



CHELAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
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ADMINISTRATIVE INTERPRETATION NO. 21-001

Purpose and need:

1. SUBJECT:

Accessory Structure and Dwelling Unit Code Interpretation for code application.

A. BACKGROUND:

The Department of Community Development has recently been inundated with after-the-fact building permits for accessory structures that were legally permitted as such, but were subsequently illegally converted to dwelling units without proper permits. Many of these instances involve a customer that purchased the property believing that the property and said structures were legally built under proper permits and codes at the time of purchase, only to later discover that was not the case. These customers then attempt to permit accessory structures, such as garages, shops, pools, decks, etc. and learn that they have an unpermitted accessory dwelling unit on their property and this in turn creates the compliance dilemma.

The unpermitted dwelling unit, in some instances, can be permitted after-the-fact due to the primary dwelling being the only other dwelling unit on the property and the unpermitted dwelling unit does not exceed the allowable 1,200SF threshold. However, there are instances where there is either more than one dwelling unit that currently exists on the property, in violation of zoning codes, and or the unpermitted dwelling unit exceeds 1,200 square feet. Both of these scenarios would prohibit the after-the-fact permit from being issued, would constitute an illegal condition, could trigger enforcement action and ultimately abatement of the illegal structure.

The other unforeseen consequence is that the after-the-fact permit for the unpermitted structure does not deem the structure to become legal in respect to the building code, only from a permit record standpoint. Therefore, no Certificate of Occupancy can be issued for the dwelling unit, which then doesn't allow occupancy per the adopted code.

Historically, Community Development staff has in practice allowed the permitting of the Accessory Structure prior to the primary dwelling being constructed and many of these have been subsequently illegally converted to dwelling units without required permits. Many of these previously approved "accessory structures" are now in fact being discovered to be used as illegal dwelling units when the current policy is to not allow an

accessory structure to exist prior to the primary dwelling, consistent with the Building Code. It can be conservatively estimated that there are hundreds of unpermitted dwelling units that exist in the county as a result of allowing the accessory structure to be permitted before the primary use is established.

Community Development staff has recently tried to address this epidemic of unpermitted structures and uses through policy development and stricter review oversight in attempt to protect the customers' investment. However, approximately 50% of our current proposals for development contain the "accessory structure" that is clearly a dwelling unit under the building codes, which creates a debate between staff and the design professional and or customer. Some permits are then denied. Many of these denials have been appealed and the appeal route seems to be the current strategy to try and circumvent staff's application of the code to the various design attempts put forward. Due to the sheer number of proposals that we receive on a daily basis concludes that the appeal route is not a sustainable option. Therefore, this Administrative Interpretation has been produced in order to consistently apply the relevant code sections, and not treat these on a case-by-case basis.

2. AUTHORITY:

Chelan County Code 14.04.020 Director.

(The Chelan County *Building Official* is a "designee" of the Director/Administrator for administration and enforcement of Chelan County Code, Title 3.)

The director or his/her designee shall review and act on the following:

(NOTE: The Chelan County *Building Official* is a "designee" of the Director/Administrator for the administration and enforcement of Chelan County Code, Title 3.)

(1) Authority. The director is responsible for the administration of county code Titles 3, 11, 12, 13, 14 and 15 and associated RCWs and WACs.

(2) **Administrative Interpretation.** Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within thirty calendar days. Requests for interpretation shall be written and shall concisely identify the issue and desired interpretation.

WA State Residential Code R104.1 General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

Community Development Interpretation NO. 21-001 "Accessory Structures, Dwelling Units and Certificates of Occupancy"

WA STATE BUILDING CODE IBC 104.1 General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

3. APPLICABLE BUILDING CODE SECTIONS:

A. UNDERLYING CODE AUTHORITY

WAC 51-51-003 International Residential Code.

The 2018 edition of the *International Residential Code* as published by the International Code Council is hereby adopted by reference with the following additions, deletions, and exceptions: Provided that Chapters 11 and 25 through 43 of this code are not adopted. Energy Code is regulated by Chapter 51-11R WAC; Plumbing Code is regulated by Chapter 51-56 WAC; Electrical Code is regulated by Chapter 296-46B WAC or Electrical Code as adopted by the local jurisdiction. Appendix F, Radon Control Methods, Appendix Q, Tiny Homes, and Appendix U, Dwelling Unit Fire Sprinkler Systems, are included in adoption of the *International Residential Code*.

CCC 3.04.010 Codes adopted.

There is adopted by the board of county commissioners the State Building Code consisting of those codes as delineated by RCW 19.27.031 including those amendments to those codes as set out in this chapter.

WA STATE IRC R101.2 Scope.

The provisions of this code shall apply to the construction, *alteration*, movement, enlargement, replacement, repair, *equipment*, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and *townhouses* not more than three stories above *grade plane* in height with a separate means of egress and their *accessory structures* not more than three stories above *grade plane* in height.

WA STATE IRC R101.3 Intent.

The purpose of this code is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations.

WA STATE IRC R103.1 Creation of enforcement agency.

The department of building safety is hereby created and the official in charge thereof shall be known as the *building official*.

WA STATE IRC R104.1 General.

The *building official* is hereby authorized and directed to enforce the provisions of this code. The *building official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

WA STATE IRC R104.2 Applications and permits.

The *building official* shall receive applications, review *construction documents* and issue *permits* for the erection and *alteration* of buildings and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

WA STATE IRC R104.4 Inspections.

The *building official* shall make the required inspections, or the *building official* shall have the authority to accept reports of inspection by *approved agencies* or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such *approved agency* or by the responsible individual. The *building official* is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

WA STATE IRC R105.1 Required.

Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and obtain the required *permit*.

WA STATE IRC R106.4 Amended construction documents.

Work shall be installed in accordance with the *approved construction documents*, and any changes made during construction that are not in compliance with the *approved construction documents* shall be resubmitted for approval as an amended set of *construction documents*.

WA STATE IRC R109.4 Approval required.

Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the *building official*. The *building official*, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the *permit* holder or an agent of the *permit* holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the *building official*.

B. CODES APPLICABLE TO THE ADMINISTRATIVE INTERPRETATION

WA STATE IRC R110.1 Use and occupancy.

A building or structure shall not be used or occupied, and a *change of occupancy* or change of use of a building or structure or portion thereof shall not be made, until the *building official* has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the *jurisdiction*. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the *jurisdiction* shall not be valid.

Exceptions:

1. Certificates of occupancy are not required for work exempt from permits under Section R105.2.
2. Accessory buildings or structures.

WA STATE IRC R202 Definitions.

ACCESSORY STRUCTURE. A structure that is accessory to and incidental to that of the *dwelling(s)* and that is located on the same *lot*.

DWELLING. Any building that contains one or two *dwelling units* used, intended, or designed to be built, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

HABITABLE SPACE. A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered *habitable spaces*.

LIVING SPACE. Space within a *dwelling unit* utilized for living, sleeping, eating, cooking, bathing, washing and sanitation purposes.

ADDITION. An extension or increase in floor area, number of stories or height of a building or structure.

WA STATE IBC 312.1 General.

Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

- Private garages

WA STATE IBC 406.3.1 Classification.

Private garages and carports shall be classified as Group U occupancies. Each private garage shall be not greater than 1,000 square feet (93 m²) in area. Multiple private garages are permitted in a building where each private garage is separated from the other private garages by 1-hour *fire barriers* in accordance with Section 707, or 1-hour *horizontal assemblies* in accordance with Section 711, or both.

4. BUILDING OFFICIAL ADMINISTRATIVE INTERPRETATION:

Per the Washington State Building Codes Sections IRC R104.1 and IBC 104.1, the Building Official is authorized to render interpretations of the adopted codes and to adopt policies and procedures in order to clarify the applications of its provisions.

A. FUNDAMENTAL ANALYSIS OF ACCESSORY STRUCTURES:

The scoping language of the WA State Residential Code relates to the construction and use and occupancy of detached single-family dwellings (dwelling units) and their accessory structures. There are only two uses that can be permitted per the residential code and these uses are;

1. Dwelling Units: One and two-family dwelling units and townhouses that are occupied for living purposes
2. Accessory structures: Garages, carports, storage structures, cabanas, etc.

Accessory Structures are defined by IRC Section 202 and the definition clearly indicates that the structure is accessory to and incidental to that of the dwelling, meaning the dwelling must come first, except for boat docks, which are specifically exempt. A proposed accessory structure, such as a garage, shop, or other on a parcel that does not contain a dwelling unit is not an accessory structure but rather the primary structure and therefore cannot be permitted unless the dwelling exists first. This determination is supported by the IRC Code Commentary, which states; *this term describes structures that are designed for accessory use to one and two-family dwellings and multiple single-family townhouses. These structures are commonly used as garages, carports,*

cabanas, storage sheds, tool sheds, playhouses and garden structures. The structures all house uses that are incidental to the primary use, which is the dwelling unit, and the activities that take place in accessory structures occur as a result of the primary building. Their use is secondary or minor in importance to the primary residence.

If a proposed garage, shop, or other is permitted as the primary (only) structure on a parcel then it is not classified as an accessory structure and would be regulated by the WA State Building Code as a miscellaneous structure, per IBC Section 312.1 and would be classified as a Use Group U. Group U occupancies are allowed to exist as primary structures and could be permitted on a parcel that does not contain a dwelling unit as long as the zoning code also allows the use prior to a dwelling being placed. Group U occupancies would be an allowed use on a residential parcel since U occupancies include private garages. However, per WA State Building Code Section 406.3.1, these structures are limited to 1,000 square feet maximum in area. Agricultural buildings and barns are also classified as Use Group U structures and could be allowed as primary structures as long as the zoning code allows this use and the structure is actually used for agricultural purposes.

B. FUNDAMENTAL ANALYSIS OF THE DWELLING UNIT:

Dwelling Units are defined as a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. It has been heavily debated that a proposed structure must contain all of these elements to be classified as a dwelling unit and if it does not, it should be classified as an accessory structure. The definition in the IRC does not state that a dwelling unit must contain all of the provisions, only that it includes permanent provisions for living, sleeping, eating, cooking and sanitation.

This is further supported by the definition of Habitable Space, which states; A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered *habitable spaces*. The IRC Code Commentary further supports this fact by stating; *An area within a building used for living, sleeping, dining or cooking is a habitable space. Those areas not meeting this definition include bathrooms, closets, hallways and utility rooms. Habitable spaces are typically occupied, and as such they are more highly regulated than accessory use areas.*

An accessory structure can contain bathrooms and other areas not defined as habitable spaces and that is why the county and the code allow bathrooms, utility rooms, laundry rooms, and similar areas to exist within the accessory structure/garage, whether it is attached or detached. This does not imply that areas within the accessory structure can be used for living, sleeping, eating or cooking, independently or collectively. Areas (rooms) within the accessory structure that are "labeled" as flex, multi-purpose, bonus, or other are areas of habitable space by definition and cannot co-exist within accessory structures. Areas labeled as "storage" that contain the required elements for habitable spaces, such as insulation, comfort heating, light and ventilation, egress windows and smoke and carbon monoxide alarms are not accessory structures but rather habitable spaces/dwelling units.

The definition of Living Space further supports this determination. The definition in the IRC states; *Space within a dwelling unit utilized for living, sleeping, eating, cooking, bathing, washing and sanitation purposes.* The IRC Code Commentary is clear that garages cannot be used as living space by stating; *The living space within a dwelling extends beyond what is defined as a habitable space. Living space includes not only those areas used for living, sleeping, eating and cooking but also includes bathing and washing areas such as bathrooms. Storage areas such as closets and garages are not a portion of the living space.*

An attached garage to an existing dwelling unit with living space above the garage would represent a mixed-use scenario with the accessory structure on the first floor and the dwelling unit on the second-floor. In this scenario, the existing dwelling could be the primary dwelling and the dwelling unit above the garage could be considered the accessory dwelling unit (ADU). The IRC allows this and requires a dwelling-garage separation at the horizontal connection (ceiling/floor). As mentioned previously, dwelling units do not have to contain all of the elements defined in order to be classified as a dwelling unit. Proposed additions that contain elements such as bedrooms and a habitable room (regardless what it is labeled) would be considered a separate dwelling unit and not an addition to the existing dwelling unit. The definition in the IRC for “addition” is clear that to qualify as an addition it must be an extension or increase of the existing floor area, not a separate structure regardless if it is attached by a breezeway, mudroom, etc. The IRC Code Commentary further supports this determination by stating; *This term is used to describe the condition when the floor area, number of stories or height of an existing building or structure is increased. This term is only applicable to existing buildings, never new ones. This would include additional floor area that is added within an existing building, such as adding a new mezzanine, or increase in roof height.*

B. FUNDAMENTAL ANALYSIS REGARDING THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY:

The purpose of the WA State Residential Code is to establish minimum requirements to safeguard the public safety, health and general welfare through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property from fire and other hazards attributed to the built environment, and to provide safety to fire fighters and emergency responders during emergency operations. This is accomplished through comprehensive plan review of the documents submitted for permitting and through comprehensive inspections for the proposed structure. The comprehensive plan review and inspections are conducted to the level of the project that was proposed and ultimately permitted, which is either the dwelling unit or the accessory structure.

It is necessary and important, especially from a commercial perspective, to establish the proposed use of the structure prior to moving through the plan review process. The proposed use is what establishes the level of review required and that level of review is quite different for an accessory structure versus a dwelling unit. An accessory structure would be reviewed to the level established per Section R101.3 and would include structural strength, stability, safety to life and property, whereas a dwelling unit would be

reviewed to a level that would include structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation and safety to life and property. This section of code may appear to be pretty simplistic based on the number of categories associated with the level of review but these elements are very broad and include multiple code sections and chapters within the IRC. The emphasis is that there is a big difference between the level of review and inspection of an accessory structure and a dwelling unit. The IRC Code Commentary supports this conclusion through the definition of Habitable Space, which states; *...Habitable spaces are typically occupied, and as such they are more highly regulated than accessory use areas.*

A typical inspection scenario for an accessory structure would include;

1. Setback and footing
2. Shear Wall
3. Framing and final

Whereas typical inspections for a dwelling unit would include;

1. Setback and footing
2. Foundation
3. Slab
4. Crawlspace – Underfloor framing
5. Shear – Braced Wall
6. Framing
7. Mechanical, Plumbing and Electrical
8. Weather barrier, window flashing, penetration/sealing
9. Insulation – window and door energy code compliance
10. Drywall – rated assemblies
11. Appliance installation per manufacturer's instructions
12. Final Inspection, which contain the life-safety components
13. Certificate of Occupancy

These inspection scenarios are the basic required inspections and may incorporate even more for dwelling units based on the size and complexity of the project. The emphasis relates to the fact the illegally converted accessory structure to a dwelling unit cannot obtain a certificate of occupancy with an after-the-fact permit since most of the above-mentioned (required) inspections never took place. Furthermore, the plan review that was conducted for the accessory structure was not reviewed to the level required for a dwelling unit. It is impossible to inspect and verify compliance with the code for after-the-fact permits due to all of the required work being covered.

5. ADMINISTRATION INTERPRETATION SUMMARY:

1. Accessory Structures

- These structures are accessory to and incidental to the that of the dwelling and therefore, can only be permitted after the primary dwelling has been built.
- These structures are commonly used as garages, storage, cabanas, carports, etc.
- Permitting may be allowed prior to the primary dwelling if regulated by the IBC as a U occupancy, which can serve as the primary structure, however, the structure would be limited to 1,000 square feet as long as the zoning code allows the primary use.
- Agricultural uses and barns are also considered U-occupancies and may exist prior to the dwelling as the primary structure as long as the zoning code allows the primary use.
- Accessory structures are considered non-habitable space and cannot contain areas used for living, sleeping, dining or cooking, per the IRC definitions of Habitable and Living Space. Bathrooms may be allowed in accessory structures as long as water and sewer are legally installed.
- Garages, shops and other accessory structures that are attached to the primary dwelling via breezeway, mudroom, or other means of attachment are considered new buildings per the IRC and are not considered additions per the IRC definition.
- Accessory structures that contain any habitable/living area for living, sleeping, dining or cooking are considered dwelling units per the IRC definitions. Structures deemed habitable or living space are part of a dwelling and do not have to contain all elements defined as a dwelling unit to be classified as such.

2. Dwelling Unit

- A single unit providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
- Habitable space is an area within a building used for living, sleeping, dining or cooking and per IRC Section R304.1, Habitable rooms shall have a floor area of not less than 70 square feet with a minimum dimension of 7 feet in any horizontal direction. A single room (space or area) that meets the 70 square feet criteria can be used for living, sleeping, dining or cooking within this common space. This is typical for Tiny Houses, which are classified as dwelling units. The code does not require separate 70 square feet areas for each of these functions or elements to be classified as a dwelling unit.
- Any area, space, room, or element that is defined as habitable or living space is classified as a dwelling unit and not an accessory structure or use.

3. Certificate of Occupancy

- Accessory structures that were legally permitted as such, and inspected to that level shall remain accessory structures until a permit is obtained for a Change of Use.
- Accessory structures are exempt from receiving certificates of occupancies.
- Accessory structures that have been converted to dwelling units without required permits are considered illegal structures. After-the-fact permits for the illegal conversion does not deem the structure legal in the eyes of the code and no certificate of occupancy can be issued, which would indicate that the dwelling unit was not a legally permitted structure and use.

Appeals: This written administrative interpretation is rendered pursuant to the provisions found in Chelan County Code 14.04.020, to interpret the meaning or application of the provisions of the code references listed above.

(1) An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.

(2) The notice of appeal shall contain a concise statement identifying:

(A) The decision being appealed;

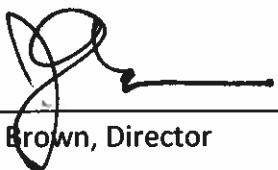
(B) The name and address of the appellant and his/her interest(s) in the application or proposed development;


(C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous;

(D) The specific relief sought by the appellant;

(E) The appeal fee.


 Chris Young, Building Official


 Jim Brown, Director


 Date of issuance