



Office of the Zoning Administrator Guidance: Dwelling Unit

I. Background

With the September 6, 2016 launch of the new Zoning Regulations of 2016, the Zoning Administrator (“**ZA**”) has noticed a greater need to define what constitutes a “dwelling unit”. In general, certain zoning changes signaled a greater permissiveness for creating accessory apartments in low density residential zones and provided more flexibility for where dwelling units can be located on a property. As a result, the ZA now is releasing this guidance on defining a “dwelling unit” (this “**Guidance**”).

The zoning regulations provide the following definitions of these spaces:

- **Accessory Apartment:** A dwelling unit that is secondary to the principal single household dwelling unit in terms of gross floor area, intensity of use, and physical character, but which has kitchen and bath facilities separate from the principal dwelling and may have a separate entrance. (B-100.2)
- **Dwelling Unit:** One (1) or more habitable rooms comprising complete independent living facilities for one (1) 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)

If a permit application proposes to add an accessory apartment (permitted in the R zones only) or additional principal dwelling units (permitted in the RF, RA, and other more intensive zones only), the ZA will review the permit application based upon the use provisions in Subtitle U, this Guidance, and any other applicable zoning rules. Crucial to this review will be the determination if a defined household space included in the permit application (hereinafter, “**Space**”) constitutes a dwelling unit. Fundamentally, the ZA will prioritize the proposed design, as opposed to an applicant’s stated intent, for how a Space will be classified for zoning compliance. The following guidance distinguishes between a Space classified for zoning compliance review as additional living space associated with the principal dwelling unit and a Space classified for zoning compliance review as a dwelling unit.

II. Building Code

This guidance document applies to zoning reviews only. All other applicable District regulations, including Construction Code requirements (Title 12A of the DCMR), are not governed by this Guidance.

III. Defining the Elements of a Dwelling Unit for Zoning Compliance

A dwelling unit contains habitable rooms capable of functioning as an independent living facility, and typically includes a kitchen, full bathroom, and living/sleeping space. However, defining these elements, and analyzing the context in which they are provided, is critical for determining whether a Space is classified for zoning compliance review as designed for independent living.

The Guidance also identifies the boundary between a design that the ZA will consider a wet bar (as opposed to a kitchen) and a half-bath (as opposed to a full bath). The Guidance lists the defining elements of what the ZA considers to be a wet bar and a half bath. Such categorizations will be important for determining how a Space will be reviewed in Section IV of this document.

A. Defining a “Wet bar”

1. Exceeding any element of the below limitations will cause a “wet bar” to be classified as a “kitchen” for zoning compliance review. For this analysis, wet bar will be the preferred term for any “kitchen-lite” design.
2. The wet bar analysis applies when there is a layout that includes a sink, and typically appliances, in close proximity in a Space that is potentially an additional independent living/dwelling unit on a property.
3. Rough-ins – means to install the preliminary (rough) plumbing, electrical and/or mechanical building materials without making the final connections.
4. Wet bar limitations:

Wet bar
<ul style="list-style-type: none">• Allowed: Single sink limited to 2 square feet in size• Allowed: Waste drain line or waste rough-ins no greater than 1.5 inches in diameter• Allowed: Under the counter refrigerator of no greater than 5 cubic feet in size• Not allowed: gas line or gas line rough-ins within close proximity of wet bar• Not allowed: gas or electric range, stove top, oven, or built-in microwave• Not allowed: 240 volt power outlets within proximity of wet bar• Not allowed: dishwasher• Not allowed: garbage disposal

B. Defining a “Half Bath”

1. Exceeding any element of the below limitations would cause a “half bath” to be considered a “full bath” for zoning purposes.
2. The half bath analysis applies when there is a layout with the potential for an additional independent living/dwelling unit on a property. Note that the following

rough-in and size limitations *apply only to* a bathroom located within the Space under scrutiny.

Half Bath
<ul style="list-style-type: none">• Allowed: Maximum size of <u>25</u> square feet in size• Allowed: Sink, toilet, and any other typical features of a bathroom (subject to the specified limitations below)• Not allowed: shower and/or bath or rough-ins for shower and/or bath

C. Other

1. Laundry facilities may have an accessory utility sink. However, any design that combines laundry facilities in close proximity to elements of a wet bar will receive additional scrutiny for compliance with applicable limitations.

IV. Defining a Dwelling Unit Based on Context

- A. The zoning compliance review of a permit application may identify a Space as a potential additional dwelling unit based on the location and type of access to the exterior of the building. Such factors may increase the likelihood that the Space could be used for independent living. As such, zoning compliance determinations will differ based on the context.
- B. The following charts display criteria for how a Space will be reviewed for zoning compliance depending on the context. In any circumstance, an applicant may identify a Space as either an accessory apartment or principal dwelling unit for zoning purposes, and the Space will be evaluated against all applicable zoning criteria. If an applicant asserts that a Space is *not* a dwelling unit, then the Space will be evaluated according to the following standards:
 1. If all of the permissions are observed (✓), the Space will presumptively be evaluated for zoning purposes as additional living space associated with the principal dwelling unit unless the applicant indicates otherwise.
 2. If a single item marked "**Choose One Only**" or any "**Conditional**" item is proposed, and all other permissions (✓) are observed, then the Space will be subject to "heightened zoning scrutiny." If the applicant asserts that the Space would not constitute a dwelling unit, then the applicant must submit a "Living Space Inventory & Justification Form" (the "**Inventory Form**") for zoning review. The Inventory Form would indicate the features proposed and include an explanation for why the Space would not function as a dwelling unit. The Office of the Zoning Administrator will review the Inventory Form and either approve it, approve it with conditions, or deny it. In addition to the Inventory Form, should the design receive zoning approval, there would be

an added requirement when the Space could potentially constitute a **third dwelling unit (or more)** on a property in an R or RF zone (excluding properties located in RA and more intensive zones). In such a circumstance, the applicant must also execute and record a covenant against the property on the Land Records restricting the use of the Space to the approved zoning classification. If denied, an applicant may alter the permit application to conform to the permitted standards or identify the Space as an accessory apartment or principal dwelling unit, as appropriate, that will then be reviewed for zoning compliance as such.

3. If a permit application proposes multiple items in the “Choose One Only” category and/or any items marked “✖”, a Space will presumptively be evaluated for zoning purposes as an additional dwelling unit, and the applicant shall have the burden to prove otherwise. That dwelling unit would either be considered an accessory apartment design (in the R zones) or as an additional principal dwelling unit design (in the RF, RA, and other more intensive zones) and must meet all applicable zoning standards and limitations as such.

For example, a design that includes a kitchen in any of the scenarios below would presumptively be reviewed as a dwelling unit design for zoning purposes. If the applicant asserts that the Space would not constitute a dwelling unit, then the applicant must submit an Inventory Form for zoning review. The Office of the Zoning Administrator will review the Inventory Form and either approve it, approve it with conditions, or deny it. In addition to the Inventory Form, should the design receive zoning approval, the applicant must also execute and record a covenant against the property on the Land Records restricting the use of the Space to the approved zoning classification. The covenant requirement would apply irrespective of the number of dwelling units proposed or the zone. If denied, an applicant may alter the permit application to conform to the permitted standards or identify the Space as an accessory apartment or principal dwelling unit, as appropriate, that will then be reviewed for zoning compliance as such.

4. The scenarios described also assume that the Space includes an area allocated to or capable of a living and sleeping use, regardless of the stated use of the area.
5. Where permitted, multiple wet bars within a principal dwelling unit will trigger heightened scrutiny.

6. Where applicable, examples of “Choose One Only” could include a proposal for a half bath + wet bar, or a full bath only. But a full bath + wet bar proposal would exceed the “Choose One Only” standard.

7. Permission Charts:

(i) **The Space is Located Within the Principal Building**

Context [Space Within a Principal Building]	Room Use/Feature	Permission
(a) The Space is accessible <i>only</i> through the interior of the principal dwelling use living space, such as through an internal functional stairway connecting the Space to the principal dwelling use. This excludes scenarios where stairs connect to an interior common space such as a vestibule. * Subject to heightened zoning scrutiny.	Half Bath	✓
	Full Bath	✓
	Wet bar	✓
	Laundry	✓
	Kitchen	✗
	Any utility system (HVAC, electrical, gas, cable, sprinkler, water heater or meter) that <u>only</u> serves the Space	Conditional*
(b) The Space has <u>both</u> : 1) independent access to the exterior of the building, such as direct access to the outdoors or through an interior common space such as a vestibule; <u>and</u> 2) access through the interior of the principal dwelling use, such as through an internal functional stairway connecting the Space to the principal dwelling use. * Subject to heightened zoning scrutiny. ** If the laundry in the Space would be the sole laundry area for the principal dwelling unit, then it is ✓.	Half bath	✓
	Full Bath	Choose One Only*
	Wet bar	
	Laundry**	
	Kitchen	✗
	Any utility system (HVAC, electrical, gas, cable, sprinkler, water heater or meter) that <u>only</u> serves the Space	Conditional*
(c) The Space only has independent access to the exterior of the building, such as direct access to the outdoors or through an interior common space such as a vestibule.	Half bath	✓
	Full Bath	✗
	Wet bar	✗

	Laundry	x
	Kitchen	x
	Any utility system (HVAC, electrical, gas, cable, sprinkler, water heater, or meter) that <u>only</u> serves the Space	x

ii) **The Space is Located Within an Accessory Building**

Context [Space Within an Accessory Building]	Room Use/Feature	Permission
(a) The Space is located in an accessory building. * Subject to heightened zoning scrutiny.	Half Bath	✓
	Full Bath	Choose One Only*
	Wet bar	
	Laundry	x
	Kitchen	x
	Any utility system (HVAC, electrical, gas, cable, sprinkler, water heater, or meter) that <u>only</u> serves the Space	Conditional*

V. **Other Information**

- A. Except as otherwise specified, existing infrastructure for kitchens, wet bars, and/or bathrooms that were legally permitted prior to this Guidance – and are not currently operating as a dwelling unit or previously reviewed by zoning as a dwelling unit – are not required to undergo a new review based on the standards above. However, for any new permit applications that: (1) propose new accessory apartments or principal dwelling units on a property, or (2) propose a potentially consequential alteration to the physical design, access, or use of a Space as described in this Guidance; such circumstances will trigger a reexamination of existing infrastructure or Space pursuant to the Guidance.
- B. Outdoor cooking facilities are not impacted by this Guidance.
- C. Kitchens, bathrooms, and laundry areas located in apartment house communal or amenity space would not be subject to the dwelling unit analysis.

- D.** The associated building permit and/or certificate of occupancy will provide a comment/condition on whether a Space that is subject to a dwelling unit analysis can be used as a dwelling unit, and if a covenant has been recorded (as applicable).
- E.** Notwithstanding this Guidance, the Zoning Administrator may, based on a review of the totality of the facts on a case-by-case basis, determine that the design of a Space is or is not intended as a dwelling unit.
- F.** This Guidance reflects the current Zoning Administrator interpretation of the Zoning Regulations in effect at the date of the posting of this document on the DCRA website. It may be subject to change based on revisions of the Zoning Regulations, decisions of the Board of Zoning Adjustment or Zoning Commission, or experience in reviewing and enforcing the Zoning Regulations.