

Expanding New Hampshire's Housing: Detached ADUs and Residential Development in Commercial Zones

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Chairman Alexander, Vice Chairman Cole, and members of the House Committee on Housing, thank you for allowing me to offer informational testimony relating to House Bill 577, titled "Relative to modifying the definition of ADUs," and House Bill 631, titled "Permitting residential building in commercial zoning by right." I am Charles Gardner, a research fellow at the Mercatus Center at George Mason University. I study housing policy and affordability across the country and how reforms like the ones proposed in these bills have affected housing market outcomes.

Strengthening Accessory Dwelling Unit Laws and Housing Affordability

New England states have been leaders in promoting accessory dwelling units (ADUs). Between 2017 and 2024, every New England state passed statewide ADU legislation.¹ State legislators have continued to strengthen these bills over time, with Maine revising its ADU law in 2023 and Rhode Island amending its law in 2024.² The focus on ADU reform reflects growing recognition of the many benefits that ADUs can provide, including making efficient use of existing infrastructure, offsetting an owner's high mortgage payments, allowing greater housing flexibility, and contributing to the stock of affordable rental units.

According to a 2023 Mercatus policy brief, the existing New Hampshire ADU law—enacted in 2017— was followed by the creation of hundreds of ADUs between 2017 and 2021 in eight towns for which data were available.³ Nonetheless, New Hampshire's law allows localities to retain several regulatory barriers to ADU

¹ Emily Hamilton and Abigail Houseal, "A Taxonomy of State Accessory Dwelling Unit Laws" (Mercatus Policy Brief, Mercatus Center at George Mason University, March 2023).

² Eli Kahn and Salim Furth, "Breaking Ground: An Examination of Effective State Housing Reforms in 2023" (Mercatus Policy Brief, Mercatus Center at George Mason University, August 2023) and Eli Kahn and Salim Furth, "Laying Foundations: Momentum Continues for Housing Supply Reforms in 2024" (Mercatus Policy Brief, Mercatus Center at George Mason University, July 2024). See also Massachusetts Bill H.4977.

³ Emily Hamilton and Abigail Houseal, "Legalizing Accessory Dwelling Units at the State Level: A New Hampshire Case Study" (Mercatus Policy Brief, Mercatus Center at George Mason University, March 2023).

construction, including prohibitions or limitations on detached ADUs.⁴ If New Hampshire were to limit municipalities' ability to erect certain of these barriers, as Maine and Rhode Island have recently done, the rate of ADU production would increase. In California, for instance, the elimination of owner occupancy requirements in 2017 coincided with a dramatic increase in overall ADU construction.⁵

House Bill 577 would build upon New Hampshire's current ADU law by requiring municipalities to allow detached ADUs. With detached ADUs constituting two-thirds to three-quarters of all ADUs built in jurisdictions where both detached and attached ADUs are allowed, this change is crucial for increasing the housing supply.⁶ The bill would also restrict municipalities from using minimum lot sizes to exclude ADUs from areas with smaller lots, where demand for ADUs is often highest. The changes proposed by the bill would further promote ADU construction in New Hampshire at a time when housing prices and rents in New Hampshire remain at or near record high levels.⁷

Promoting Housing Supply by Allowing Residential Development in Commercial Zones

To date, seven states—California, Florida, Montana, Oregon, Rhode Island, Arizona, and Maryland—have enacted bills legalizing residences in areas that municipalities have zoned for commercial use.⁸ The intent of these bills has varied but has generally reflected changing economic conditions following the pandemic and a growing appreciation for how downtown living fosters well-rounded communities. New Hampshire introduced a similar bill in 2024 (House Bill 1053) that, although well intended, suffered from some vagueness in its drafting. The bill under consideration today, House Bill 631, remedies these issues and provides clear and concise criteria for what landowners are allowed to construct on their own commercial properties.

In particular, the bill avoids some of the problems that have plagued bills introduced or enacted in other states. First, it establishes clear guidelines for allowable density rather than relying upon existing density limits in commercial zones, which can inadvertently create an incentive to downzone commercial areas. Secondly, it wisely does not apply to industrial zones, where the introduction of residences could create unnecessary conflicts with existing uses and with municipal plans for industrial development. Thirdly, it allows residential development on a by-right basis and preempts local use of public hearings, conditional use permits, special exceptions, and other procedural devices that could otherwise be employed to hinder or obstruct proposals under the law.

The bill stops short of prohibiting municipalities from imposing parking requirements on residential developments in commercial zones, but with the enactment of House Bill 1400 in 2024, this issue is already being separately addressed by the state legislature. Further, some New Hampshire localities have begun to

⁴ Hamilton and Houseal, "Legalizing Accessory Dwelling Units." See also N.H. Rev. Stat. § 674:72 et seq. (providing that an ADU "may not be restricted to less than 750 square feet" by a municipality).

⁵ Hamilton and Houseal, "Legalizing Accessory Dwelling Units."

⁶ See Kol Peterson, "Massachusetts Adopted a Strong ADU Law, but Local Regulations Will Still Prevent Them," *Accessory Dwellings* (January 9, 2025).

⁷ See Paul Briand, "Home Prices in New Hampshire Set Another New Record; Old Concerns Remain," *NH Business Review*, June 14, 2023; and Brooklee Han, "New Hampshire's hot housing market has the state in crisis mode," *Housingwire*, December 19, 2024.

⁸ Eli Kahn and Salim Furth, "Office Overhauls and 'God's Backyard': Reforms for Housing in Commercial Zones and Faith Land" (Mercatus Policy Brief, Mercatus Center at George Mason University, May 2024).

see the wisdom of eliminating parking requirements entirely.⁹ The bill also allows regulation of siting and design but subject to a reasonableness standard that would limit abuse. In all, the bill contains sound ideas that should encourage the development of housing in New Hampshire's urban centers.

The State's Role in Allowing Detached ADUs and Residences in Commercial Zones

Local government authority to regulate housing density is based upon the state-granted power to protect health, safety, and the general welfare.¹⁰ The effects of local rules that prevent homes from being built in one locality are not confined to that locality but spill over to the next. Local land use regulations that limit population growth, economic growth, and income mobility within one municipality limit growth and opportunity for New Hampshire as a whole.

When local authority is employed in a manner that interferes with meeting state housing goals and the urgent housing needs of state residents, lawmakers have the responsibility to consider interventions tailored to advancing the welfare of all state residents. Legalizing detached ADUs and allowing residential development in commercial zones are two promising means of providing greater housing choice and allowing for a more abundant and flexible supply of affordable housing options.

⁹ For example, Seabrook, New Hampshire eliminated parking minimums in 2019, and Dover, New Hampshire, eliminated them in 2020.

¹⁰ N.H. Rev. Stat. Ann. § 674:16 (2023).