



## Written Interpretation – Adding Residential Unit to Stand-Alone Accessory Building Without a Primary Residential Structure

**Question:** Under what circumstances may a property owner add a dwelling unit as part of a stand-alone accessory structure?

**Relevant Code Citations:** The Zoning Ordinance says:

“SECTION 3. Change of Use.

a. A non-conforming use of a building or structure, or part of it may be changed to a use of the same or of a more restricted character, but may not be changed to any less restricted use.”

“SECTION 5. Repairs, Alterations and Additions.

a. Any person may engage in normal maintenance of a building or other structure containing a non-conforming use, including necessary non-structural repairs and incidental alterations which do not extend or intensify the non-conforming use.

b. No structural alterations shall be made in a building or other structure containing a non-conforming use, except in the following situations:

(1) When the alteration is required by law;

(2) When the alteration will actually result in eliminating the non-conforming use; or

(3) When a building containing residential non-conforming uses may be altered in any way to improve habitability if no structural alteration is made which would increase the number of dwelling units or the bulk of the building.”

“ARTICLE 1

1.00 ACCESSORY BUILDING OR USE: An “accessory building or use” is one which:

(a) incidental and subordinate to, and serves the principal building or principal use; and

(b) Is customarily and commonly associated with the principal building or principal use served; and

(c) Is subordinate in area, extent, and purpose to the principal building or principal use served; and

(d) Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and

(e) Is located on the same zoning lot and the same zoning district and under the same ownership as the principal building or principal use served; and

(f) Is not specifically enumerated as a special use in the particular zoning district in which the principal building or principal use served lie; and

(e) An "accessory use" includes, but is not limited to: ....."

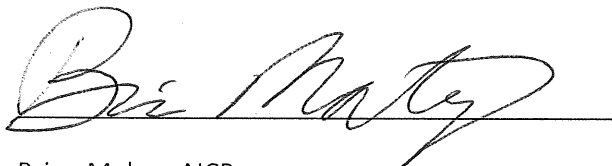
**Interpretation:** Section 3 and Section 5.a and b(2) generally say that changes may be made to a nonconforming structure<sup>1</sup> to bring it more closely into compliance with the Zoning Ordinance. Such changes do not require permission from the BZA.

With this in mind, a residential unit may be added to a stand-alone accessory building (i.e., an accessory building with no primary structure on the property), even if the residential square footage is less than the accessory square footage. This is under the rationale that the addition of the dwelling is bringing the property into closer compliance with the requirement in the Zoning Ordinance that says that a primary structure must exist in order for an accessory structure to legitimately exist on the property. The residential conversion must be a true habitable residence with a septic system and reserve area and it must meet the requirements of the residential building code. The residential conversion is only permitted by right if the accessory structure is truly a nonconforming structure that was in compliance with the Zoning Ordinance at some point.

If the structure is an illegal one, (i.e. it was built without a permit in the first place, or on property that was parceled-off from the parent tract without compliance with the Subdivision Ordinance in effect at the time), then the petitioner should:

- (1) make the residential square footage exceed that of the accessory; or
- (2) seek a Developmental Variance for accessory square footage to exceed primary.

Regardless of whether (1) or (2) are chosen, the petitioner must also bring the property into compliance with the current Subdivision Ordinance through a plat of the property prior to issuance of a Building Permit under option (1) or prior to such Building Permit if the Variance is approved under option (2).

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Brian Mabry, AICP

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<sup>1</sup> A "nonconforming structure" is a structure that was permitted and built in compliance with the Zoning Ordinance in effect at the time of the permit, but that, as a result of a rezoning or a change in the text of the Zoning Ordinance, became out of compliance.