

**STATEMENT REGARDING THE “ONE RESIDENCE” RESTRICTION
IN THE APPLICANTS’ DEED**

The Applicants’ deed, like the deeds of other owners in the area, contains the following restriction:

There shall be one residence only built on this lot in accordance with the zoning laws and building codes of the Town of Nottingham, with no commercializing whatsoever.

This language is a privately enforceable restriction that does not prohibit the addition of an Accessory Dwelling Unit (“ADU”) to the Applicants’ single-family dwelling.

First, a deed restriction such as the “one residence only” restriction in the Applicants’ deed may be enforceable by other property owners in the area. Whether it is privately enforceable depends on a number of factors, including whether the other lot owners are similarly restricted and whether the restriction would unduly impact the use and enjoyment of the Applicants’ property. Such deed restrictions may be **privately** enforceable but generally play no role in the enforcement of **public** zoning provisions.

Second, and more importantly, the restriction itself does not prohibit the owners of the Applicants’ property from adding an ADU. An ADU, by definition, is not a separate “residence” or “dwelling unit.” An ADU is a part of – is accessory to – a single-family dwelling.

RSA 674:71 defines “accessory dwelling unit” as follows:

... a residential living unit that is **within or attached to** a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. (Emphasis added.)

The Nottingham Zoning Ordinance (“NZO”) has adopted the same definition of “accessory dwelling unit.” NZO, Article VI (B).

As set forth in RSA 674:71, and the NZO, an ADU is a dwelling unit “within or attached to a single-family dwelling.” An ADU does not convert a single-family dwelling into a duplex, or into two separate single-family dwellings. An ADU is secondary and subordinate to a single-family dwelling.

The following specific provisions of the NZO support the conclusion that an ADU is a part of, is secondary and subordinate to, a single-family dwelling:

- Article II (C), Section 2 (a): “ADUs shall be secondary and accessory to a principal single family dwelling unit.”

- Article II (C), Section 2 (b): “An ADU shall not be considered to be an additional dwelling unit for the purpose of determining lot size.”
- Article II (C), Section 3 (b): “The ADU must be developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single-family residence.”

Moreover, the deed restriction in question does not attempt to adopt its own definition of “residence.” The restriction specifically provides that there should be “one residence only... in accordance with zoning laws and building codes of the Town of Nottingham ...”. Thus the NZO’s provisions relating to ADUs are determinative of the meaning of “one residence only” in the deed. And under the NZO, an ADU is “within or attached to” a single-family dwelling.

In sum, it is clear that under both the applicable RSAs and the NZO, an ADU is not treated as a separate dwelling unit. An ADU is “secondary and accessory to” a single-family dwelling.