

BIG HOUSE, LITTLE HOUSE, BACK HOUSE...ADU?

Planning Webcast Series Consortium
March 30, 2018



New Hampshire Housing
Bringing You Home



Benjamin D. Frost, Esq., AICP
Director, Legal and Public Affairs
New Hampshire Housing

bfrost@nhhfa.org
(603) 310-9361

Roadmap for Today

- Background to ADUs and examples
- ADUs in the NH context
 - Demographic changes and market forces
 - The NH ADU Law
- The Broader Context
 - ADUs in the news!
 - State laws
 - Local laws
- Q & A



Background to ADUs

Big House, Little House, Back House, Barn



NH Farm Museum, Milton, NH

Photo by Ray Boas; <https://shunpikingwithray.com>

Living in Close Proximity

- It's a really old and simple idea





Downton  Abbey

ADUs – What Are They?

- A second, smaller **dwelling** on the same grounds as a single-family house – attached or detached
 - ▣ An apartment over the garage, in the basement, in an outbuilding
 - ▣ Also called *granny flats, in-law apartments, family apartments, secondary units, etc.*
- “Accessory” is a word that has legal meaning – customarily incidental and subordinate to the primary use

ADUs – Out West



ADUs in Eugene and Portland, OR

Benefits of ADUs

- Increases a community's housing supply without further land development
- Facilitates efficient use of existing housing stock & infrastructure
- An affordable housing option for many low- and moderate-income residents
- Improves homeowner cash flow
- Helpful to elderly and/or disabled people who may want to live close to family members
 - ▣ or caregivers, empty nesters, young adults, etc.

ADUs – Back East



Converted Farmhouse
Hopkinton, New Hampshire
Photo: Roger Hawk

In-town ADU
Concord, New Hampshire



ADUs – Someplace You Could Live

Find the hidden
ADU in Warner,
New Hampshire



ADUs – History and Evolution

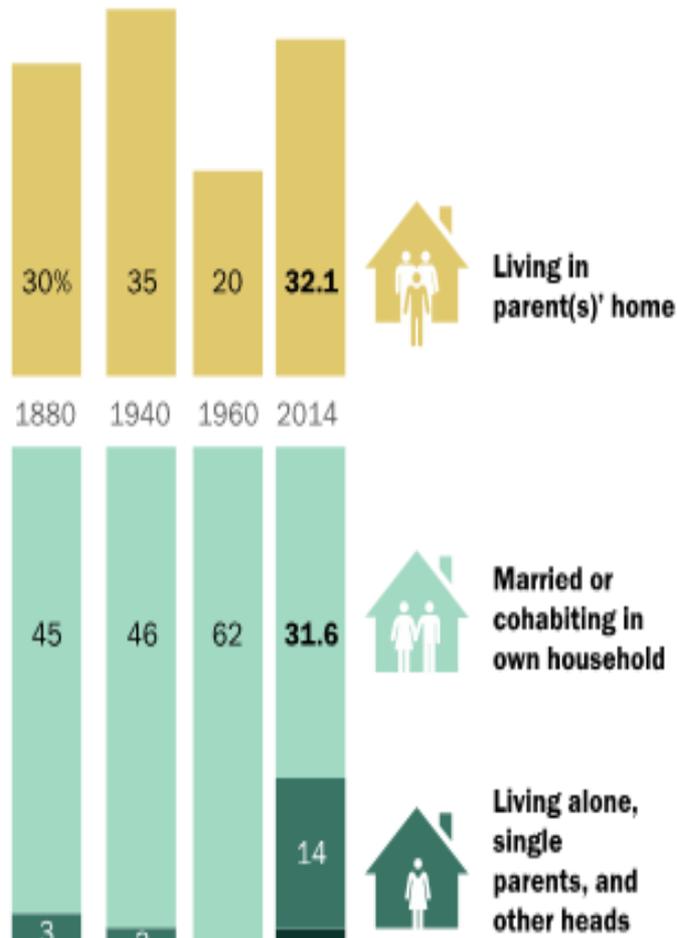
- Early 20th century – a common feature in SF homes
- With post-WWII suburbanization and deployment of “Euclidean” zoning, ADUs became far less prevalent
 - Baby boom/Car boom/Sprawl
 - Less interest in efficient use of space
 - Easier mortgage financing
- *But things are changing...*



The New Hampshire Context

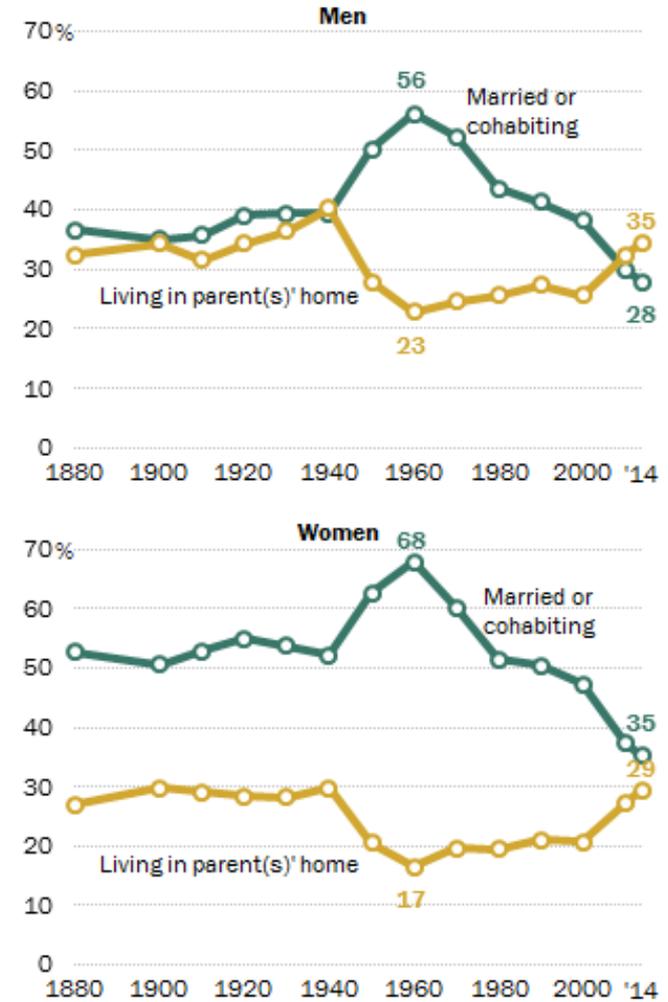
Living with a parent is the most common young adult living arrangement for the first time on record

% of 18- to 34-year-olds by living arrangement



Young men are now more likely to live with a parent than to live with a spouse or partner; not so for women

% of 18- to 34-year-olds



Fry, Richard. 2016. "For First Time in Modern Era, Living With Parents Edges Out Other Living Arrangements for 18- to 34-Year-Olds." Washington, D.C.: Pew Research Center, May.

Median Age Belies Our Relative Youth

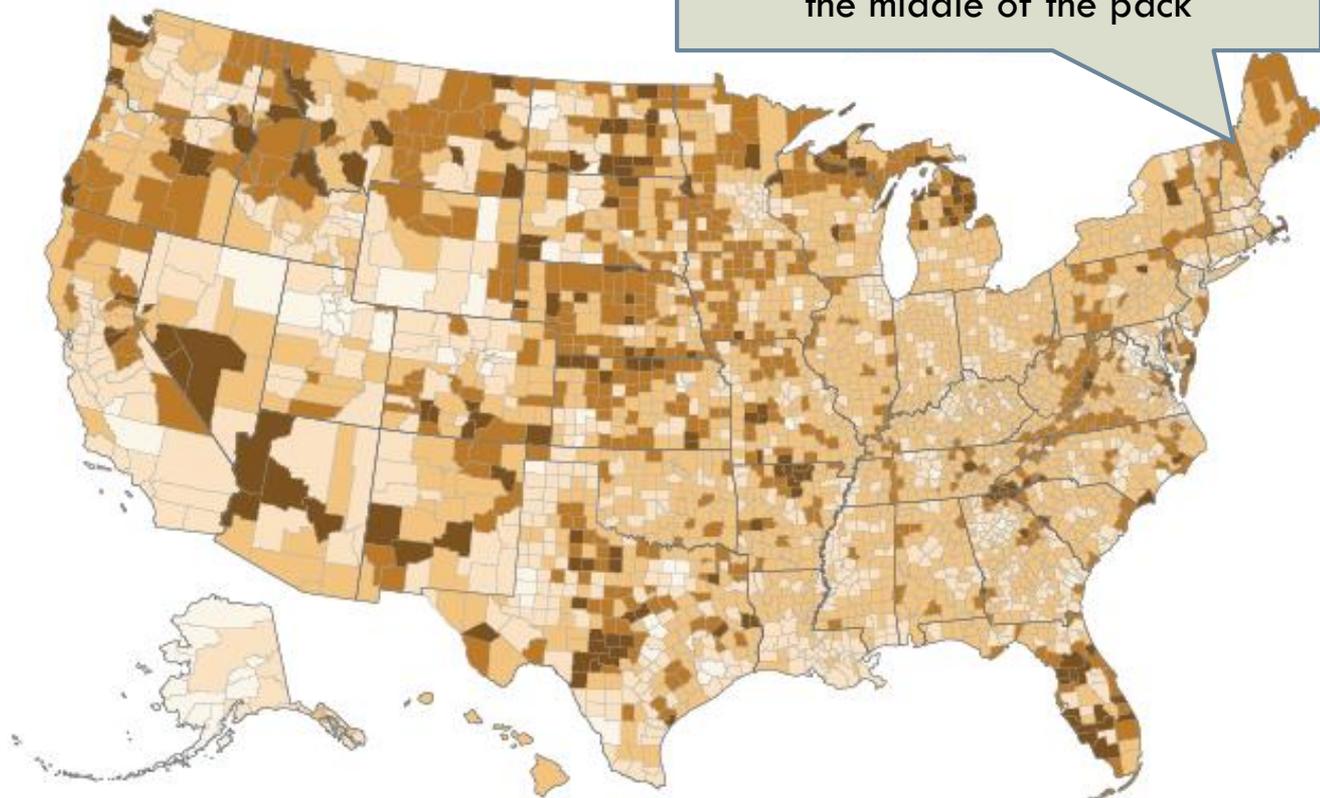
Counties With the Largest, Smallest Shares of Seniors

% of county population ages 65+

By this measure, NH is closer to the middle of the pack

2016 Median Age

1. Maine	44.5
2. Vermont	43.1
3. NH	42.7
4. W. Virginia	42.3
5. Florida	42.1
...	
50. Utah	30.7
US	37.9



American Community Survey

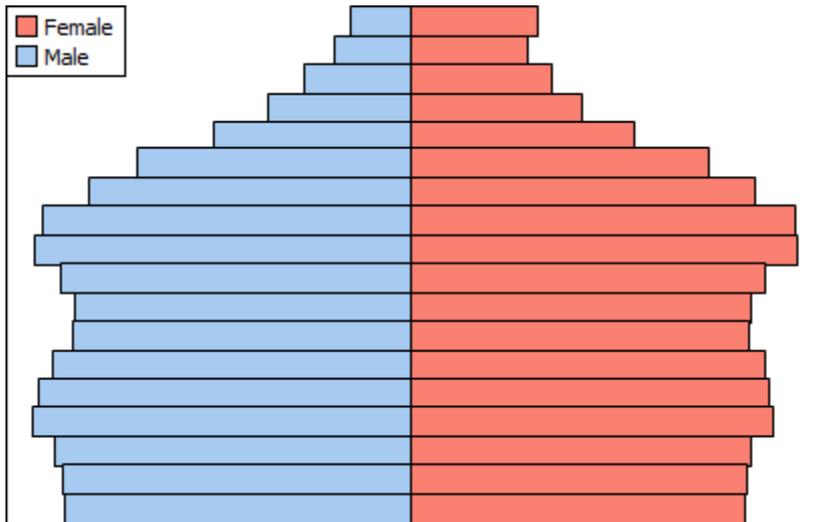
Source: U.S. Census Bureau 2014 population estimates

PEW RESEARCH CENTER

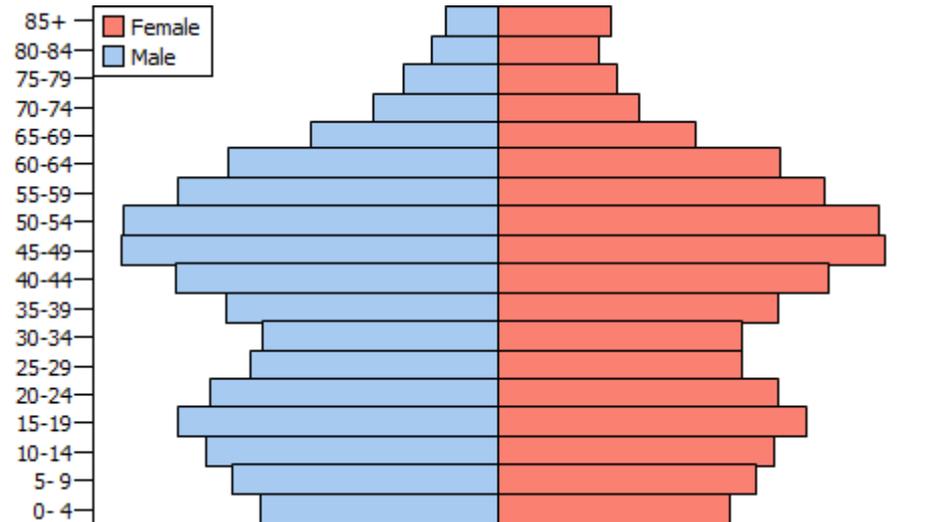
Expected Increase in Older Population

Total Population, 2010

United States

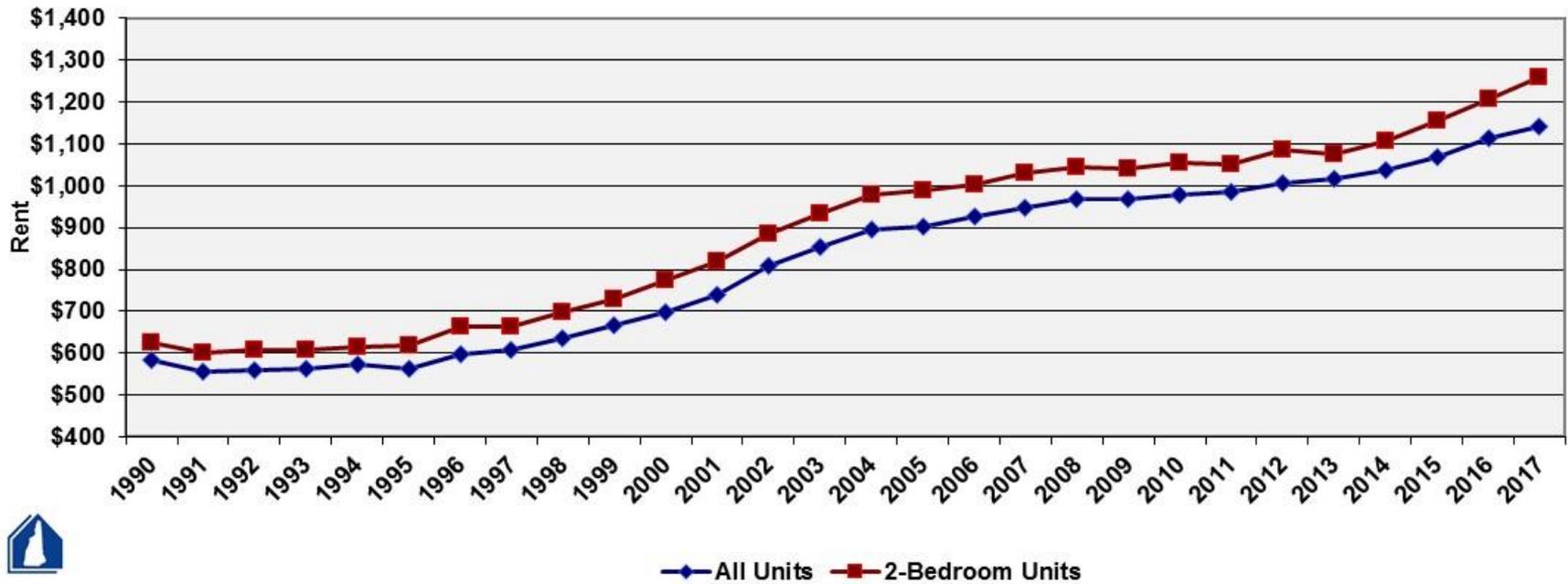


New Hampshire



Rents in NH: Up, Up, Up

Median Gross Rental Cost



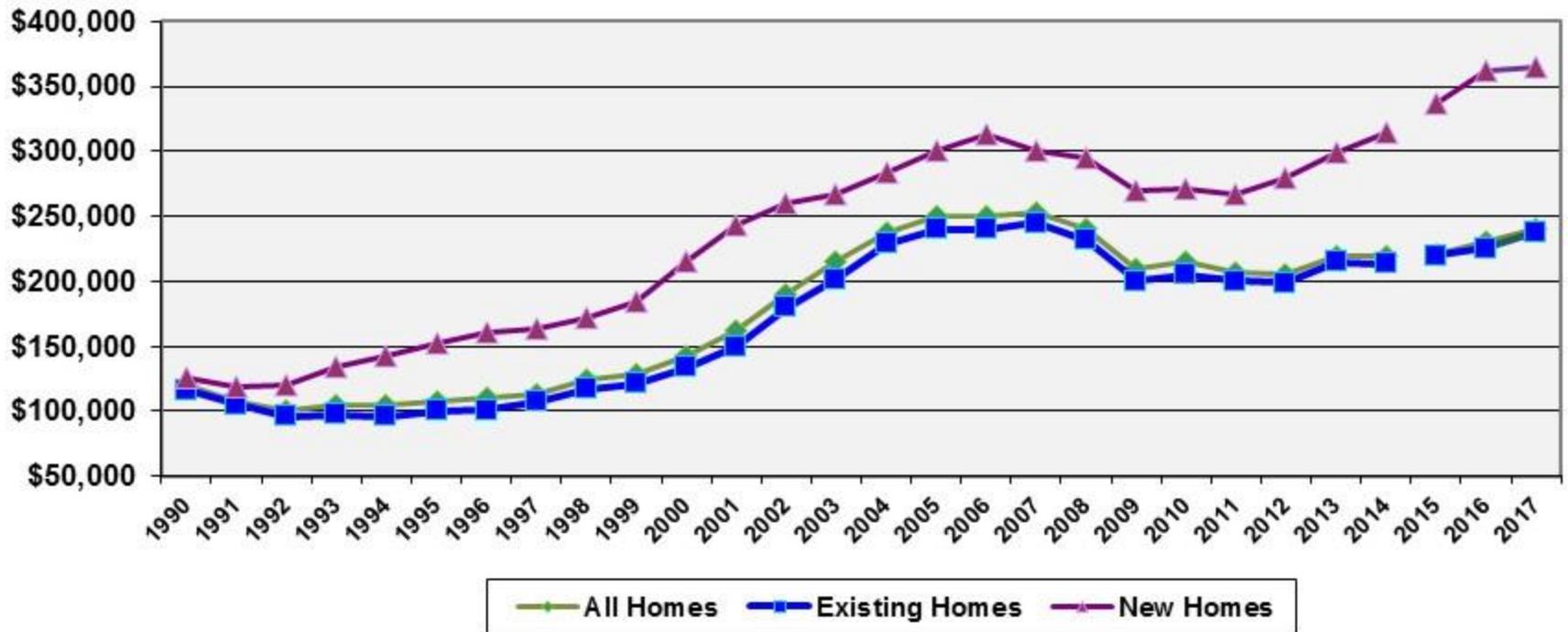
2BR median gross rent increased 17% since 2013

NH Vacancy Rate: Down, Down, Down



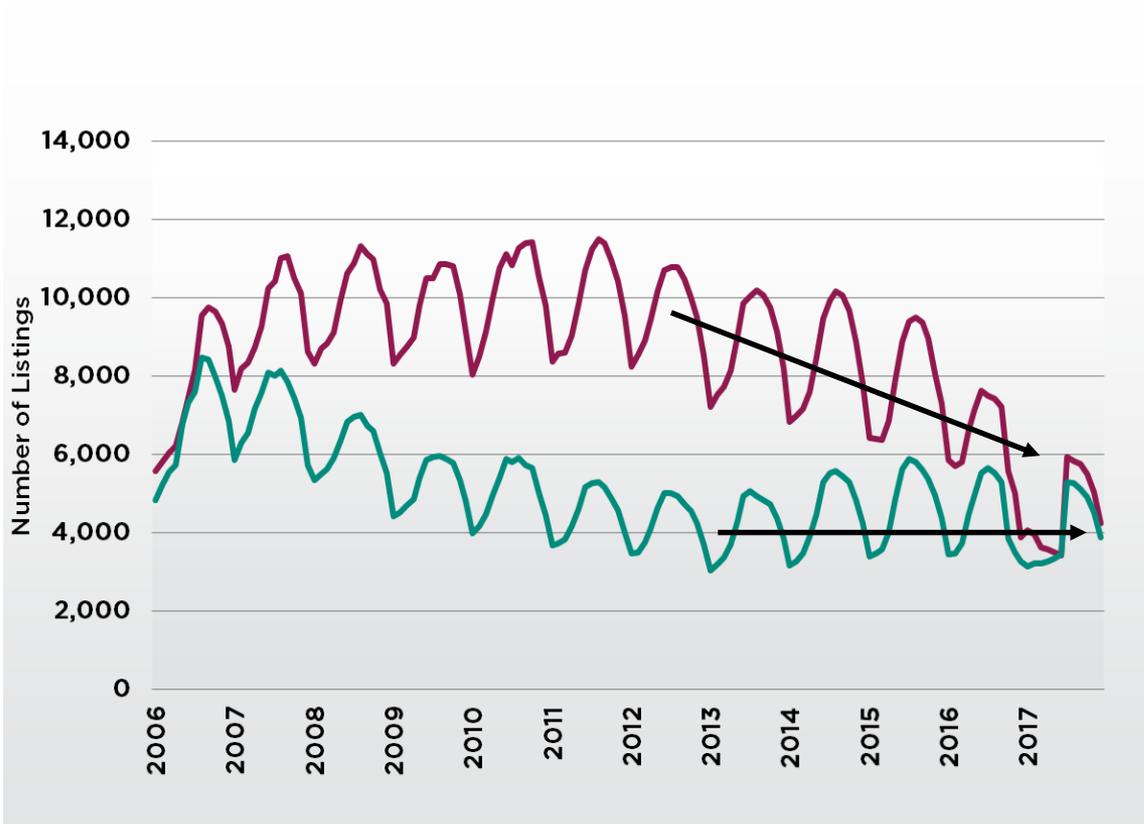
NH Home Prices Have Recovered

Median Home Purchase Price



Listings

— Listings <\$300K — Listings >\$300K



Overall, listing have declined, but the shortage of entry level homes in areas of high demand has become critical.

Between 2010 and 2017 the listings for homes for < \$300K dropped by approximately 50% while homes for > \$300K dropped only 10%.

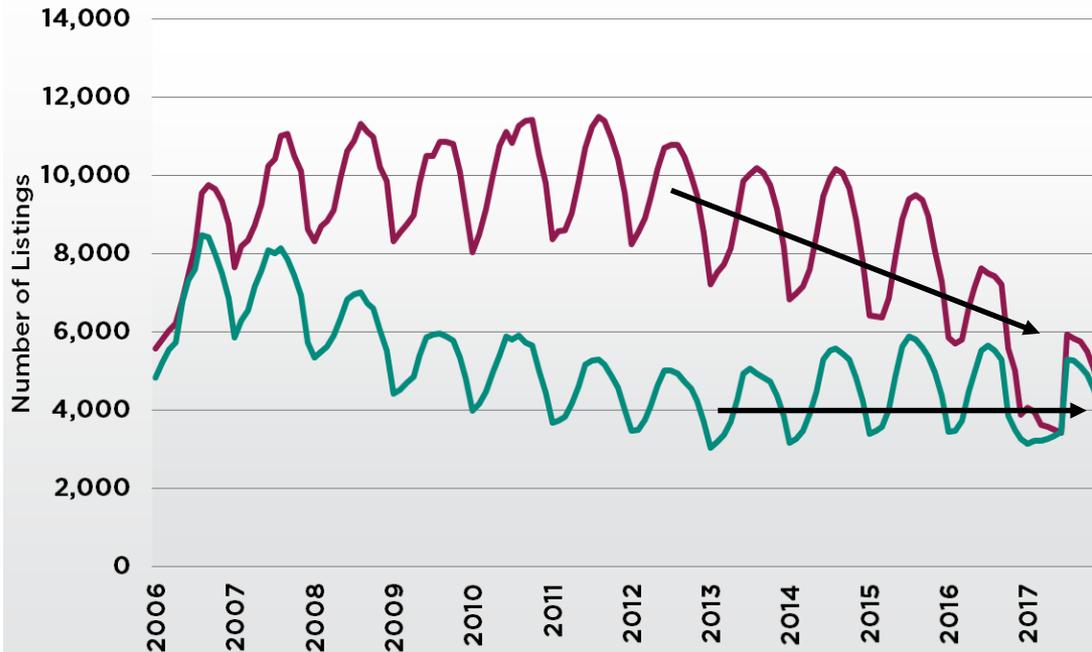
Based on information from the Northern New England Real Estate Network for towns in New Hampshire, compiled by New Hampshire Housing. Excludes land, interval ownership, seasonal camps/cottages, multi-family property, mobile/manufactured homes and commercial/industrial property.

And NH Inventory Is Dropping



NH Starter Homes Disappearing

— Listings <\$300K — Listings >\$300K



Overall, listings have declined, but the shortage of entry level homes in areas of high demand has become critical.

Between 2010 and 2017 the listings for homes for < \$300K dropped by approximately 50% while homes for > \$300K dropped only 10%.

Housing Needs and Preferences

- NH Center for Public Policy Studies 2014 reports:
“Housing Needs and Preferences in New Hampshire”
 - ▣ Common knowledge
 - Slower population growth
 - Aging population
 - ▣ Less Commonly Known
 - Mismatch of housing stock and needs and desires of changing population-young and old
 - Big single-family homes; small families
 - Older adults want to “age in place” or “age in community”
 - “Golden Acres” not so golden

What Does It Mean?

- What are the housing implications of these demographic changes?
 - ▣ We need to house an aging population
 - ▣ We need to attract and retain a younger workforce
- What are the housing policy implications of these demographic changes?
- Do these different groups want the same things?
 - ▣ Urban(ish), walkable, transit, cultural amenities
 - ▣ Who will win in a bidding war? (Follow the money)

Better Living in Less Space?



<https://makespace.com/blog/posts/carmel-place-nyc-micro-apartment-building-kips-bay/>

NH ADU Law's "Back Story"

- Demographic and market changes
- Homebuilders unable to fulfill homeowner requests to create ADUs for a family member or caregiver
 - ▣ Stymied by local land use restrictions
 - ▣ Sought legislative relief

NH ADU Law – The Basics

- Defining Characteristics
 - ▣ Independent living unit (sleeping, cooking, eating, sanitation)
 - ▣ Adequate water supply and sewage disposal required
 - ▣ Interior door between primary unit and ADU required
- Municipal Role
 - ▣ Municipalities must allow an attached ADU in any single-family zone by right, special exception, or conditional use permit
 - ▣ If the zoning ordinance is silent on ADUs, then they are allowed in any single-family home (regardless of zone)
 - ▣ Standards for a single-family home also apply to combined SF and ADU (e.g., setbacks and frontage)

NH ADU Law – Options

- Municipality may
 - ▣ Require adequate parking to accommodate an ADU
 - ▣ Require owner occupancy of one of the units (but can't say which one)
 - ▣ Require demonstration that a unit is the owner's principal place of residence
 - ▣ Control for architectural appearance (“look and feel”)
 - ▣ Limit the number of ADUs per single family dwelling
 - ▣ Limit the number of unrelated individuals that occupy a single unit (concern of college towns)

NH ADU Law – Prohibitions

- Municipality must not
 - Limit any ADU to 1 bedroom
 - Require minimum size to be less than 750 s.f.
 - Require a familial relationship between the occupants of principal dwelling and ADU
 - Require the interior door between primary unit and ADU to remain unlocked
 - Require additional lot area or other dimensional standards for ADU (but it may increase lot size for a detached ADU)

NH ADU Law – Miscellaneous

- Other elements
 - ▣ Detached ADUs
 - Municipalities may allow at their discretion
 - A municipality may require increased lot size, but other statutory standards for attached ADUs will apply
 - ▣ Amends NH RSA 674:21 Innovative Land Use Controls
 - ADUs are removed from list along with its definition – no longer a voluntary land use regulation

ADU Law – *But Wait, There's More!*

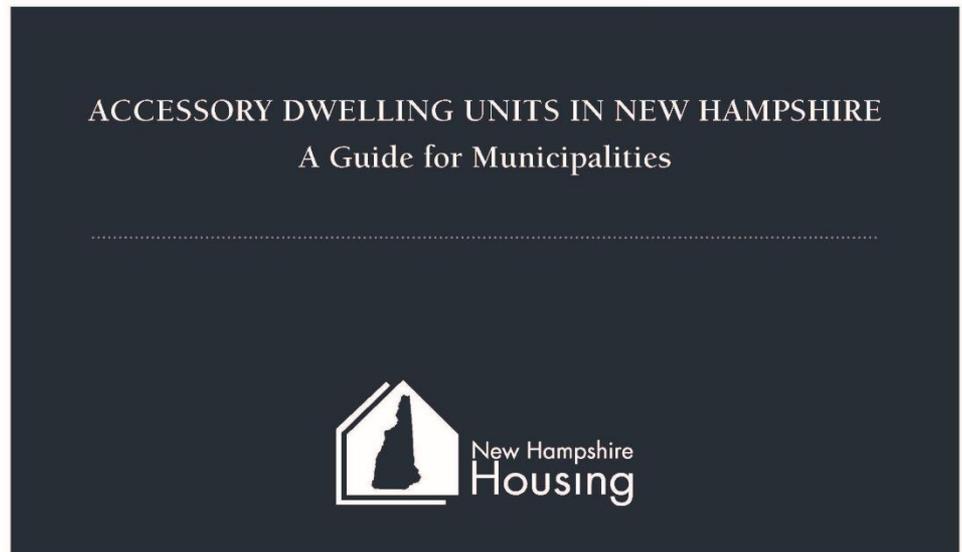
- Effective date: June 1, 2017
- Bills passed in 2017 modified the law
 - HB 258: Require submission only of an application for a new septic design for ADU construction; new system not required, unless existing system was unlicensed or has failed (Ch. 238, effective September 16, 2017)
 - HB 265: Allow municipalities to limit ADUs in townhouses and manufactured housing, and to prohibit condo conversion of ADUs (Ch. 89, effective June 5, 2017)

NH ADU Law – FAQs

- ❑ Isn't this just a duplex?
- ❑ Do we still need to care about workforce housing?
- ❑ Do impact fees apply to a new ADU?
- ❑ What does “attached” mean?
- ❑ What's the purpose of an interior door?
- ❑ What about septic standards?
- ❑ Can HO associations or condo docs prohibit ADUs?
- ❑ Owner occupancy – what if the owner is a trust?
- ❑ What are the HUD occupancy standards?
- ❑ What about use as a short-term rental?
- ❑ What if we do nothing?

Guidebook contains
sample zoning
language.

NHHFA is also in the
process of developing
a homeowner's guide
to ADUs.



Available at
www.nhhfa.org/accessory-dwelling-units



ADUs in a Broader Context

Why Aren't Homes Being Built?

THE WALL STREET JOURNAL.

BUSINESS

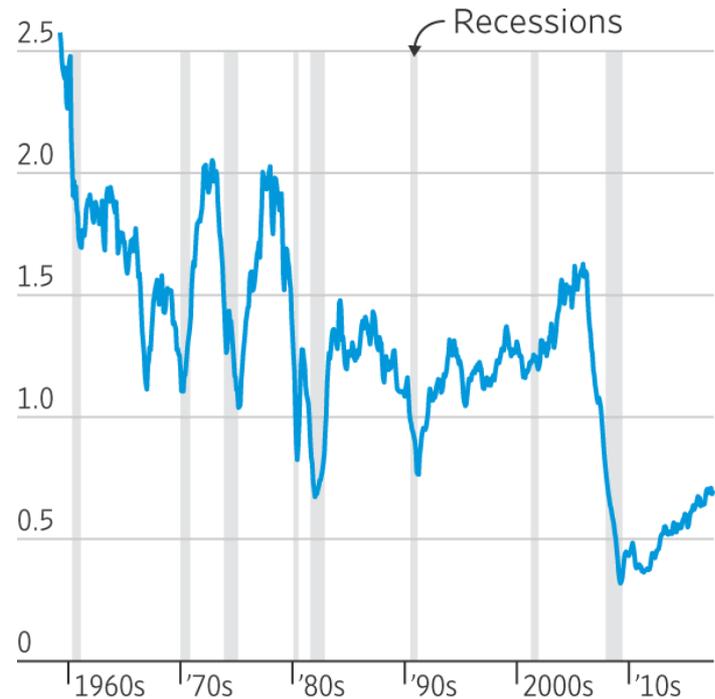
The Next Housing Crisis: A Historic Shortage of New Homes

- Strong economy
- Jobs are plentiful
- Wages are rising
- Millennials “aging into” home ownership
- Land & construction costs \uparrow x2 in 10 years
- Higher labor costs
- Tighter regulations
- Better profit margins in higher end homes

“There’s a tremendous mismatch between the places where people want to live and the places where it’s easiest to build,” says Edward Glaeser, a professor of economics at Harvard University who studies constraints on housing supply.

Still Broken

Housing starts per 100 households,
3-month moving average



Source: Federal Reserve Bank of Kansas City

How Much Demand Is There?

- JAPA Spring 2017 (vol. 83, no. 2) – *Measuring Informal Housing Production in California Cities*
 - “Informal housing” – built without permits (includes ADUs)
 - “...flourishes in spite of ubiquitous land use regulation and building codes, and systematic efforts to enforce both.”
 - Different analyses conclude that informal housing constitutes between 25-40% of all new housing units nationwide
 - Clearly a response to an unmet need
 - Problem: informal housing doesn’t meet codes and can pose safety hazards (and unaccounted municipal service burdens)
 - Solutions: enforcement crackdown, or accommodation?

Home → Shows

Tiny House Central

Your guide to living small



#tinyparadise

Mondays, 9p | 8c

MAIN

TINY HOUSE SHOWS ▾

VIDEO PLAYLISTS

BLOG



Pinterest



Facebook



Twitter



Email



SMALL SPACE, BIG STYLE

13 Style-Packed Tiny Homes 45 Photos

Living small doesn't mean you have to sacrifice design details.



GoToWebinar

Use your webinar to get the results you want.

START FREE TRIAL

On TV

On Now

Fixer Upper

12pm | 11c

• WATCH LIVE TV

Up Next

Flip or Flop Fort Worth

1pm | 12c

What's Hot



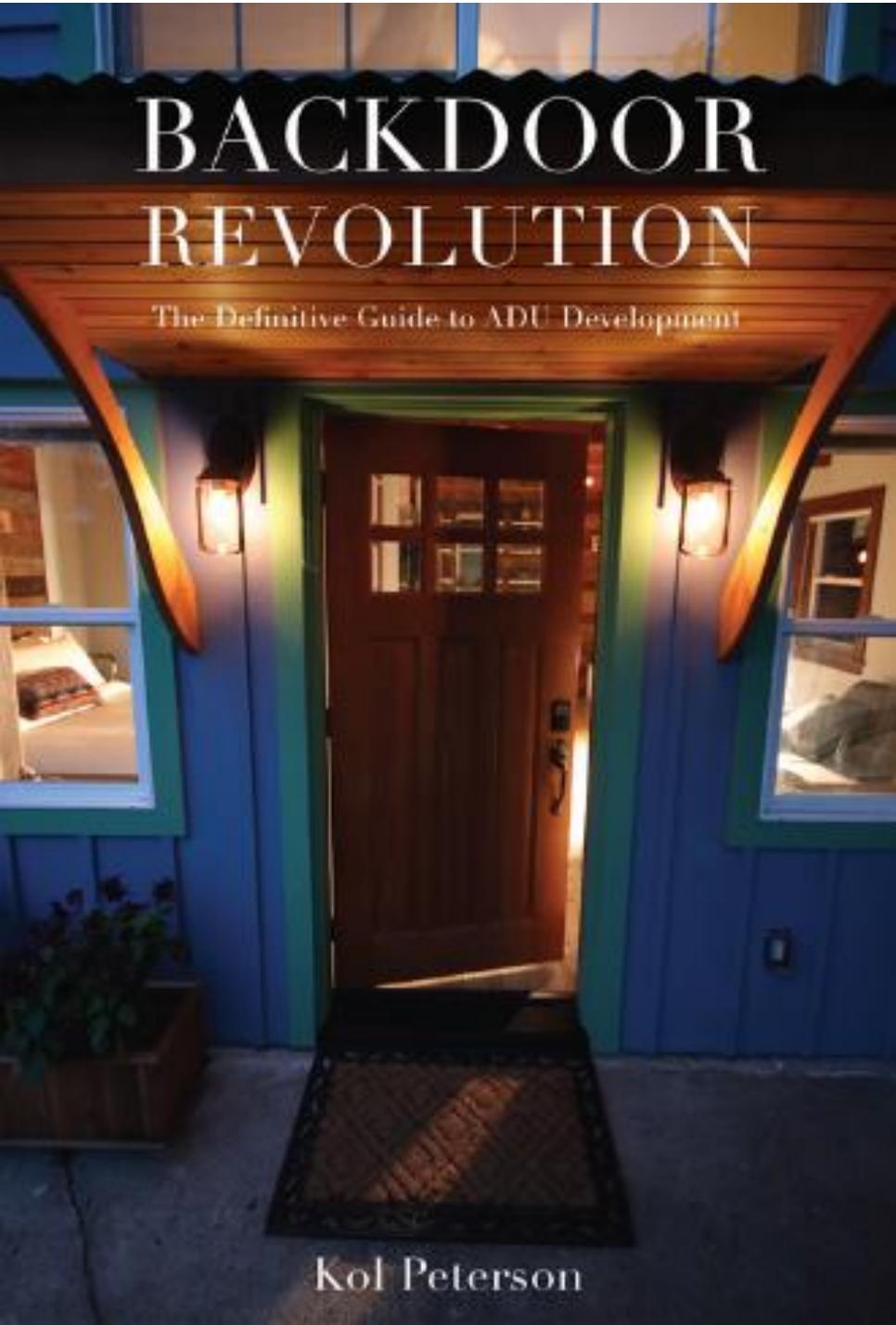
Flip or Flop



A small accessory dwelling unit—known as an ADU—is attached to an older single-family home in a Portland, Oregon, neighborhood. // Courtesy of Kol Peterson

The Granny Flats Are Coming

MIMI KIRK JAN 16, 2018



Kol Peterson's new book for homeowners and others interested in creating ADUs. See BuildinganADU.com

Peterson also is one of the editors of www.accessorydwellings.org

State Law

- Foundation for action – state law
 - ▣ Home Rule vs. Dillon’s Rule state
 - ▣ Enabling or constraining legislation

 - ▣ Most enabling statutes will give sufficient power to allow and regulate ADUs
 - ▣ Are there barriers in your statutes, either overt or buried in some obscure statutory or regulatory corner (e.g., septic standards or utility connection requirements)

Local Laws 1

- The greater the number and stringency of standards, the fewer units will be created
- By right or special permit?
 - ▣ Vary by district?
- Attached vs. detached
 - ▣ Vary by district?
- Occupancy limitations?
 - ▣ Owner; family member; caregiver; number of unrelated individuals
- Additional dimensional standards?
 - ▣ Lot size, setbacks, density, lot coverage
- What is the purpose of your regulation?
 - ▣ What are you trying to protect or encourage?

Lot A

2500 sf house
(incl. 750 sf ADU)
625 sf garage
1000 sf driveway
4125 sf total
20.6% coverage

Lot B

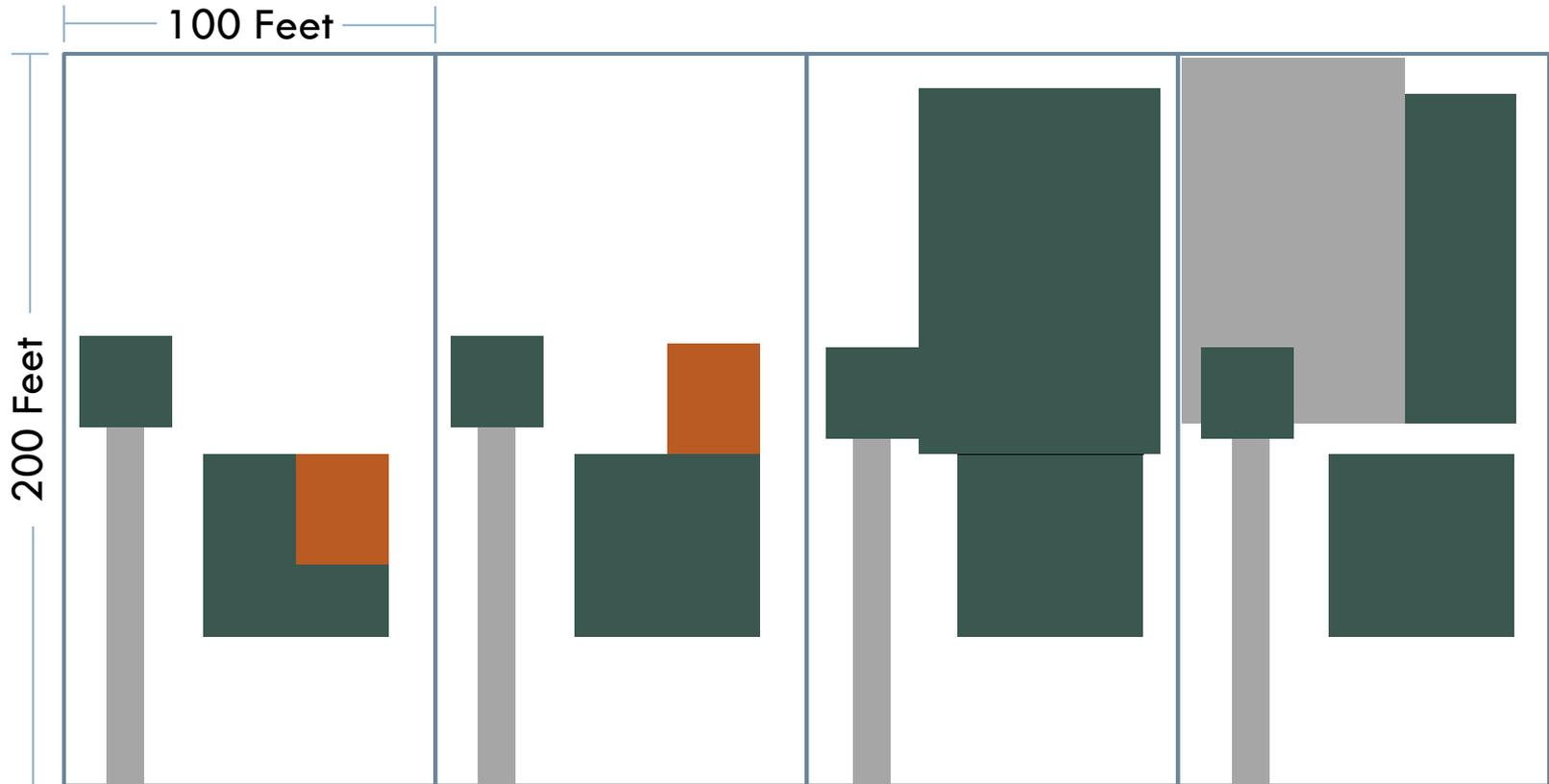
2500 sf house
625 sf garage
1000 sf driveway
750 sf ADU
4875 sf total
24.4% coverage

Lot C

2500 sf house
625 sf garage
1000 sf driveway
6500 b-ball bldg
10625 sf total
53.1% coverage

Lot D

2500 sf house
2700 sf garage
7000 sf driveway
12200 sf total
61.0% coverage



20,000 sf lot size

Mulberry Street

Local Laws 2

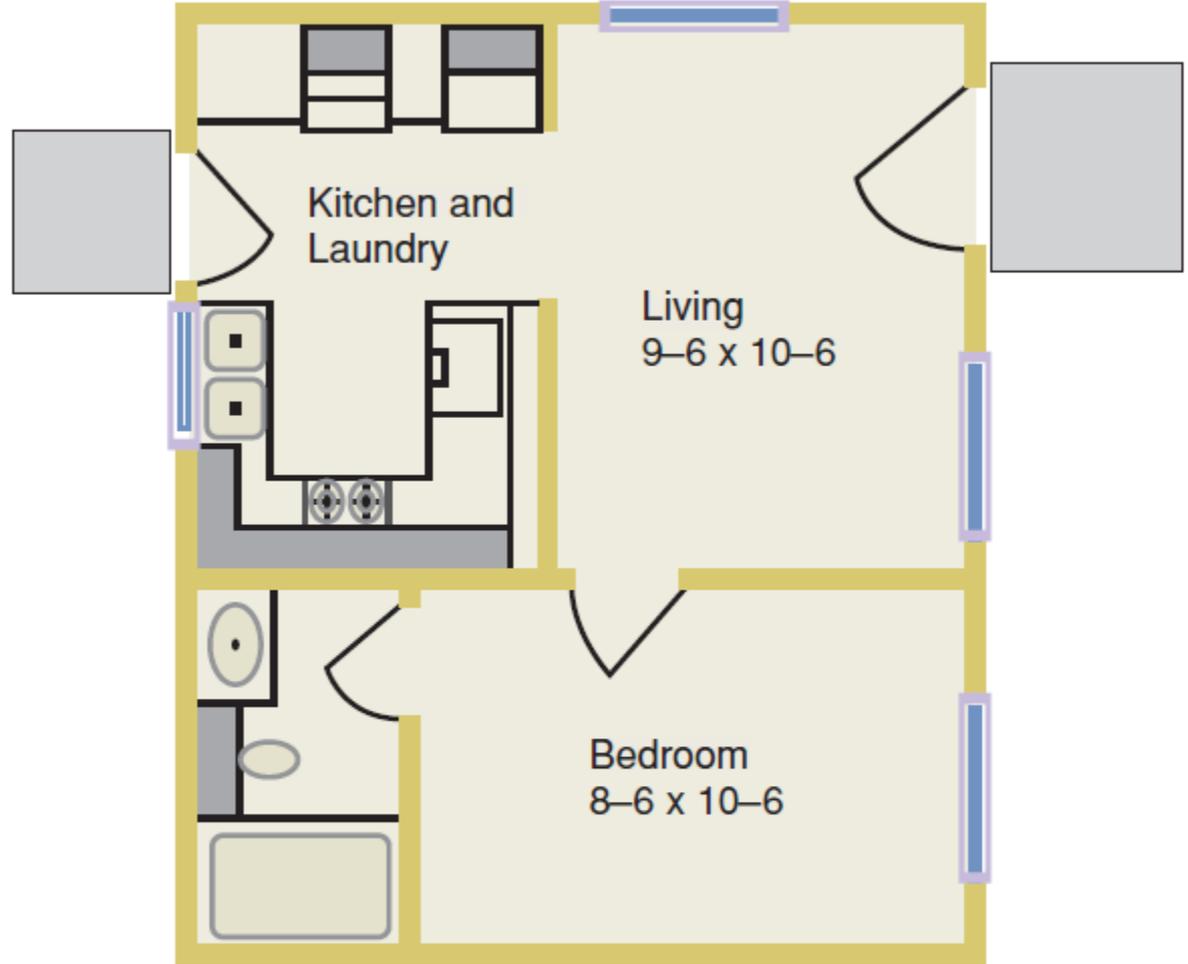
- Separate utility connections?
 - ▣ Why not leave this up to the owner?
- Impact fee implications?
- Architectural controls
 - ▣ What could the owner do without the ADU?
- Limitation on short-term rentals (AirBnB, VRBO, etc.)
- Min/max size restrictions?
 - ▣ Absolute – square footage of heated space, or other
 - ▣ Proportional – percentage of the dwelling unit's space

The 2015 International Residential Code eliminated the requirement that a dwelling must have a room of at least 120 s.f. and other rooms of at least 70 s.f.

R304.1 now reads:

“Habitable rooms shall have a floor area of not less than 70 square feet (6.5 m²).”

In a media brief, the ICC said “...[the change] will accommodate alternatives for very small dwellings that would previously not be allowed under the IRC.”



Small dwelling complying with minimum area requirements

ADU FAQs

- ❑ Isn't this just a duplex?
- ❑ What about septic standards?
- ❑ Can HO associations or condo docs prohibit ADUs?
- ❑ Owner occupancy – what if the owner is a trust?
- ❑ What are the HUD occupancy standards?
- ❑ What about use as a short-term rental?

Is an ADU a Duplex?

- Not really – duplexes tend to be two units of comparable size in a single structure
- “Accessory” in ADU has real meaning –intended to be secondary to the main use of the building as a single family home, in the same way that a garage would be of secondary importance.



© U.S. Navy photo by Mass Communication Specialist 2nd Class Kevin L. Burleson

Owner Occupancy

- What if the owner is a trust, LLC, or corporation?
 - Purely legal entities that cannot occupy physical space
 - This is a question for state law and local interpretation
 - Some entities are transparent instruments – see through them to the beneficiary
 - Others closely controlled – e.g., a single-member LLC
 - How flexible do you want to be?

HO/Condo Restrictions

- Partly a question of state law: what does your state's condominium act say?
- Generally, these are private contractual agreements among multiple owners – they can tell each other what not to do
- If a local law prohibits (or requires) ADUs, that would be enforceable
- If a local law allows ADUs, associations could still prohibit them

Do HUD Occupancy Standards Apply?

- Fair Housing Enforcement Policy – Occupancy Standards (FR Vol. 63, No. 245, page 70982 (1998))
 - 1991 Policy Statement
 - Applicable to “housing providers” but also may have implications for municipal regulation (pro & con)
 - Occupancy restrictions often used to exclude or unreasonably limit families with children
 - 2 persons per bedroom as a general rule is reasonable
 - Factors: number and size of sleeping area, size of overall unit, age of children, configuration of unit

Conclusion

- Need for more housing in many markets
- ADUs are becoming more popular
- ADUs can promote more efficient use of existing infrastructure
- ADUs can provide more housing without further land development
- ADUs can provide housing that's more affordable, but without any public subsidy or public intervention

Questions?

Ben Frost

bfrost@nhhfa.org

(603) 310-9361



New Hampshire
Housing