single-family neighborhoods. ADUs do increase the dwelling count, and thus density, but in a way that is typically in harmony with the existing built environment (architecture, scale, setbacks, etc.).

3. Question: Does deletion of the requirement to “not negatively impact the character of the existing neighborhood or overburden existing infrastructure” comply with the Kittery Comprehensive Plan?

The change is consistent with Kittery’s Comprehensive Plan Housing Goal: “To provide a range of housing types to meet the needs of individuals throughout their lifecycle and to support residents with a range of incomes.”

4. Question: How does the deletion of the existing code requirement that, either the principal dwelling or the ADU be occupied by the resident owner, shift the economic benefit of ADUs between Kittery Residents investing in ADUs to remain in their homes, and non-resident investors building ADUs for profit?

The ADU residency requirement is unenforceable due to manpower constraints and the inability to defensibly distinguish property owners from renters, family and friends, or guests. The proposed code changes will likely not create wild shifts in economic benefits as described. Kittery will not solve complex housing issues with a single solution. A combination of strategies is needed to achieve the Comprehensive Plan housing goals and protect the character of the community. In the committee meetings, discussions centered on increasing the supply of housing stock through code changes. Individual ADU rents would presumably vary depending on several factors: type of ADU (separate structure, above garage, in-law suite, etc.), size, location, utilities, amenities, the desires of the owner, etc.

5. Question: How is deletion of the owner residency requirement expected to impact cost of housing and property tax rates (due to demand, services, commercialization of neighborhoods, etc.)?

Any potential increase in ADUs is not expected to have a demonstrable impact on the provision of services, whether renter or owner occupied. Because the ADU residency requirement is unenforceable, code enforcement and public safety staff will be freed up to work on other tasks. Broadly speaking, increases in housing supply should put downward pressure on prices, however this depends on numerous conditions of the housing market.

6. Question: How does deletion of the owner residency requirement impact the character of existing neighborhoods?

The impact of ADUs to neighborhood character is up for debate. As stated earlier, “neighborhood character” can mean different things to different people. ADUs must be developed in the context of existing single-family neighborhoods and cannot violate height, size, setbacks, and other zoning limitations (subject to legal, nonconforming statutes). Whether or not a property owner rents out a room, their basement, or their entire home is not something the zoning code addresses.

7. Question: Does deletion of the owner residency requirement comply with the Comprehensive Plan?

Yes. Kittery’s Comprehensive Plan Housing Goal calls for “a range of housing types to meet the needs of individuals throughout their lifecycle and to support

residents with a range of incomes.” This would include non-owner-occupied housing.

8. Question: What resources and processes are planned to administer and enforce the proposed ADU amendments, for example the 30-day minimum rental period?

New ADUs would require permitting and inspection, and would be tracked via our online systems, which allow us to record notes and alerts for follow up later. The 30-day minimum rule is enforceable, since staff can monitor online services that cater to short term rentals. Staff already monitors online postings to check for commercial activities that do not belong in single-family neighborhoods.

9. Question: How does the ADU approval process avoid conflict with existing subdivision plan requirements, property covenants or property deed restrictions?

Existing subdivisions with limits via covenants, deed, or association rules would limit what property owners could do. Subdivisions or properties without such restrictions would be subject to Town code only, which waives the net residential calculation for single-family zoning and allow one ADU per lot.

10. Question: How does the text of three new purpose statements alter criteria for approval of ADUs or constrain the process for administration and enforcement? Proposed purpose statements: (2) increase the housing stock of existing neighborhoods...; (3) allow more efficient use of existing housing stock and infrastructure; and (4) provide a broader range of affordable housing options.

Purpose statements are meant to convey broad goals and information. The criteria for new ADUs are contained in the proposed technical standards and would be subject to building codes in force. ADUs would be allowed by-right subject to those standards and proper permitting and inspection. Administrative review and approval would follow the same processes for permits depending on the scope of the work (zoning compliance, structural, electrical, plumbing, etc.).

Staff recommends that the Planning Board schedule a public hearing for the proposed ADU amendments to gather resident feedback.

Thank you,

Adam Causey, AICP
Director, Planning & Development Department

1 **AMEND § 16.2 DEFINITIONS:**

2 **ACCESSORY DWELLING UNIT (ADU)**

3 ~~An apartment which is part of an existing structure on the property where the owner of the property~~
4 ~~occupies one of the units. The accessory dwelling unit may be rented so that the owner occupant~~
5 ~~may benefit from the additional income. The owner may also elect to occupy the accessory dwelling~~
6 ~~unit and rent the principal dwelling unit. A secondary dwelling unit with facilities used or intended to~~
7 ~~be used for living, sleeping, cooking, eating, and sanitary facilities for one or more persons, whether~~
8 ~~attached to the primary dwelling unit, detached from it, or contained within it.~~

9 **AMEND §16.8.25 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 accessory
12 dwelling units that are compatible with this title ~~and do not negatively impact the character of the existing~~
13 ~~neighborhood or overburden the existing infrastructure~~ and to (1) provide a means for residents –
14 including seniors, single parents, and families with grown children – to remain in their homes and
15 neighborhoods, and (2) increase the housing stock of existing neighborhoods in a manner that is
16 compatible with their size and scale, and (3) allow more efficient use of existing housing stock and
17 infrastructure, and (4) provide a broader range of affordable housing options. The purpose of this article
18 is not intended to create a new supply of short-term rental (STR) units, such as those commonly
19 advertised to tourists.

20 **§ 16.8.25.2 Applicability.**

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

23 A. within an existing structure, either principal or accessory on the property; or

24 B. Attached to the existing principal structure, sharing a common wall; or

25 C. Within a new accessory structure constructed for this purpose on the property.

26 ~~with a certificate of occupancy issued more than five years prior to the date of the ADU application, on~~
27 ~~the property where the owner of the property occupies one of the units. The accessory dwelling unit may~~
28 ~~be attached to, or detached from, the primary dwelling unit. No expansion of a building's footprint is~~
29 ~~allowed to accommodate an accessory dwelling unit. Neither may be rented for less than a 30-day period.~~
30 Violation of the 30-day minimum rental period shall result in the revocation of the certificate of
31 occupancy for the ADU.

32 **§ 16.8.25.3 Application for accessory dwelling unit.**

33 A. An application for an accessory dwelling unit must be made by the owner of the parcel on which the
34 primary residential unit sits. The completed application and associated fees must be submitted to the
35 Town Planner and Code Enforcement Officer for review.

36 B. Applications for an accessory dwelling unit that meets the unit size standards and development
37 standards contained in this article may be approved administratively and require approval by both
38 the Town Planner and Code Enforcement Officer.

39 C. An accessory dwelling unit that fails to meet the ~~unit size~~ standards ~~and/or the development~~
40 ~~standards~~ provided in this article may not receive administrative approval; however, the accessory
41 dwelling unit may still be allowed. See § 16.8.25.4 A and BC below.

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

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

49 § 16.8.25.4 Accessory dwelling unit standards.

50 A. Lot standards.

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

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

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

59 (4) Setbacks and Coverage. Yard setbacks for the zone must be met. However, for legally non-
60 conforming lots where a proposed accessory dwelling unit will be attached to a principal dwelling
61 unit and cannot meet the zone's side and rear yard setbacks, the percentage by which a lot is smaller
62 than the required lot size for the zone will dictate the required setbacks for that lot. For example, a
63 30,000 square foot legally non-conforming lot in a zone that requires 40,000 square feet would
64 require side and rear yard setbacks that are 75% of the zone's side and rear yard setbacks. Building
65 coverage requirements will remain as required by the zone.

66 (45) Utility connections. Accessory dwelling units must be connected to adequate water and sewer
67 services.

68 (a) Public sewer.

69 [1] Service: verification, in writing, of adequate service to support the additional flow from the
70 Superintendent of Wastewater Treatment Facilities.

71 [2] Fees: Payment of appropriate fees for connection to the municipal sewer system is required prior to
72 obtaining the certificate of occupancy.

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

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

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

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

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

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

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

90 B. Unit standards.

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

98

99 (2) Unit location. ~~An accessory dwelling unit:~~

100 (a) An accessory dwelling unit must meet one of the following conditions:

101 [1] Must be fully constructed within the existing footprint of any legal primary residence or accessory
102 building; or

103 [2] Share a common wall with the principal residence, providing yard setbacks can be met per
104 16.8.25.4.A.(4); or

105 [3] Be constructed as a new accessory building containing an accessory dwelling unit, providing yard
106 setbacks can be met for the zone.

107 (b) Accessory dwelling units will be allowed inside of the primary-principal residence building-
108 where the even if the building has none conforming does not meet yard setbacks.

109 (c) Accessory dwelling units will not be allowed in accessory ~~or detached~~ buildings encroaching on
110 yard setbacks.

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

114 C. Development standards. Should an accessory dwelling unit fail to meet the applicable development-
115 unit standards listed in this article, the accessory dwelling unit may still be allowed if the applicant
116 obtains approval from the Board of Appeals under the provisions of a miscellaneous variation
117 request as outlined in §16.6.4.C. The Board of Appeals shall review any appeal decision in
118 conformance with §16.6.6. "Basis for decision".