



**AFFIDAVIT**  
**Acknowledgment that Accessory Sleeping Unit**  
**Does Not Qualify as a Dwelling Unit**

A dwelling unit is an independent living facility comprised of a kitchen, bathroom(s) and bedroom(s). An Accessory Sleeping Unit (ASU) is a building that can be used for habitation, including sleeping, but is separate and distinct from a dwelling unit and cannot be used as such or contain **all** the provisions that comprise a dwelling unit. Regarding the kitchen portion of a dwelling unit, an explanation of what constitutes permanent cooking provisions can be found in the attached Advisory Determination.

I, \_\_\_\_\_ hereby certify that this Accessory Sleeping Unit, proposed under  
Property Owner  
permit number B \_\_\_\_\_, constructed on Tax Map \_\_\_\_\_ Parcel \_\_\_\_\_ located  
(Staff to input if unknown)  
at \_\_\_\_\_ does **not** qualify as a dwelling unit due to (select one):  
Physical Address

- Lack of full kitchen (permanent provisions for cooking – see attached determination)
- Lack of bathroom (toilet AND/OR shower/tub)

Any proposed conversion of this building into a dwelling unit must be verified with the Zoning Administrator prior to any work being done and will require submitting a new building permit.

I further understand that long-term rental of the building is prohibited and short-term rental (**less than 30 days**) of the ASU is only permitted with approval of a [Homestay Clearance](#), which may necessitate obtaining a [Special Exception](#), depending on the nature of the site. If this property is sold, I will inform any future owner of the restrictions outlined here.

An ASU found to have all provisions of a dwelling unit will result in a determination by the Albemarle County Zoning Administrator that a dwelling has been established in violation of Albemarle County Zoning Ordinance.

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Date

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_ Grantor.

My Commission expires: \_\_\_\_\_  
Notary public



**County of Albemarle  
Department of Community Development**

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**Memorandum**

**To:** Community Development Staff  
**From:** Amelia McCulley, Zoning Administrator  
**Date:** April 23, 2018  
**Subject:** **Advisory Determination – Definition of a Dwelling Unit and Permanent Provisions for Cooking**

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For purposes of the Zoning Ordinance, a dwelling unit is defined as:

*“A single unit providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.”*

The definition of dwelling unit may apply to an accessory apartment, a guest house, or a residence. Additionally, an efficiency living space, wherein multiple provisions are contained within a single room, do constitute a dwelling unit. Notably, the County deems a single family dwelling which adds an accessory apartment shall be considered one dwelling unit for density purposes. However, a detached guest house or rental cottage which meets the dwelling unit definition is counted as a separate dwelling unit for density purposes, regardless of whether the parcel is in the development areas or the rural areas.

Exclusion of one of the required provisions for living, sleeping, eating, cooking, or sanitation constitutes a space which will not be deemed a dwelling unit, and will not be counted for density purposes.

This determination is intended to clarify the Zoning Ordinance in regards to the requirement for permanent cooking provisions. In consultation with the County Attorney’s office, staff has determined the exclusion of any permanent cooking provisions excludes a space from meeting the dwelling unit definition. “Permanent cooking provisions” include stoves, ovens, built-in microwaves, cooktop ranges, and any other similar cooking methods permanently installed into a space. If a stove needed to be removed in order to bring a space into compliance with the code, the dedicated outlet, gas connection, or electrical line to serve the stove must also be removed.

This determination does not supersede any requirements of the Building Official, who must be consulted for Building Code requirements for any additions or changes to a dwelling.

**Background**

**1992 Determination**

On January 8, 1992, the Zoning Administrator determined the definition of a dwelling unit “implies that a kitchen, bathroom and bedroom constitute a dwelling unit.” As noted above, however, this did not imply the necessity of an individual room for each use, only the requirement of provisions for each.

The determination noted that a property owner wishing to provide a living space for elderly relatives or young adult children returning home may build an apartment for their relative, provided they remove cooking provisions from the unit, and sign an affidavit promising to never rent the space as a separate apartment for a non-family member.

The determination also noted that for zoning purposes, the County did not distinguish between “accessory apartments, guest houses and conventional dwellings,” nor did it distinguish between rented and owner-occupied dwellings. All of these were counted towards density maximums in the County. In 1994, the County adopted regulations allowing one accessory apartment in a dwelling to not be counted towards density maximums.

### Virginia Uniform Statewide Building Code (USBC)

The Virginia Uniform Statewide Building Code (USBC) definition of a 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.*

This definition, which is consistent with the definition of dwelling unit in the Zoning Ordinance, provides that any accessory apartment, guest house, or conventional dwelling which meet the aforementioned requirements must be treated as a separate dwelling unit, regardless of zoning designation. This requires that each individual dwelling unit be able to function as a wholly independent unit, which may include provisions such as firewalls between dwelling units, even if a relative will be living in the dwelling unit.

### Second Kitchen Affidavit

Some County property owners have expressed a desire to install or build a second kitchen in their primary dwelling within a recreational room or home office, or for use when entertaining. In this cases, the County has inspected the dwelling unit to confirm that it may not be used as or easily converted to an independent living facility. The property owner is also required to sign an affidavit, affirming they will not convert the space into a dwelling unit, and will not rent it out as living space.

### Discussion

Growth in the County has created an increasing demand for dwelling units. Combined with the increasing trend of short-term, transient lodging on residential properties, this demand has necessitated a clarification of the definition of dwelling unit as it pertains to the Zoning Ordinance.

The 1992 memorandum on the definition of a dwelling unit was prompted by an increasing demand for additional living space for family members, and acknowledged that residents needed a way to provide some independence to family members moving into their homes, without creating an unregulated increase in density of dwelling units.

Today, residents are still hoping to provide living space to family members, but many are also using homestay platforms like Vacation Rentals By Owner (VRBO), Airbnb, and HomeAway to rent rooms in their homes as transient lodging. These rentals are often more attractive if they are given private entrances and provisions for cooking. While transient lodging rentals are a permitted accessory use to a primary dwelling in the County, the immediate use of a space as transient lodging does not preclude the future use of such a space as an independent dwelling unit. This is similar to the issue presented

by the intention to use a dwelling unit for a family member.

While previously, “permanent provisions” for cooking were interpreted as stoves, the development of more frequent microwave use and other, non-traditional cooking provisions, like range-only tops, microwave/convection oven combinations, and apartment-sized appliances, easily allows a space with these provisions to be used as a full-time dwelling unit. This has necessitated the expansion of the “permanent provisions” in the dwelling unit definition to include all built-in provisions, whether they are a traditional stove or an alternative, non-traditional cooking provision.

### **Summary**

For zoning purposes in the County, a dwelling unit is any independent living facility with a kitchen, bathroom, and bedroom. This definition applies whether a dwelling unit is located within a guest house, an accessory apartment, or an independent dwelling. A kitchen must provide permanent provisions for cooking, which includes both a traditional stove and non-traditional cooking provisions that are built into the kitchen, including microwaves, microwave/convection oven combinations, or any other hard-wired cooking apparatus.