

**Proposed Zoning Ordinance Amendments
Accessory Dwelling Units and Garden Cottages
June 21, 2018**

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 10 — Zoning Ordinance, be amended as follows:

A. In Article 8 – Supplemental Use Standards, delete existing Sections 10.814 – Accessory Dwelling Units and 10.815 – Garden Cottages and insert in their place the new Sections 10.814 and 10.815 as presented on the document titled “Proposed Amendments to the Portsmouth Zoning Ordinance: Sections 10.814 – Accessory Dwelling Units and 10.815 – Garden Cottages”, dated June 21, 2018.

B. In Article 15 – Definitions, Section 10.1530 – Terms of General Applicability, amend existing definitions and insert new terms and definitions as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

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 is not an accessory building or structure.**

Accessory dwelling unit (ADU)

A 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 ~~sharing a common wall for at least 25 percent of the length of the side of the single-family dwelling.~~

(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 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.**

Dwelling, principal

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

Dwelling unit, principal

A dwelling unit in a single-family dwelling that is not an attached accessory dwelling unit or a garden cottage.

Principal building

The primary building on a lot **which includes one or more principal uses.**

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

Jack Blalock, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

Accessory Dwelling Units and Garden Apartments:
Comparison of Proposed Amendments with Existing Ordinance

10.814 Accessory Dwelling Units

10.814.10 One, and only one, **accessory dwelling unit** 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**.

10.814.20 Except as provided in elsewhere in this Section 10.814, ~~all land use regulations applicable to a single-family dwelling shall also apply to the combination of a principal dwelling unit and~~ 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:

10.814.21 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.

10.814.22 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.

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

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

10.814.32 Either the principal **dwelling unit** or the **accessory dwelling unit** shall be occupied by the owner of the **dwelling**; as his or her principal place of residence. 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.

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

10.814.322 When the property is owned by a limited liability corporation, one of the dwelling units shall be the principal place of residence of a person or persons holding at least 80 percent of the ownership of the corporation.

10.814.33 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.

10.814.34 Electric, gas, water and sewer utilities for the **accessory dwelling unit** shall be on the same meters as the principal **dwelling unit** and shall not be billed separately from the principal **dwelling unit**.

10.814.35 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.

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

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

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

10.814.43 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 **dwelling**, one door shall ~~clearly~~ be designed as the principal entrance and the ~~others~~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**.

10.814.452 The addition to or expansion of the existing **single-family dwelling** shall not include any increase in **building height** of the existing **principal building**.

10.814.453 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**.

10.814.50 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.)
- 10.814.52 The **DADU** shall not have more than two bedrooms and shall not be larger than 750 sq. ft. gross floor area; except that the maximum **gross floor area** shall be 1,000 sq. ft. if the **lot area** is 2 acres or more.
- 10.814.53 The **DADU** shall be ~~separated from~~ clearly subordinate to the principal **single-family dwelling** by at least 20 feet in scale, height and appearance.
- 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**.
- 10.814.532 The **building height** of the **DADU** shall be no greater 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.
- 10.814.55 The front wall of the **DADU** shall be **set back** at least 10 feet further from the **front lot line** than the existing front wall of the **single-family dwelling**.
- 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**.
- 10.814.60 Before granting a conditional use permit for an **attached** or **detached ADU**, the Planning Board shall make the following findings:
- 10.814.61 Exterior design of the **ADU** is ~~compatible~~ consistent with the existing ~~residence~~ principal dwelling on the **lot** ~~through architectural use of **building forms, scale and construction materials**.~~
- 10.814.62 The site plan provides adequate and appropriate **open space** ~~and~~ landscaping that is useful 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 ~~and~~ 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.

~~10.814.70 A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy requirement. Said certificate shall be renewed annually.~~

~~10.814.80~~10.814.70 In granting a conditional use permit for an **accessory dwelling unit**, the Planning Board may modify a specific ~~dimensional or parking~~ standard set forth in ~~this~~ Section 10.814.40 or 10.814.50, 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 10.814.60.

10.814.80 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 renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.

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 living trusts, one of the **dwelling units** shall be the principal place of residence of the beneficiary(ies) of the trust(s).

10.815.342 When the property is owned by a limited liability corporation, one of the **dwelling units** shall be the principal place of residence of a person or persons holding at least 80 percent of the ownership of the corporation.

10.815.35 Electric, gas, water and sewer utilities for the **garden cottage** shall be on the same meters as the principal **dwelling unit** and shall not be billed separately from the principal **dwelling unit**.

10.815.36 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 ~~compatible~~consistent with the existing ~~residence~~single-family dwelling on the ~~lot~~through architectural use of **building** forms, scale and construction materials.

10.815.42 The site plan provides adequate and appropriate **open space** and **landscaping** that is useful, 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~~ — ~~A certificate of use issued by the Planning Department is required to verify compliance with the standards of this Section, including the owner-occupancy requirement. Said certificate shall be renewed annually.~~

~~10.815.60~~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 ~~this~~ 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 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 renewed annually upon submission of such documentation as the Planning Department may require to verify compliance.