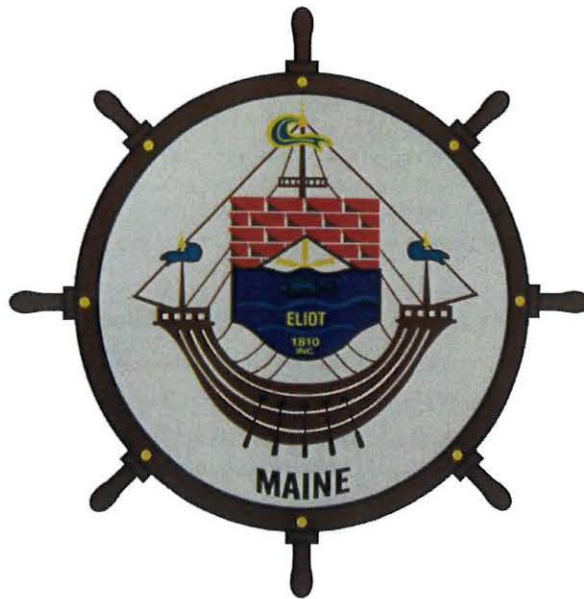


# Amendments to Chapter 45 – Zoning, Related to Accessory Dwelling Units

## Town of Eliot, Maine



Date of Enactment: June 8, 2021

### ***ENACTMENT BE THE LEGISLATIVE BODY***

Date of the vote to enact/amend this Ordinance:

June 8, 2021

Per the Charter of the Town of Eliot, Article 2(11) this Ordinance  
shall become *effective on June 15, 2021*

Certified by the Town Clerk:

*[Signature]*

On the 17<sup>th</sup> day of June, 2021.

## **Proposed Town Code Amendments of Chapter 45 – Zoning, Related to Accessory Dwelling Units**

*As recommended by the Planning Board and Select Board for the June 8, 2021, Annual Town Meeting Election / Referendum Warrant*

**ARTICLE #34:** Shall an Ordinance entitled “Proposed Town Code Amendments of Chapter 45 – Zoning, Related to Accessory Dwelling Units” be enacted?

### **Background and rationale – short**

Modifies Section 45-459 to provide more flexibility for the creation of accessory dwelling units (ADUs). Changes the maximum gross floor area of an ADU to be no greater than 50 percent of the principal dwelling unit (PDU), or 1,000 square feet, whichever is less, compared to the existing static maximum of 650 square feet. Removes the prohibition on both the PDU and ADU having a home occupation or home business as accessory uses. Modifies and simplifies ADU occupancy limits to 2 persons per bedroom, which may be increased after application and inspection, compared to the existing occupancy limits, which are pegged to ADU size.

### **Background and rationale – long**

These amendments modify Section 45-459 of the Town Code to allow greater flexibility for accessory dwelling units (ADUs). The amendments increase the maximum gross floor area of an ADU from 650 sq. ft. to 1,000 sq. ft., or 50 percent of the principal dwelling unit (PDU), whichever is less. The 50 percent provision creates proportionality between the PDU and the ADU, preventing ADUs from being of greater, equal, or similar size as the principal dwelling unit. That type of situation would be contrary to the “clearly secondary” nature of the ADU (as described in its definition in Section 1-2). Increasing the overall area cap from 650 sq. ft. addresses Affordable Housing Strategy 1.1 in the 2009 Comprehensive Plan.

The amendments simplify ADU standards related to home occupations/home businesses and the maximum number of ADU occupants. Although it is somewhat unclear, paragraph (c)(6) appears to prohibit a situation where both the principal dwelling unit and the ADU have a home occupation or a home business. The amendments strike this paragraph to allow greater flexibility for both units to have home occupations or home businesses. Sections 45-455 (Home occupations) and 45-456.1 (Home businesses) already have limitations on the scale of these respective uses. Home occupations cannot exceed 25 percent of the total area of the principal residential or other structure. A single home business, or multiple home businesses collectively, cannot exceed 1,500 sq. ft. in total area. Paragraph (c)(13) currently pegs maximum ADU occupancy to various ADU size ranges. The amendments simplify this paragraph by prescribing a two-per-bedroom standard but allowing for a greater occupancy if approved by the Code Enforcement Officer and the Fire Chief (or their designees) after inspection.

**(New text underlined in bold)**

~~Deleted text in strikethrough~~

Sec. 45-459. - Accessory dwelling unit.

- (a) An accessory dwelling unit (ADU) is a small apartment which is part of an existing or new single family owner-occupied home, and which is clearly secondary to the single family home. The accessory dwelling unit may be rented so that the owner-occupant may benefit from the additional income. The owner may also elect to occupy the accessory dwelling unit and rent the principal dwelling unit.
- (b) Owner-occupied means that either the principal dwelling unit or the accessory dwelling unit is occupied by a person who has a legal or equitable ownership interest in the property and bears all or part of the economic risk of decline in value of the property and who receives all or part of the remuneration, if any, derived from the lease or rental of the dwelling unit.
- (c) An accessory dwelling unit may be permitted as an accessory use to a single family home under the following conditions:
  - (1) Only one accessory dwelling unit (ADU) is permitted per lot. The accessory dwelling unit shall be located in the same building as the principal dwelling unit or in a building accessory to the principal dwelling unit. Any structure containing an accessory dwelling unit must meet minimum yard and setback requirements for principal structures.
  - (2) A building permit for the proposed construction of a new ADU or the creation of a new ADU within an existing building, must be issued by the CEO. Planning board approval is not required for an ADU.
  - (3) A building permit for a new single family home may include an ADU as long as the provisions of this section are met and the building conforms to all of the dimensional requirements for the zone in which it is being built. An ADU may be included in a new home constructed on a lawful nonconforming lot of record which may be built upon pursuant to section 45-194.
  - (4) The property owner must occupy either the principal dwelling unit or the ADU as their principal residence, and at no time receive rent for the owner-occupied unit. Principal residence must be proven by voter registration or other evidence acceptable to the CEO.
  - (5) ~~In no case shall an ADU be more than 650~~**The maximum gross floor area of an ADU shall be 1,000 square feet or 50 percent of the gross floor area of the principal dwelling unit, whichever is less. The minimum gross floor area of an ADU shall be** ~~or less than 300 square feet.~~**An ADU shall not** ~~nor~~ have more than two bedrooms. ~~Area shall be measured using the interior dimensions of the ADU.~~
  - (6) ~~A home occupation or home business may be conducted, subject to existing regulations, as an accessory use to either the ADU or the principal dwelling unit, but not both.~~
- ~~(7)~~**(6)** Apartments built prior to November 2, 1982 and existing on March 16, 2002, shall be considered lawful nonconforming uses which may continue pursuant to section 45-191. Any apartments existing on (effective date of section 45-459) and built on or after November 2, 1982 shall not be considered lawful nonconforming uses, unless the

property owners applies for a building permit for the ADU and brings the unit up to the health and safety provisions of the minimum housing code standards. A grace period of one year from the adoption of this article will be allowed for homeowners to modify such unlawful non-conforming units. The CEO will have the authority to waive certain space and setback requirements for such unlawful nonconforming units where full compliance would be impractical. On March 16, 2003, all owners of unlawful nonconforming units who have not brought them up to the health and safety standards of the minimum housing code, will be in violation of this section and subject to fines per section 45-6 (b).

~~(8)~~**(7)** When any property containing an accessory dwelling unit is sold or transferred, the new owner must continue to meet the requirements of this Section in order to continue the use of the accessory dwelling unit. Should the new owner not meet the requirements of this section, the use of the unit must be discontinued. However, any lease in effect at the time of transfer may be continued until it expires or up to one year from the date of the transfer, whichever is shorter. This paragraph (8) does not apply to an apartment built before November 2, 1982 and existing on March 16, 2002.

~~(9)~~**(8)** To ensure continued compliance by current and subsequent owners, the applicant shall provide and record in the York County Registry of Deeds a covenant in a form acceptable to the town attorney that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by a person who owns the property. It is also required that any owner of the property must notify a prospective buyer of the limitations of this section.

~~(10)~~**(9)** New accessory dwelling units are not subject to the requirements of the Growth Management Ordinance, chapter 29. However, the number of accessory dwelling units that may be issued building permits within a calendar year is limited to a total of 12, to be issued on a first- come, first-served basis in the order in which the code enforcement officer receives completed applications for building permits under section 45-127. If two or more applications are received simultaneously (as in as a single mail delivery), the code enforcement officer shall determine their order by random selection. The provisions of this paragraph are retroactive to January 1, 2003.

~~(11)~~**(10)** This provision shall not prohibit the conversion of a single family dwelling to a multifamily dwelling so long as said conversion complies with all current zoning requirements. However, if such conversion is approved, any accessory dwelling unit previously allowed under this section must be incorporated into and meet all the requirements for one of the units of the multifamily dwelling. Multifamily dwellings shall not include accessory dwelling units as defined in this section.

~~(12)~~**(11)** Design criteria:

- a. An ADU shall be designed to maintain the architectural design, style, appearance, and character of the main building as a single-family residence. If an ADU extends beyond the existing footprint of the main building, such an addition must be consistent with the existing facade, roof pitch, siding, and windows.
- b. Exterior stairs are restricted to the rear or sides of the structure.

~~(13)~~**(12)** Occupancy of an ADU shall be limited to the following: ~~No more than two persons may occupy a unit of 300 to 400 square feet of gross floor area; no more than three persons~~

in a unit ranging from 401 to 600 square feet of gross floor area; and no more than four persons in a unit of 601 square feet or greater of gross floor area. **No more than two persons per bedroom are allowed, unless otherwise approved by the Code Enforcement Officer and the Fire Chief or their respective designees. Increased occupancy limits may be granted after application to the Code Enforcement Officer and inspection of the dwelling unit.**

- ~~(14)~~**(13)** One off-street parking space must be provided for the accessory dwelling unit in addition to the off-street parking required for the principal dwelling unit.
- ~~(15)~~**(14)** An occupancy permit must be issued by the CEO prior to occupancy of an accessory dwelling unit created or modified pursuant to this section 45-459.
- ~~(16)~~**(15)** The CEO shall prepare a biennial report to the planning board on accessory dwelling units which will include: (a) the number of units established; (b) the geographic distribution of the units; and (c) the average size of the units. The planning board shall reassess the provisions of this section allowing accessory dwelling units every five years or sooner if records show that 20 percent of single family homes have ADUs.
- ~~(17)~~**(16)** The code enforcement officer may inspect an accessory dwelling unit, with or without complaint with a minimum of 48 hours of receipt of notice of inspection to the property owner to ensure compliance with the section. Any property owner found in violation of this section shall have 30 days from the date of written notice to correct such violation. Failure to correct the violation shall result in the revocation of the accessory dwelling unit certificate of occupancy, as well as subjecting the property owner to the remedies and penalties provided in sections 45-101 and 45-102.

(T.M. of 3-16-02, (art. 4); T.M. of 6-10-03; T.M. of 6-14-05)

## Municipal Officers' Certification of Official Text of a Proposed Ordinance

To the Town Clerk of the Town of Eliot, Maine:

We hereby certify to you that the document to which we have affixed this certificate is a true copy of the official text of an ordinance entitled "Proposed Town Code Amendments of Chapter 45 – Zoning, Related to Accessory Dwelling Units", which is to be presented to the voters for their consideration on June 8, 2021.

Pursuant to 30-A M.R.S.A. § 3002(2), you will retain this copy of the complete text of the ordinance as a public record and make other copies available for distribution to the voters, and you will ensure that copies are available at the town meeting/polling places on the day of the vote.

Dated: \_\_\_\_\_, \_\_\_\_\_

DocuSigned by:

*Richard Donhauser*

Richard Donhauser, Chairman

DocuSigned by:

*Alexandros Orestis*

Alexandros Orestis, Vice Chairman

DocuSigned by:

*Robert McPherson*

Robert McPherson, Secretary

DocuSigned by:

*Philip Lytle*

Philip Lytle

DocuSigned by:

*William Widi*

William Widi

**Select Board  
Town of Eliot, Maine**