
Interpretation of Zoning Regulations Guidance Document

Defining a Separate Dwelling Unit

2019-003

References:

- Subtitle B, § 100.2

Purpose

The purpose of this guidance document (“Guidance”) is to define what elements constitute a separate dwelling unit. The use of a single household dwelling as a two unit dwelling, or the creation of additional dwelling units more generally, must be reviewed under required Department of Consumer and Regulatory Affairs (DCRA) permit processes. The Zoning Regulations, in certain residential zones, provide restrictions on the maximum number of dwelling units per lot. The Zoning Administrator (ZA) has encountered the following issues: 1) building permit plans showing an unclear number of dwelling units; 2) the detection of illegal dwelling units that lack appropriate zoning and building code reviews; and 3) the need to provide future home buyers and tenants with clarity regarding the permitted number of dwelling units on a property.

The ZA issues the following Guidance, which builds upon previous direction, to accomplish the following:

- 1) Define what features establish a separate dwelling unit distinct from the principal dwelling unit; and
- 2) Address when building permit applications show a specific area of a residence (hereinafter, “Potential Unit”) that has the key characteristics of a dwelling unit – *except that there is a reduced eating and cooking facility* (such as a wet bar) – and which the applicant represents will *not operate* as a separate dwelling unit.

The Guidance applies to pending and new building permit applications, not to construction previously completed under issued permits.

What is a Dwelling Unit?

A dwelling unit is defined as: “One or more habitable rooms comprising complete independent living facilities for one or more persons, and including within those rooms permanent provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit is intended for a single household.” (B- § 100.2).

The ZA has identified the following three key characteristics of a separate dwelling unit:

- 1) “**independence**” from another dwelling unit – e.g., the habitable room(s) have independent access to the exterior (either directly, or through a common foyer or lobby);
- 2) “**sanitation**” facilities – e.g., a full bathroom, including a sink and bathtub and/or shower (or plumbing rough-ins for a full bath or shower); and
- 3) “**eating**” and “**cooking**” facilities – e.g., a kitchen, including stove and sink (separate from the full bath or laundry room sinks), or rough-ins for stoves and sinks (such as a gas line, or line for a stove or plumbing connection for separate sink).



- Where all three of the key characteristics are clearly present for a specific area of the residence in the building permit application, the ZA will view this Potential Unit as a separate dwelling unit that must be reviewed for zoning compliance accordingly, irrespective of the representations by a homeowner.
- Where all three key characteristics are present – *except that there is a reduced eating and cooking facility* – and the homeowner represents that the Potential Unit will not operate as a separate dwelling unit, the ZA provides the following guidance. Rather than a typical kitchen design, the building permit in this circumstance shows a wet bar or secondary sink (a sink not associated with the bathroom or laundry room) but no stove or gas line rough-in. A reduced eating and cooking facility, in combination with the other dwelling unit characteristics, may still allow a Potential Unit to operate as an unpermitted separate dwelling unit, either as originally designed or through later unpermitted alterations. In such cases, the ZA has determined that he will accept the homeowner’s representation provided the homeowner executes a covenant to be recorded in the District’s Land Records affirming that the Potential Unit will not operate as a separate dwelling unit.
- Where a Potential Unit is entirely missing a key characteristic of a separate dwelling unit, such as independence, sanitation elements such as a bathtub and shower, or any cooking or eating facility, the ZA will not consider the Potential Unit as a separate dwelling unit for zoning purposes – but instead as part of the principal dwelling unit – and no covenant will be required.

Notwithstanding this Guidance, the ZA may, based on a review of the totality of the facts on a case-by-case basis, determine that the design of a Potential Unit is or is not intended as a separate dwelling unit.

Covenants

- When required, the covenant is a declaration from the homeowner that the space will be used by members of the household occupying the principal dwelling unit and will not be used as a separate dwelling unit. It also indicates to future home buyers and tenants that a specific space in the residence that may look like a dwelling unit has not been approved as a separate dwelling unit by DCRA.
- A covenant template must be obtained from the Office of the Zoning Administrator (OZA). Once a homeowner enters necessary information about the property and provides clear and consistent building plans of the area in question, and has the covenant signed by all owners and notarized, OZA and the Office of the Attorney General will review and approve the covenant typically within 15 business days. Once approved, the homeowner must record the covenant with the Recorder of Deeds at the Office of Tax and Revenue and then provide a recorded copy to OZA prior to the issuance of any related building permit.
- The homeowner (or successor) may terminate this covenant in coordination with DCRA by either: 1) removing key characteristics of the Potential Unit (e.g., eliminating the separate sink/wet bar or the shower/bathtub) under issued permits or 2) converting the Potential Unit into a dwelling unit by obtaining



permit approval, as allowed in the property's zone district, for an accessory apartment or an additional dwelling unit (an updated certificate of occupancy may also be necessary).

Implementation

Since this interpretation reflects current practice, this Zoning Administrator guidance will apply to all pending and new building permit applications beginning **May 7, 2019**, the date of publication.

**This Guidance reflects the ZA's current interpretation of the Zoning Regulations in effect at the date of the posting of this document on the DCRA website and is subject to change due to revisions of the Zoning Regulations, decisions of the Board of Zoning Adjustment or Zoning Commission, or experience in reviewing and enforcing the Zoning Regulations. This Guidance only applies to zoning. All other applicable District regulations, including building code requirements and licensing, must be complied with.*