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5:00PM – ANTICIPATED NON-PUBLIC SESSION IS BEING HELD IN CONFERENCE ROOM A

1. *CONSIDERATION OF LEGAL ADVICE - RSA 91-A:3, II (I)*

CITY COUNCIL WORK SESSION

DATE: MONDAY, APRIL 10, 2023

TIME: 6:00PM

LOCATION: EILEEN DONDERO FOLEY COUNCIL CHAMBERS

SUBJECT: ACCESSORY DWELLING UNIT ORDINANCE

Agenda

- I. CALL TO ORDER – Mayor McEachern
- II. PRESENTATION – Planning Department Staff
- III. LEGAL DEPARTMENT COMMENTS & RECOMMENDATIONS – Suzanne Woodland, Deputy City Manager/Deputy City Attorney
- IV. ORDINANCE DISCUSSION
- V. PUBLIC COMMENT (*participation may be in person or via Zoom*)
- VI. ADJOURNMENT

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: April 6, 2023

TO: KAREN S. CONARD, CITY MANAGER

FROM: JANE M. FERRINI, ASSISTANT CITY ATTORNEY

RE: AMENDMENTS TO ACCESSORY DWELLING UNIT ORDINANCE
FOR APRIL 10, 2023 WORK SESSION

Amendments to the Accessory Dwelling Unit ordinance were presented to the City Council for second reading at the April 3, 2023 City Council meeting. These draft amendments had not been reviewed by the Legal Department for compliance with the enabling legislation for accessory dwelling units set forth in RSA 674:72 and 674:73. The attached ordinance draft includes the Legal Department's comments that suggest additional amendments for the Council to consider in light of this enabling legislation.

RSA 674:72, VII: Square footage of an accessory dwelling unit may not be restricted to less than 750 square feet.

RSA 674:73 permits, but does not require, a municipality to enact ordinances that allow detached accessory dwelling units. These ordinances must comply with some of the requirements of RSA 674:72, including RSA 674:72, VII, which states that a municipality may not restrict an accessory dwelling unit to less than 750 square feet. References in the ordinance that limited detached accessory dwelling units to 600 square feet have been amended to 750 square feet in order to comply with state statute.

RSA 674:72, I: Accessory Dwelling Units are permitted by right, by conditional use permit or by special exception.

State statute provides three separate ways an accessory dwelling unit may be permitted:

1. By right;
2. Condition Use Permit; or
3. Special Exception

The ordinance was reviewed to confirm that the approval process for permitting accessory dwellings complies with the three methods of approval permitted by statute. The Legal

Department determined that the Administrative Approval process is an approval by right, and proposed amendments clarify this standard.

RSA 674:72.VII: Standards may be established for the purpose of confirming that the accessory dwelling units maintain the aesthetic continuity with the principal dwelling unit as a single family dwelling.

The statute permits a municipality to establish standards in order to ensure that the accessory dwelling unit maintains the aesthetic continuity with the principal dwelling unit as a single family dwelling. Edits were added to clarify that the standards in the ordinance were established to determine aesthetic continuity with the principal dwelling, which is permissible by statute.

Administrative Approval Process

Language was added to the Administrative Appeal process to clarify that the Planning Director may approve, deny or request further information. The Planning Director's decision, as an administrative official, may be appealed to the Zoning Board of Adjustment. If the Planning Director refers the application to the Planning Board for a conditional use permit because the applicant is requesting modification of standards pursuant to section 10.814.63, the decision of the Planning Board may be appealed directly to the superior court.

Miscellaneous edits

The definition of principal dwelling and Section 10.1116.14 were included in the amendment in order to remove all references to garden cottage from the zoning ordinance.

Attachments

1. Amendments to ADU Ordinance
2. Email from Councilor Bagley outlining proposed modifications to ADU Ordinance

cc: Susan G. Morrell, City Attorney
Trevor McCourt, Assistant City
Suzanne M. Woodland, Deputy City Manager

Section 10.430 Use Regulations

- 10.431 All **buildings** or **structures** hereafter erected, reconstructed, altered, enlarged or moved, and all **uses** hereafter established, shall be in conformity with the provisions of this Zoning Ordinance.
- 10.432 No **building, structure,** or land shall be used for any purpose or in any manner other than that which is permitted in the district in which it is located.
- 10.433 **Buildings, structures** and land owned or leased by the City of Portsmouth shall be exempt from all provisions of this Ordinance except Article 10, Environmental Protection Standards. Nevertheless, the City is urged to comply with all relevant land **use** controls whenever possible and feasible.
- 10.434 The **use** regulations for all zoning districts are listed in Section 10.440 (Residential, Mixed Residential, Business and Industrial Districts), Section 10.450 (Pease/Airport Districts) and Section 10.460 (Municipal and Conservation Districts).
- 10.434.10 The following key applies to the Tables of Uses in Sections 10.440, 10.450 and 10.460:

Symbol	Meaning
<u>AP</u>	use is permitted through Administrative Approval
P	use is permitted in the district
S	use is allowed in the district upon the granting by the Board of Adjustment of a special exception
CU	use is allowed in the district upon the granting by the Planning Board of a conditional use permit
N	use is prohibited in the district

Commented [SR1]: Add the words "by right" after the word "permitted". See, RSA 674:72, I

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
1. Residential Uses																		
1.10 Single family dwelling	P	P	P	P	N	P	P	P	<u>NP</u>	N	P	P	N	N	N	N	N	

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
1.20 Accessory dwelling unit																		10.814 (Accessory Dwelling Units)
1.21 Attached accessory dwelling unit (AADU)																		
<u>1.211 Up to 750 sq. ft. GLA and entirely within an existing single-family dwelling</u>	<u>AP</u> CU	<u>AP</u> CU	<u>AP</u> CU	<u>AP</u> CU	N	<u>AP</u> CU	<u>AP</u> CU	<u>AP</u> CU	CU	N	CU	CU	N	N	N	N	N	
<u>1.212 Up to 750 sq. ft. GLA and in an expansion of an existing single-family dwelling</u>	CU	CU	CU	<u>CU</u> N	N	<u>CU</u> N	<u>CU</u> N	<u>CU</u> N	N	N	<u>CU</u> N	<u>CU</u> N	N	N	N	N	N	

P = Permitted AP = Administrative Approval S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
1.22 Detached accessory dwelling unit (DADU)																		
<u>1.221 Up to 600 sq. ft. GLA and entirely within an existing accessory building that conforms with the dimensional requirements of this Ordinance.</u>	CU	CU	AP	AP	N	AP	AP	AP	N	N	N	N	N	N	N	N	N	
<u>1.222 Up to 600 sq. ft. GLA in an existing accessory building that does not conform with the dimensional requirements of this Ordinance or includes the expansion of the existing accessory building</u>	CU	CU	CU	CU	N	CU	CU	CU	N	N	N	N	N	N	N	N	N	
<u>1.223 Up to 750 sq. ft. GLA on a lot and in a new building that complies with all lot and building dimensional standards of this Ordinance for a single-family dwelling</u>	CU	CU	CU	CU	N	CU	CU	CU	N	N	N	N	N	N	N	N	N	
1.25 Garden Cottage	CU	CU	CU	CU	N	CU	CU	CU	CU	N	N	N	N	N	N	N	N	10.815 (Garden Cottages)
1.30 Two-family dwelling	N	N	P	P	P	P	P	P	P	N	P	P	N	N	N	N	N	10.640 (Downtown Overlay district)

Commented [SR2]: 1.221 replace "600" with "750" to comply with RSA 674:73, 674:72, VII.

Commented [SR3]: 1.222 replace "600" with "750" to comply with RSA 674:73, 674:72, VII.

10.814 Accessory Dwelling Units

10.814.10 Purpose and Eligibility

~~10.814.11~~ The purpose of this section is to provide for additional **dwelling units** within single-family neighborhoods in order to: increase the supply of smaller, more affordable housing units with less need for more municipal infrastructure or further land development; contribute to local housing needs; and provide opportunities for adapted reuse of existing **accessory structures**. The standards in this section are intended to integrate more housing options into the community with minimal impact on the surrounding neighborhood.

~~10.814.12~~ ~~One, and only one, Only one~~ **accessory dwelling unit (ADU)** shall be allowed on any **lot** containing a **single-family dwelling**. An **accessory dwelling unit** shall not be allowed under this Section 10.814 on a **lot** that contains more than one **dwelling unit**.

10.814.~~13~~²⁰ Except as provided elsewhere in this Section 10.814, in order for a **lot** to be eligible for an **accessory dwelling unit**, the **lot** and all proposed **structures** and additions to existing **structures** shall conform to all zoning regulations as follows:

10.814.~~24~~¹³¹ Any municipal regulation applicable to **single-family dwellings** shall also apply to the combination of a **principal dwelling unit** and an **accessory dwelling unit** ~~including, but not limited to, lot area, yards, open space, off-street parking, building coverage, and building height~~. However, an **accessory dwelling unit** shall be allowed without additional requirements for lot area, lot area per dwelling unit, or frontage beyond those required for a single family dwelling without an ADU in the same zoning district.

10.814.~~22~~¹³² An **attached accessory dwelling unit** is permitted on existing **nonconforming lots** and within an existing nonconforming buildings as long as there is provided no increased or new nonconformity is created, in building height or building footprint for any portion of the existing **building** and no increase to the nonconformity.

10.814.~~23~~¹³³ Newly constructed detached accessory dwelling units shall be governed by the provisions of this Ordinance and the side and rear yard requirements for the applicable zoning or Character District.

~~A detached accessory dwelling unit is not an accessory building or structure for the purposes of this Ordinance, and therefore shall be governed by the applicable minimum yard dimensions in Section 10.521 for a principal building~~

~~or structure and not by the side yard and rear yard standards applicable to an accessory building.~~

~~10.814.14~~ Notwithstanding all of the above provisions, an **accessory building** existing on the effective date of this ordinance may be converted to a **detached accessory dwelling unit** as provided in this Ordinance.

10.814.20 Standards for All Accessory Dwelling Units

~~10.814.30~~ All **accessory dwelling units** shall comply with the following standards:

10.814.~~321~~ The **principal dwelling unit** and the **accessory dwelling unit** shall not be separated in ownership (including by condominium ownership).

10.814.~~322~~ Either the **principal dwelling unit** or the **accessory dwelling unit** shall be occupied by the owner ~~'s of the dwelling as his or her~~ principal place of residence. The owner shall provide documentation demonstrating compliance with this provision to the satisfaction of the City ~~that one of the units is his or her principal place of residence.~~

Commented [SR4]: Delete "occupied by" in the second line

10.814.~~322~~1 When the property is owned by an entity, one or more trusts, one of the **dwelling units** shall be the principal place of residence of one or more principals of that entity, such as the a member or beneficiary(ies) of the trust(s).

~~10.814.23~~ **Accessory dwelling units** shall not have more than two bedrooms.

10.814.~~2433~~ Neither the **principal dwelling unit** nor the **accessory dwelling unit** shall be used for any business, except that the property owner may have a **home occupation** use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

10.814.~~2534~~ Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

~~10.814.26~~ **1 off-street parking** space shall be provided for an **ADU** in addition to the spaces that are required for the principal **single-family dwelling**.

10.814.30 Additional Standards for Attached Accessory Dwelling Units

Commented [SR5]: Add as an introductory sentence "The following standards are intended to ensure the aesthetic continuity with the principal dwelling unit." See, RSA 674:72, VII

~~10.814.40~~ An **attached accessory dwelling unit (AADU)** shall comply with the following additional standards:

10.814.431 An interior door shall be provided between the **principal dwelling unit** and the **AADU accessory dwelling unit**.

10.814.432 The **AADU accessory dwelling unit** shall not ~~have more than two bedrooms and shall not~~ be larger than 750 sq. ft. **in gross living area (GLA).** ~~gross floor area.~~ For the purpose of this provision, **the gross floor living area of the AADU** shall not include ~~existing~~ storage space, shared entries, or other spaces not exclusive to the **AADU accessory dwelling unit**.

10.814.433 The **AADU** shall be subordinate to the **principal dwelling unit** in scale, height and appearance, as follows:

~~10.814.331 Any exterior changes to the **single-family dwelling** shall maintain the appearance of a **single-family dwelling**. If there are two or more doors in the front of the **principal dwelling unit**, one door shall be designed as the principal entrance and the other doors shall be designed to appear to be secondary.~~

~~10.814.44 No portion of the **AADU** shall be closer to the **front lot line** than the existing front wall of the **principal dwelling unit**.~~

~~10.814.45 An **AADU** that is attached to the **single-family dwelling** (i.e., created by an expansion of the existing **structure**) shall comply with the following:~~

~~10.814.451 An exterior wall of the **AADU** that faces a **street** on which the **lot** has **frontage** shall comprise no more than 40 percent of the total visible **façade** area of the **dwelling** as seen from that **street**.~~

10.814.4532 An addition to or expansion of an existing **building** for the purpose of creating an **AADU** shall be recessed or projected at least 18 inches from the existing front wall of the **principal dwelling unit**. Where the addition includes the construction of an attached, street-facing garage, it shall be set back at least 10 feet from the front wall of the **principal dwelling unit**.

~~The addition to or expansion of the existing **single-family dwelling** may include an increase in **building height** only as an upward expansion of the existing **principal building** with no increase in building footprint.~~

10.814.4533 The **building height** of any addition or expansion that includes an increase in **building footprint** shall be ~~less than the **building height** of the existing principal building, no greater than 75% of the height of the existing **building**. In the case of a single-story **building**, an addition or expansion~~

may include either an additional story to the existing **building** or a single-story addition at the same height as the **existing building**.

10.814.454 — The **AADU** shall be architecturally consistent with the existing **principal dwelling** through the use of similar materials, detailing, roof pitch, and other **building** design elements.

10.814.40 Additional Standards for Detached Accessory Dwelling Units

Commented [SR6]: Add an introductory sentence "The following standards are intended to ensure the aesthetic continuity with the principal dwelling unit." See, RSA 674:72, VII

10.814.50 A **detached accessory dwelling unit (DADU)** shall comply with the following additional standards:

~~10.814.51 — In a General Residence district, the combination of the **principal dwelling** and the **DADU** shall comply with the minimum **lot area per dwelling unit** specified for the district. (For example, the required **lot area** for a **single-family dwelling** with a **DADU** in the GRA district is 7,500 sq. ft. per **dwelling unit** multiplied by 2 **dwelling units**, or 15,000 sq. ft.) In a Single Residence or Rural district, a lot with a **DADU** shall comply with the minimum **lot area** for the district, but need not comply with the minimum **lot area per dwelling unit**.~~

10.814.4152 The **DADU** shall not have more than two bedrooms and shall not be larger than 750 sq. ft. in gross **living floor area**, except that the maximum **gross floor area** shall be 1,000 sq. ft. if the **lot area** is 2 acres or more.

10.814.4153 A **DADU** that is created from an existing **accessory building** that does not comply with its minimum **yard requirements** shall not exceed 600 sq. ft. in **gross living area**.

The **DADU** shall be clearly subordinate to the principal **single-family dwelling** in scale, height and appearance.

Commented [SR7]: "600" needs to be changed to "750" to comply with RSA 674:73, 674:72, VII.

10.814.531 — The façade area of the **DADU** that faces a **street** on which the **lot** has **frontage** shall be no more than 40 percent of the combined visible façade areas of the principal **single-family dwelling** and the **DADU** facing the same **street**.

10.814.42 A **DADU** that is created from an existing **accessory building** that does not comply with its minimum **yard** requirements shall comply with the following additional requirements:

10.815.421 The existing **accessory building** shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.; except that the Planning Board may grant a conditional use permit to allow the **gross living area** of the **accessory building** to be expanded up to a total of 600 sq. ft. as provided in this Ordinance.

10.815.422 A **DADU** that is within a required **side yard** or **rear yard** setback for the zoning district shall not have any windows, balconies, or doors higher than eight feet above grade facing adjacent property.

10.814.43 The **DADU** shall be ~~clearly~~ subordinate to the principal **single-family dwelling** in scale, height and appearance as follows:-

~~10.814.532~~ The **building height** of the **DADU** shall be ~~less than the building height of the principal single-family dwelling.~~

~~10.814.533~~ The **DADU** shall be architecturally consistent with the **principal dwelling** through the use of similar materials, detailing, and other **building** design elements.

~~10.814.54~~ The **DADU** shall be separated from the **single-family dwelling** by at least 20 feet.

10.814.431~~55~~ The front wall of ~~the a -DADU ,that is not created within an existing accessory building~~ shall be **set back** at least 10 feet further from the **front lot line** than the existing front wall of the principal **single-family dwelling unit**.

10.814.432 The **building height** of the **building** containing the **DADU** shall be no greater than 22 feet.

10.814.433 When the **building** containing the **DADU** is taller than the **principal building**, its required setback from all property lines shall be increased by the difference in **building height** between the **DADU** and the **principal building**.

10.814.434 The **building footprint** of the **building** containing the **DADU** shall be no greater than 750 sq. ft.

10.814.435 The **gross floor area** of the **building** containing the **DADU** shall be no greater than 1,600 sq. ft. **gross floor area** or 75 percent of the **gross floor area** of the **principal dwelling unit**, whichever is less.

Commented [SR8]: Section 10.814.41 provides that a DADU shall not be larger than 750 sq. ft. *in gross living area*. Section 10.814.434 provides that the building footprint shall not be greater than 750 sq. ft. This provision conflicts with Section 10.814.41 and should be deleted.

10.814.436 The **DADU** may include roof dormers provided they are located outside the required setbacks from all property lines and occupy no greater than 33% of any individual roof plane.

10.814.437 The **DADU** shall comply with the drainage requirements of this Ordinance.

10.814.438 The **DADU** shall comply with the lighting requirements of this Ordinance.

10.814.44 A newly constructed **DADU** shall be separated no less than 5 feet from the principal structure or as required by the Building Code, whichever is greater.

~~10.814.56~~ No portion of the **DADU** shall be located in any required front yard, regardless of the location of the single-family dwelling:

10.814.50 Architectural Design Standards

Where the creation of an **accessory dwelling unit** involves the construction of a new **building** or an addition to or expansion of an existing **building**, the exterior design shall be architecturally consistent with or similar in appearance to the **principal building** using the following design standards:

10.814.51 The new **building**, addition or expansion shall be architecturally consistent with or similar in appearance to the existing **principal building** with respect to the following elements:

- Massing, including the shape and form of the **building footprint**, roof or any projecting elements;
- Architectural style, design, and overall character;
- Roof forms, slopes, and projections;
- Siding material, texture, and profile;
- Window spacing, shapes, proportions, style and general detailing;
- Door style, material and general detailing;
- Trim details, including window and door casings, cornices, soffits, eaves, dormers, shutters, railings and other similar design elements;
- Exposed foundation materials and profiles.

~~10.814.60~~ Before granting a conditional use permit for an **attached or detached ADU**, the Planning Board shall make the following findings:

10.814.52 If provided, the following elements shall be architecturally consistent with or similar in appearance to the corresponding elements on the **principal building** in terms of proportions, materials, style and details:

- ~~Projections such as dormers, porticos, bays, porches and door canopies;~~
- ~~Chimneys, balconies, railings, gutters, shutters and other similar design elements.~~

~~10.814.53 If provided, all street-facing garage doors shall be limited to 9 feet in width.~~

~~10.814.61 Exterior design of the **ADU** is consistent with the existing **principal dwelling on the lot.**~~

~~10.814.62 The site plan provides adequate and appropriate **open space, landscaping and off-street parking** for both the **ADU** and the primary **dwelling.**~~

~~10.814.63 The **ADU** will maintain a compatible relationship to **adjacent** properties in terms of location, design, and **off-street parking** layout, and will not significantly reduce the privacy of **adjacent** properties.~~

~~10.814.64 The **ADU** will not result in excessive noise, traffic or parking congestion.~~

10.814.60 Review and Approval Process

~~10.814.61 When Section 10.440 indicates that an **attached** or **detached ADU** is permitted by administrative approval ("AP"), the following shall apply:~~

~~10.814.611 For a period of at least 30 days following the date of application to the City, the applicant shall post a notice, in the form of a sign provided by the city, that describes the proposed **ADU** application subject to the following:~~

~~(1) Such sign(s) shall be located on the perimeter of the **lot** where it can easily be viewed and readable from all abutting public ways.~~

~~(2) The applicant shall also provide the sign notice information to the City. The City shall send by certified mail to all owners of any property located within 100 feet of the **lot.**~~

~~10.814.612 Any person may submit written comments on the **ADU** application. In order to be considered by the Planning Director, such comments shall be submitted to the Planning Director within the 30-day notice period.~~

Commented [SR9]:

Commented [SR10]: Add the words "written notice" after the word "mail".

Commented [SR11]: Start 30-day comment period on date notice is mailed by the City.

10.814.613 The determination as to whether the **ADU** complies with all requirements shall be made as an administrative review by the Planning Director. If the Planning Director determines that the application is not appropriate for an AP, the application may be denied or may require a conditional use permit.

10.814.64 The Planning Director shall not approve an application for an **ADU** until the conclusion of the 30-day notice period.

10.814.62 ~~Before granting~~ When Section 10.440 requires a conditional use permit for an **attached** or **detached ADU**, the Planning Board shall make the following findings before granting approval:

10.814.621 The **ADU** complies with all applicable standards of this Section 10.814 or as may be modified by the conditional use permit.

10.814.622 The ~~E~~ exterior design of the **ADU** is architecturally consistent with or similar in appearance to the existing principal **dwelling** on the lot.

10.814.623 The site plan provides adequate and appropriate **open space and landscaping** for both the **ADU** and the ~~primary dwelling-principal dwelling unit~~, and complies with the **off-street parking** requirements of Section 10.814.26.

10.814.624 The **ADU** will maintain a compatible relationship ~~to-with~~ the character of adjacent and neighborhood properties in terms of location, design, and **off-street parking** layout, and will not significantly reduce the privacy of **adjacent** properties.

10.814.6370 In granting a conditional use permit for an **accessory dwelling unit**, the Planning Board may modify a specific standard set forth in Sections 10.814.~~2640~~ and ~~or~~ 10.814.~~3052~~ through 10.814.506 (except the size and height of any ADU), including requiring additional or reconfigured **off-street parking** spaces, provided that the **Board** finds such modification will be consistent with the required findings in Section 10.814.629.

10.814.70 **Post-Approval Requirements**

10.814.7180 Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds- together with an affidavit that either the principal dwelling unit or the accessory dwelling unit will be

Commented [SR12]: Delete "administrative review" and replace with "Administrative Approval". Delete the sentence "If the Planning Director determines that the application is not appropriate for an AP, the application may be denied or may require a conditional use permit." And add the sentence "The Planning Director may approve, deny, or request additional information from the applicant. The Planning Director may refer the application to the Planning Board for a conditional use permit, if appropriate."

occupied by the owner of the **dwelling** as the owner's principal place of residence, as required by Section 10.814.22.

10.814.7290 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department ~~and shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.~~ A certificate of use shall not be issued prior to recording of documentation as required by this Ordinance 10.814.80.

10.814.73 The certificate of use shall be renewed annually upon submission of such documentation as the Planning Department may require to verify continued compliance with the standards of this Section. Failure to comply with this requirement shall be deemed a violation of the ordinance and may be enforced as provided in Article 2.

~~10.815—Garden Cottages~~

~~An **accessory building** existing on the effective date of this ordinance may be converted to a **garden cottage** through a conditional use permit granted by the Planning Board, subject to the following provisions and limitations:~~

~~10.815.10—One **garden cottage**, and only one, shall be allowed on any **lot** containing a **single-family dwelling**.~~

~~10.815.20—Relationship to other provisions of this Ordinance:~~

~~10.815.21—No **garden cottage** shall be allowed on the same **lot** as an **accessory dwelling unit** authorized under this Ordinance.~~

~~10.815.22—The establishment of a **garden cottage** results in two **dwelling units** on the property and thus makes the property ineligible to establish an **accessory dwelling unit** under RSA 674:72-73 and this Ordinance. As a condition of receiving a conditional use permit for a **garden cottage**, the property owner shall waive all rights under RSA 674:72 and RSA 674:73.~~

~~10.815.23—A **garden cottage** that complies with the standards of this section is exempt from the residential density standards of the Zoning Ordinance. A second **dwelling unit** on a **lot** that does not comply with the standards of this section shall be considered to be either a second primary **dwelling** or an **accessory dwelling unit** and shall comply with the applicable standards and provisions of the Ordinance.~~

~~10.815.30~~ ~~**Garden cottages**~~ shall comply with the following standards:

~~10.815.31~~ The existing ~~**accessory building**~~ shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.

~~10.815.32~~ A ~~**garden cottage**~~ shall not be larger than 600 sq. ft. ~~**gross floor area**~~.

~~10.815.33~~ A ~~**garden cottage**~~ that is within a required ~~**yard**~~ for the zoning district shall not have any windows or doors higher than eight feet above grade facing the ~~**adjacent**~~ property.

~~10.815.34~~ The ~~**principal dwelling unit**~~ and the ~~**garden cottage**~~ shall not be separated in ownership (including by condominium ownership); and either the ~~**principal dwelling unit**~~ or the ~~**garden cottage**~~ shall be occupied by the owner of the property. The owner shall provide documentation demonstrating to the satisfaction of the City that one of the units is his or her principal place of residence.

~~10.815.341~~ When the property is owned by one or more trusts, one of the ~~**dwelling units**~~ shall be the principal place of residence of the beneficiary(ies) of the trust(s).

~~10.815.35~~ Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

~~10.815.40~~ Before granting a conditional use permit for a ~~**garden cottage**~~, the Planning Board shall make the following findings:

~~10.815.41~~ Exterior design of the ~~**garden cottage**~~ is consistent with the existing ~~**single-family dwelling**~~ on the lot.

~~10.815.42~~ The site plan provides adequate and appropriate ~~**open space, landscaping, and off-street parking**~~ for both the ~~**garden cottage**~~ and the primary ~~**dwelling**~~.

~~10.815.43~~ The ~~**garden cottage**~~ will maintain a compatible relationship to ~~**adjacent**~~ properties in terms of location and design, and will not significantly reduce the privacy of ~~**adjacent**~~ properties.

~~10.815.44~~ The ~~**garden cottage**~~ will not result in excessive noise, traffic or parking congestion.

~~10.815.50 — In granting a conditional use permit for a **garden cottage**, the Planning Board may modify a specific dimensional or parking standard set forth in Section 10.815.30, including requiring additional or reconfigured **off-street parking** spaces, provided that the Board finds such modification will be consistent with the required findings in Section 10.815.40.~~

~~10.815.60 — Documentation of the conditional use permit approval shall be recorded at the Rockingham County Registry of Deeds.~~

~~10.815.70 — A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy and principal residency requirements. Said certificate shall be issued by the Planning Department upon issuance of a certificate of occupancy by the Inspection Department and shall be renewed annually upon submission of such documentation as the Planning Department may require to verify compliance. A certificate of use shall not be issued prior to recording of documentation as required by 10.815.60.~~

Article 11 Site Development Standards

Section 10.1110 Off-Street Parking

10.1113.20 Location of Parking Facilities on a Lot

Required **off-street parking** spaces shall not be located in any required **front yard**, or between a **principal building** and a **street** (including on a **corner lot**). This restriction shall not apply to required **off-street parking** for a **single-family dwelling** (including the combination of a single-family dwelling and an accessory dwelling unit) or **two-family dwelling**.

10.1116.14 The following uses are exempt from providing bicycle parking spaces:

Commented [SR13]: This section as edited was added by Legal

Use No.	Use
---------	-----

- | | |
|------------------|---|
| 1.10 | Single-family dwelling |
| 1.20, 1.21, 1.22 | Accessory dwelling unit |
| 1.25 | Garden cottage |
| 1.30 | Two-family dwelling |
| 2.10 | Assisted living facility |
| 2.20 | Residential care facility |
| 7.10 | Day care |
| 7.70 | Undertaking establishment |
| 11.10-11.60 | Motor vehicle related uses |
| 12.10-12.40 | Marine craft related uses |
| 13.10-13.40 | Wholesale trade, warehousing and distribution |
| 14.70 | Recycling facility or recycling plant |
| 14.80 | High hazard use |
| 17.10-17.20 | Agricultural uses |
| 19.10-19.40 | Accessory uses |

Article 15 Definitions

Section 10.1530 Terms of General Applicability

A

Accessory building or structure

A subordinate **building** located on the same **lot** with the principal **building**, occupied by or devoted to an **accessory use**. Where an **accessory building** is attached to the main **building** in a substantial manner, as by a wall or roof, such **accessory building** shall be considered part of the main **building**. For the purpose of this Ordinance, a **detached accessory dwelling unit that is not created within an existing accessory building** is not an **accessory building** or **structure**.

Accessory dwelling unit (ADU)

An **attached or detached dwelling unit** that is constructed on the same **lot** as a **single-family dwelling** and complies with the standards for **accessory dwelling units** set forth in this Ordinance.

Attached accessory dwelling unit (AADU)

An **accessory dwelling unit** that is constructed within or attached to a **single-family dwelling**. For the purpose of this definition, “attached” means:

- (a) located within the **dwelling** and separated from the **principal dwelling unit** either horizontally or vertically, or
- (b) sharing a common wall for at least 25 percent of the length of the side of the **single-family dwelling**.

“Attached” does not include connection to the **single-family dwelling** solely by an unenclosed **structure** (such as a breezeway) or by an enclosed but unconditioned space.

Detached accessory dwelling unit (DADU)

An **accessory dwelling unit** that is constructed within an ~~accessory detached building~~ on a **lot** containing one **single-family dwelling**. A detached accessory dwelling unit may be connected to the **single-family dwelling** by an unenclosed **structure** (such as a breezeway) or by an unconditioned space.

Accessory use

A **use** that is incidental and subordinate to the **principal use** and located on the same **lot** with such **principal use** or **building**.

Dwelling, principal

A single-family dwelling on a lot on which an accessory dwelling unit ~~or a garden cottage~~ is allowed.

Commented [SR14]: This definition as edited was added by Legal.

G

Garden cottage

~~A **dwelling unit** that is constructed through conversion of an **accessory building** on the same lot as a **single-family dwelling** and complies with the standards for **garden cottages** set forth in the Ordinance.~~

Gross floor area (GFA)

The sum of the areas of the several floors of a **building** or **buildings** as measured by the exterior faces of the walls, but excluding the areas of fire escapes, unroofed porches or terraces, and areas such as basements and **attic**s exclusively devoted to **uses** accessory to the operation of the **building**. If the exterior walls are greater than 6 inches thick, then the **gross floor area** shall be adjusted to a maximum of a 6-inch thick wall.

Gross living area (GLA)

The total area of finished residential space in an accessory **dwelling unit**, including all conditioned living space, but excluding unconditioned space such as decks, porches, garages, or other such spaces that have not been converted into living space. **GLA** is calculated by measuring the interior perimeter of the **accessory dwelling unit**.

Jane Ferrini

From: Karen Conard
Sent: Wednesday, March 29, 2023 11:42 AM
To: Elizabeth A. Moreau Esq.; Suzanne M. Woodland; Peter L. Britz; Jane Ferrini; Peter M. Stith
Subject: Fwd: ADU proposed modifications at second reading

FYI
KSC

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From: Andrew Bagley <andrewbagleyportsmouth@gmail.com>
Sent: Wednesday, March 29, 2023 11:40:30 AM
To: Kelli L. Barnaby <klbarnaby@cityofportsmouth.com>
Cc: Karen Conard <kconard@cityofportsmouth.com>; deaglanmceachern@gmail.com <deaglanmceachern@gmail.com>
Subject: ADU proposed modifications at second reading

Hi Kelli,

I am trying to figure out the best way for this to go into the packet. I suppose you could put as an agenda item under my name:

Amend the ADU proposal as proposed in the packet by Councilor Bagley. A motion may be made during the discussion of the second reading of the ordinance to include all or some of the changes outlined in the packet.

And in the packet:

Proposed changes to ADU proposal at second reading by Councilor Bagley

Move to strike 10.814.23 limit to two bedrooms.

Move to amend 10.814.26 strike language and replace with ADU shall not have any off-street parking requirements nor trigger any grandfathered parking exceptions currently in place for the principal unit.

Move to strike 10.814.413. No interior door shall be required between the units. This adds unnecessary expense, degrades the livability of the unit, and provides no appreciable benefit.

Move to strike 10.814.433. This will be covered by HDC regulations if in the HDC district. If not, aesthetic requirements are not in the spirit of the intent of the ordinance changes.

Move to strike 10.814.332 as unnecessary.

Move to strike 10.814.333 as unnecessary.

Move to amend 10.814.41 to no larger than 1,250 sq ft

Move to strike 10.814.42 as unnecessary.

Move to strike 10.814.431, 10.814.432, 10.814.433 amend 10.814.434 to 1,250 sq ft

Move to strike 10.814.435 as unnecessary.

Move to strike 10.814.436 as unnecessary.

Move to strike 10.814.50 and all subsets. (HDC covers in appropriate areas)

Move to strike as unnecessary:

10.814.622

10.814.623

10.814.624

Change 10.814.73 to every five years instead of every year.

Move to strike 10.1110 as unnecessary.

Thanks,
Andrew

--

Best regards,
Andrew Bagley
1-603-583-8015