



DEVELOPMENT SERVICES

RULE INTERPRETATION DETERMINATION


Determination #: 119

Title: *Accessory Structures versus Accessory Dwelling Units*

Drafted by: *Land Development Division, Policy Administration Section*

Rule in Question: *35-370: Accessory Use and Structure Regulations and 35-371: Accessory Dwellings*

Department Action: This document updates RID 119, originally issued on March 21, 2013, and accounts for changes to applicable sections from the 2021 Unified Development Code amendment cycle. It does not alter the department's position on classifying accessory structures versus accessory dwelling units. This RID does propose UDC amendments.



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Development Services Director

2/29/24

Date

Effective Date of Determination: Immediately

Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.

Staff Analysis: 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?

Staff Position and Interpretation: 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 principal residence [Section 35-370(b)(5)]. Although an accessory structure may be used for many activities, access to and from the principal 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.

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. 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 120 volt 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, an area 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. Such a structure must comply with all regulations as outlined in 35-370 and must not qualify as a dwelling per the table below.

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	
Full Bath or ½ Bath (No bathtub or shower)	Sink and Counter and / or 240 volt Electrical Circuit*	At Least 70 Square Feet (living and / or closet space)	Dwelling?
Full Bath			NO
½ Bath	Any	Any Size	NO
None	Any	Any Size	NO
Full Bath	Sink and Counter and/or 240		NO
Full Bath		70 Square Feet	NO
Full Bath	Sink and Counter and/or 240	70 Square Feet	YES

*The presence of (1) a sink and counter supporting more than one small appliance or (2) a 240 volt circuit, alone or in combination with the other, when paired with a full bath and at least 70 square feet of living and/or closet space, will constitute an accessory dwelling unit.

Future UDC Amendments: The following is proposed for addition to the Unified Development Code at the next available amendment cycle.

Sec. 35-370. – Accessory Use and Structure Regulations

(b) Accessory Structures.

(7). Accessory Structure Classification. The following table is used to categorize a structure as either an accessory structure or an accessory dwelling unit.

<u>Full Bath or ½ Bath (No bathtub or shower)</u>	<u>Sink and Counter and / or 240 volt Electrical Circuit*</u>	<u>At Least 70 Square Feet (living and / or closet space)</u>	<u>Dwelling?</u>
<u>Full Bath</u>			<u>NO</u>
<u>½ Bath</u>	<u>Any</u>	<u>Any Size</u>	<u>NO</u>
<u>None</u>	<u>Any</u>	<u>Any Size</u>	<u>NO</u>
<u>Full Bath</u>	<u>Sink and Counter and/or 240</u>		<u>NO</u>
<u>Full Bath</u>		<u>70 Square Feet</u>	<u>NO</u>
<u>Full Bath</u>	<u>Sink and Counter and/or 240</u>	<u>70 Square Feet</u>	<u>YES</u>

*The presence of (1) a sink and counter supporting more than one small appliance or (2) a 240 volt circuit, alone or in combination with the other, when paired with a full bath and at least 70 square feet of living and/or closet space, will constitute an accessory dwelling unit.