

RID (Rule Interpretation Decision)

(Use additional sheets as necessary)

Type of RID	Requested Response Time	
Customer RID <input type="checkbox"/>	24 hours <input type="checkbox"/>	<u>DSD Assigned RID # 119</u>
Internal Staff RID <input checked="" type="checkbox"/>	10 working days <input type="checkbox"/>	
	As time available <input checked="" type="checkbox"/>	
Date: March 21, 2013	Contact: Richard Chamberlin	Contact #: 210-207-8281

1. Project Name: Accessory Structures versus Accessory Dwelling Units

2. Project Number: n/a

3. Project Street Address: n/a

4. Applicant Name: n/a

5. Applicant Address: n/a

6. Applicant Contact #: n/a

7. Applicant e-mail: n/a

8. Rule(s) in Question: Provisions contained within Sections 35-370 (*Accessory Use and Structure Regulations*) and 35-371 (*Accessory Dwellings*) of the Unified Development Code (*UDC*) relative to accessory structures and accessory dwelling units in residential zoning districts.

The accessory structure provisions contained in the *UDC*, along with previous interpretations, have created customer service challenges within the Department's permit review, inspection, and enforcement functions as they relate to accessory dwelling units. Attached and detached accessory dwelling units are permitted in single family residential districts pursuant to Section 35-371 of the *UDC*, but what differentiates an accessory dwelling unit from an accessory structure?

9. Applicant's Position: Section 35-370 (*Structures*) contains regulations regarding accessory uses and structures, and Section 35-371 (*Dwellings*) contains regulations concerning both attached and detached accessory dwelling units. **Accessory structures** must be located in side and rear yard areas, are subject to setback limitations and are customarily incidental and subordinate to the principal building or use. **Accessory dwelling units** may be detached or attached to the principal dwelling unit. Detached accessory dwelling units must meet a minimum 5 foot setback from the rear and side property lines and attached accessory dwelling units are subject to the same setback requirements as the principal dwelling unit. Additional provisions restrict the number of accessory dwellings and identify standards pertaining to size, parking areas, the number of bedrooms, the number of occupants and utility services. Most importantly, a property owner must occupy either the principal or accessory dwelling unit.

The *UDC* defines a dwelling unit (primary or accessory), as “*One (1) or more rooms providing complete living facilities for one (1) family, including kitchen facilities or equipment for cooking or provisions for the same, and including room or rooms for living, sleeping, bathing and eating.*”

Using the definitions offered by the *UDC*, the presence of kitchen facilities, including those used for cooking, along with room or rooms for living, sleeping, bathing and eating constitute a dwelling unit and the presence or absence of any of these factors may be used to distinguish a dwelling from what is otherwise a typical, non-livable accessory structure.

Per previous Department policy, submitted plans absent of just one of the required elements of a dwelling (kitchen, rooms for living, sleeping, bathing, eating) are reviewed and approved as accessory structures rather than accessory dwelling units. For example, if plans do not include designated improvements such as cooking equipment or adequate electrical circuits for said equipment, the structure is not deemed a dwelling. Because of this approach, buildings that are reviewed and permitted as accessory structures are sometimes being occupied as accessory dwelling units resulting in noncompliance with the standards identified in Section 35-371 of the *UDC*. For example, these types of conversions can result in accessory dwellings that far exceed the 800 square foot and/or 40% limitation on the size of accessory dwellings as they relate to the principal dwelling. More importantly, electrical circuits not designed for a kitchen are being overloaded with cooking equipment.

10. Staff Finding: The following discussion of complete living facilities serves to distinguish an accessory structure from a dwelling unit:

Question #1: What constitutes a complete living facility? If just one element for living, sleeping, bathing or eating is removed, is a building only subject to the standards for accessory structures found in Section 35-370 of the *UDC* and not regulated as a dwelling unit under Section 35-371?

Answer: It depends on the design of the structure and the intended use. Accessory structures are not self-contained dwellings with facilities for sleeping, eating and bathing and accessory to the principle residence [Section 35-370(a)(5)]. Although an accessory structure may be used for many activities, access to and from the principle dwelling is still necessary in order to conduct all normal living activities such as sleeping, bathing and cooking/eating. To be considered an accessory dwelling unit, a building must contain a full bathroom, kitchen/kitchen area for cooking and at least 70 square feet of living/sleeping space. Generally, the absence of any two elements renders the building an accessory structure and subject to the regulations found in Section 35-370. However, since the largest difference between an accessory structure and a dwelling is sleeping (with the possibility of renting the space or increasing the number of family members beyond those residing in the principle residence), it is possible to have the sleeping activities absent in a proposed structure and still be considered an accessory structure (See Questions #4 and #5).

Question #2: If plans are submitted for a structure that includes only a half-bath(s) with living/sleeping room(s) with no kitchen, does it constitute a dwelling unit?

Answer: No, a structure with a sleeping room and one half-bath (no bathtub or shower) with no kitchen does not constitute a dwelling unit since no bathing fixtures exist. The intent of Section 35-371 is that accessory dwellings do not involve the payment of rent, house no more than three occupants, have no more than one bedroom (if detached from principal dwelling) and do not exceed 800 square feet in most zoning districts. Therefore, plans that identify not more than one half-bath and not more than one designated bedroom with no kitchen will be reviewed pursuant to accessory structure standards. Any room where a closet is proposed, regardless of closet size, will be designated a bedroom by the Department when permits are issued.

Question #3: What constitutes a kitchen?

Answer: A kitchen consists of a sink, countertop(s) for processing food, and electrical circuits (GFCI protected) for cooking equipment. A sink may be installed in an accessory structure and a GFCI receptacle installed by the sink, but the sink countertop should not have a width supporting more than one small appliance (microwave, toaster oven, juicer/processor). However, absent a sink and countertops, electric circuitry consisting of 240 volts suggests future conversion to a kitchen or kitchenette, triggering the applicability of Section 35-371. A sink without a countertop does not constitute a kitchen unless a 240 volt circuit is provided.

Question #4: Is a full bath and kitchen allowed in an accessory structure without the structure constituting a dwelling unit?

Answer: Yes, an accessory structure such as a pool house or detached play/party room may contain bathing and cooking facilities. However, separate rooms consisting of at least 70 square feet of living/sleeping space or other areas designated on submitted building plans as closet space would not be allowed else the structure will be considered an accessory dwelling and subject to Section 35-371 of the *UDC*.

Question #5: A detached structure is being proposed that contains a ½ bath with a family room/recreation room that contains a wet bar with sink, countertop for the bar and 120 volt circuits. There is no apparent sleeping area with closets. The intent is to use the structure for parties, separate art studio, game room, home entertainment room, or other functions with no intent to have people sleep overnight. Can this structure be considered an accessory structure?

Answer: Yes, the structure may be an accessory structure, however, the following restrictions shall apply: The building footprint of the accessory structure shall be limited to forty (40) percent of the building footprint of the principal residence as stated in Section 35-371 (b)(1); since the uses of the structure is limited to non-sleeping activities by the residents of the main home, there shall be no new parking/garage areas or new curb cuts created for the accessory structure; there shall be no bedroom proposed; there

shall be no 240 volt circuits serving the structure; and, the accessory structure shall meet all the accessory structure requirements of Section 35-370(b).

11. Staff Position: The following table summarizes guidelines as to how the Department will differentiate accessory structures from accessory dwellings for review, permitting and enforcement purposes:

BATHROOM	KITCHEN	LIVING SPACE	Dwelling?
Full Bath or ½ Bath (No bathtub or shower)	Sink and Counter and / or 240 volt GFCI Electrical Circuit	At Least 70 Square Feet (living and / or closet space)	
Full Bath			NO
½ Bath			NO
	Sink and Counter and/or 240		NO
	Sink and Counter		NO
	240		NO
		70 Square Feet	NO
Full Bath	Sink and Counter and/or 240		NO
Full Bath		70 Square Feet	YES
	Sink and Counter and/or 240	70 Square Feet	NO
½ Bath	Sink and Counter and/or 240	70 Square Feet	NO**
½ Bath	Sink and Counter and/or 240		NO
½ Bath		70 Square Feet	NO
Full Bath	Sink and Counter and/or 240	70 Square Feet	YES

** The accessory structure is limited to forty (40) percent of the building footprint of the principal residence as stated in Section 35-371 (b)(1). No separate parking garage or parking lot shall be constructed. No 240 volt electrical circuits shall be permitted. No separate rooms with closets shall be permitted. The accessory structure shall meet all the requirements of Section 35-370(b).

12. Departmental Policy or Action: The Director concurs with staff's position in differentiating accessory dwellings from accessory structures and directs this interpretive decision be posted on the Department website for customer consumption.

Date of policy/action: March 21, 2013

Effective Date of policy/action: Immediately


 Roderick Sanchez, AICP, CBO
 Development Services Director

3-21-13
 Date