

## MEMORANDUM

To: CPD Development Services Staff, BOA Staff  
From: Matthew Seubert for Tina Axelrad, Zoning Administrator  
Date: Revised November 25, 2019  
Re: **Denver Zoning Code Interpretation — Initial Assignment of Building Form to Existing Structures and Change of Building Form After Initial Assignment**

---

### Initial Assignment of Building Form to Existing Structures

When a development project involves an existing primary or detached accessory structure being modified or altered for the first time under Denver Zoning Code rules (“DZC”), the applicant will select, or assign, a building form from the range of building forms allowed in the subject zone district, provided that the subject zone lot meets the minimum zone lot dimensional requirements for the selected building form (such as size and width). See DZC, §2.4.1.5. This section specifies that “One building form and the associated standards must be selected.” In practice, this allows the applicant to assign a building form to their existing structure based not only on what is allowed in the zone district and on the zone lot, but also what they intend to do with the structure in the future.

- **Question:** In the context of assigning the initial building form for proposed development, is the applicant bound by any rules for that assignment, other than:
  - 1) the building form must be allowed in the subject zone district, and
  - 2) the subject zone lot must comply with the minimum zone lot dimensional requirements for the selected building form, specifically zone lot size and width?
- **Answer:** No, with certain limited exceptions for detached accessory structures and Carriage Houses as shown in Examples 7 through 10 below.
- **Important Note:** If the building form the applicant wants to initially apply does not comply with the minimum zone lot dimensional requirements for the selected building form, the subject zone lot may only be developed (and a building form assigned) according to the rules for nonconforming zone lots in DZC, Division 12.10, and this written code interpretation will not apply. See Example #4 below.

The building form to be assigned must be allowed in the zone district, as specified in DZC, §2.4.1.5. The building form to be assigned must also meet the zone lot area and width requirements in the building form table. This is because if the zone lot area and width requirements are not met, the zone lot would be a Nonconforming zone lot as defined by DZC §13.3.<sup>1</sup> In addition, DZC §1.2.3.4.B states that development of an allowed primary building form shall occur only a legally established Zone Lot that complies with the minimum Zone Lot size required for that specific building form. Zone Lots that do not comply with the minimum size or width requirements for a specific building form are nonconforming Zone Lots. Under an applicant-assigned initial building form, the existing structure does not need to 100% comply with the chosen building form standards other than minimum zone lot size and minimum zone lot width. Please see examples below.

---

<sup>1</sup> The definition of Nonconforming Zone Lot does not include any dimensional requirements for a zone lot other than minimum size and minimum width. For example, it does not include minimum zone lot depth, which is required for certain building forms in certain contexts, such as the Tandem House in the S context.

## Initial Assignment of Building Form to Primary Structures

**Example #1:** An existing primary structure was legally constructed in 1965 under Former Chapter 59 (FC59) and has been continuously maintained and used as a single-unit dwelling. The structure is in an E-TU-B zone district. The zone lot is 4500 sf. and 35 ft. wide. The current owner wants to enlarge the existing structure and establish a new two-unit dwelling use. The primary structure DZC building forms available to choose from based on the zone district and subject zone lot dimensions are Urban House, Duplex, and Tandem House.

- **Question:** Which building form can the applicant choose?
- **Answer:** The applicant can choose any of these forms, regardless of the structure's current use or degree of compliance with any of these three forms. Here, even though the structure is currently being used for single-unit dwelling use, and therefore would violate the Duplex form's use limitation, the owner may choose to apply the Duplex form to the existing structure to most closely accommodate her future development plan to convert the structure to a two-unit dwelling use.
- **Important Note:** While the existing structure does not need to 100% comply with the initially assigned building form, that means in some cases, with the applicant's full knowledge, the existing structure after development may be deemed "compliant" or "nonconforming" under the DZC, Divisions 12.6 or 12.8, for one or more pre-existing building elements that violate the chosen building form standards.

**Example #2:** An existing primary structure was legally constructed in 1965 under FC59 and has been continuously maintained and used as a single-unit dwelling. The structure is in an E-TU-B zone district. The zone lot is 4500 sf. and 35 ft. wide and the existing structure is 45 ft. long. The current owner wants to enlarge the existing structure, build a second primary structure behind the existing structure in the rear of the zone lot, and establish a new single-unit dwelling use in the new rear structure. The primary structure DZC building forms available to choose from based on the zone district and subject zone lot dimensions are the Urban House, Duplex, and Tandem House forms.

- **Question:** Which building form can the applicant choose?
- **Answer:** The applicant can choose any of these forms, regardless of the structure's current use or degree of compliance with any of these three forms. Here, even though the existing structure would most fully comply with the Urban House building form standards as to permitted use and maximum building coverage, the owner may choose to apply the Tandem House form to accommodate her future development plans, even though the choice will result, after development, in the existing structures becoming "compliant" as to the Tandem House's requirement for 42 ft. maximum overall structure length.
- **Important Note:** Because this is an initial assignment of the Tandem House building form, the owner does NOT need an administrative adjustment or variance prior to development to allow the existing structure to exceed the maximum overall structure length. Compare this to the result when there is a change in previously assigned building form – see "Change of Building Form After Initial Assignment" below.

**Example #3:** Ms. Jackson owns an existing residence with an as-yet unassigned building form in an E-TU-B district. The zone lot is 4500 sf. and 35 ft. wide. Allowed building forms for residential development based on the zone district and subject zone lot dimensions are the Urban House, Duplex, and Tandem House forms. Her existing structure is "compliant" as to the minimum side interior setback (it extends 2 feet into a required minimum 5-foot setback), but is conforming with all other Urban House form standards. However, when Ms. Jackson submits plans for alterations to her existing building to convert it to two units, she chooses the Duplex building form as the structure's initial form assignment,

and demonstrates 100% compliance with all the Duplex form standards, except for the same side interior setback. The noncompliant setback under the Duplex Form is the same dimension/extent as the noncompliant setback under the Urban House form (2 feet into a required 5-foot setback).

- **Question:** When Ms. Jackson submits her alteration plans, does she have to bring the “compliant” side interior setback into conformance with the minimum 5-foot setback? Her plans do not include any changes to the compliant side interior setback and will not increase the extent of the existing setback violation.
- **Answer:** She does not need to bring the existing 2-foot encroachment into the side interior setback into full compliance with the 5-foot setback requirement. She can choose the Duplex form because the Duplex form is allowed in the U-TU-B zone district, and a two-unit dwelling is an allowed use. Nor would she have to correct the side interior setback violation if she had chosen, instead, to assign the Urban House building form to her existing structure.
- **Important Note:** Because this is an initial assignment of the Duplex building form, Ms. Jackson does NOT need an administrative adjustment or variance prior to development to allow the existing structure to violate the side interior setback standard. Compare this to the result when there is a change in previously assigned building form – see Example “Change of Building Form After Initial Assignment” below.

**Example #4:** Ms. Jackson’s neighbor, Mr. Smith, owns an existing residence with an as-yet unassigned building form in an E-TU-B district. The zone lot is 4000 sf. and 32.5 ft. wide and is a Nonconforming Zone Lot under any of the allowed building forms due to substandard size and width dimensions. Mr. Smith has submitted plans for alterations to his existing building to convert it to two units, and has chosen the Duplex building form as the structure’s initial form assignment. The plans demonstrate compliance with the building form standards, with the exception of a compliant existing side interior setback, as well as the substandard zone lot size, and substandard zone lot width.

The building form tables for the E-TU-B zone district do not list any available building forms for this situation as 4500 sf of zone lot size and 35’ of zone lot width are the minimum zone lot dimensions for all allowed building forms. However, DZC §12.10.3.3.A — Development of Nonconforming Zone Lots in a Residential Zone District — states the applicant may choose one of the allowed building forms in the zone district, which are Urban House, Duplex, and Tandem House. This section states that “development of a permitted use on a nonconforming zone lot shall comply with all applicable standards for that zone district, except any minimum zone lot area or zone lot width standard...”

- **Question:** Can Mr. Smith choose the Duplex building form designation, or is he restricted to the Urban House designation because of the subject zone lot’s substandard size and width?
- **Answer:** Yes, Mr. Smith can choose the Duplex form because of the express allowance in DZC §12.10.3.3.A applicable to nonconforming zone lots, such as the subject. In this case, because the Duplex form is allowed in the E-TU-B zone district, and a two-unit dwelling is an allowed use, in this initial assignment of building form, he does not need to bring the existing encroachment into the side interior setback into full compliance with the 5-foot setback requirement under the assigned Duplex form. Nor would he need to correct the side interior setback violation if he had chosen, instead, to assign the Urban House building form to the existing structure. Because this is an initial assignment of the Duplex building form, he does NOT need a variance prior to development to allow the existing structure to violate the side interior setback standard, the substandard zone lot area, nor the substandard zone lot width.

**Example #5:** An applicant owns an existing three-unit dwelling in an E-MU-2.5 District. The three-unit use was legally established and has been continuously maintained, but a DZC building form has not been previously assigned. The zone lot is 4500 sf.

- **Question:** Can the applicant assign the Apartment building form to the existing three-unit dwelling?
- **Answer:** No, the applicant cannot assign the Apartment form to the existing building, because the minimum zone lot size requirement for the Apartment form is 6000 sf. The applicant can choose a different form that meets the minimum zone lot area and width requirements, such as the Duplex form, which only requires 4500 sf of zone lot size. Even though the Duplex form would not allow the establishment of a new multi-unit dwelling use, the existing multi-unit dwelling use can continue.

**Example #6:** A commercial property owner owns an existing building currently used as a drive-thru restaurant on East Colfax Avenue in a U-MS-5 zoned area. No building form has yet been assigned to the existing building.

- **Question:** Can she assign the Shopfront building form to the existing structure, or is she restricted to one of the Drive-Thru building forms?
- **Answer:** The owner is not restricted to a Drive-Thru building form. She may assign the Shopfront building form to the existing building.

### Initial Assignment of Building Form to Detached Accessory Structures

**Example #7:** Ms. Ying owns a home with an existing detached garage in the rear of a 3700 sf. zone lot, located in a U-SU-B1 zone district. Neither the existing primary structure nor the existing detached accessory structure have yet been assigned a building form. Ms. Ying is planning to add storage space above the garage but is not proposing an Accessory Dwelling Unit (ADU) use.

- **Question:** Can Ms. Ying assign the Detached Accessory Dwelling Unit (DADU) building form to her existing garage, or is she restricted to only the Detached Garage form or the Other Detached Accessory Structure form?
- **Answer:** Ms. Ying cannot assign the DADU form for the initial form assignment. Although the U-SU-B1 zone district allows the DADU form, the minimum zone lot size for the DADU form in this district is 4,500 sf. As Ms. Ying's zone lot is only 3,700 sf, she cannot assign the DADU building form to this existing detached structure, because the zone lot is too small. She can instead choose the Detached Garage or Other Detached Accessory Structure forms, which do not have standards for minimum zone lot size or width. *See also* DZC, §12.10.3.3.B.1, which allows the DADU building form on a nonconforming zone lot only when that zone lot meets the minimum zone lot size standards for the DADU form in the subject zone district.

**Example #8:** An applicant lives in the U-SU-B1 zone district and has an existing home and existing detached garage on a 4,500 sf zone lot that is 35' wide. The applicant is proposing an Accessory Dwelling Unit use for their existing detached garage. The applicant's proposal will comply with the DADU building form standards, including the minimum zone lot size requirement.

- **Question:** Which building form can the applicant choose?
- **Answer:** In this case, the applicant must choose the DADU building form. This is because DZC §11.8.2.1.B.2 specifies that "ADU (uses) established in a detached accessory structure shall comply with the Detached Accessory Dwelling Unit (DADU) Building form standards in the applicable zone district." This DZC provision requires that the applicant assign the DADU building form to her existing garage as part of her plans to establish the ADU use in that structure. DZC §11.8.2.1.B.2 does not allow her to assign any other building form as part of her proposal to establish an ADU use in this building. With regards to DZC §11.8.2.1.B.2 as shown in this example #8 only, this code

interpretation does not apply to projects that have been granted a Variance by the Board of Adjustment as of the date of this interpretation, November 25, 2019.

**Example #9:** An applicant lives in the U-SU-B1 zone district and has an existing home and existing detached garage in the front half of a 4,500 sf zone lot that is 35' wide. The applicant is proposing an Accessory Dwelling Unit (ADU) use for their existing detached garage. The applicant's proposal will not comply with the DADU building form standards, because the garage is in the front half of the zone lot, and DZC §4.3.4.5.A requires that a DADU building form be located in the rear 35% of the zone lot depth.

- **Question:** Can the applicant choose the DADU building form for this structure?
- **Answer:** The applicant can choose to apply the DADU building form to this existing structure, but will not be able to establish an ADU use in the building. This is because DZC §11.8.2.1.B.2 specifies that "ADU (uses) established in a detached accessory structure shall comply with the Detached Accessory Dwelling Unit (DADU) building form standards in the applicable zone district." The building does not comply with this requirement, because it is not located in the rear 35% of the zone lot, as required by §4.3.4.5.A. The applicant can seek a Variance to this requirement in §11.8.2.1.B.2 from the Board of Adjustment in order to establish the ADU use in the detached structure. Alternately, the applicant can choose the Detached Garage or Other Detached Accessory Structure building form for this existing structure, but cannot establish an ADU use in this building form.

### Initial Assignment of Building Form to Carriage Houses

**Example #10:** Mr. Lee owns a single-unit home and a Carriage House on a 3700 sf zone lot, located in a U-SU-B1 zone district. The applicant proposes a Single Unit Dwelling use for the existing Carriage House.

- **Question:** What building form is available to the applicant?
- **Answer:** The only available building form for the Carriage House is Urban House. DZC does not specify minimum zone lot dimensions for a Carriage House. Even though the zone lot does not meet the 4500 sf requirement for an Urban House, DZC §12.10.3.3 — Development on a Nonconforming Zone Lot — allows an Urban House on a nonconforming zone lot that does not meet minimum zone lot size and width standards. DZC §1.2.3.5 allows a Carriage House to be used as a Primary Structure containing a single unit dwelling use. DZC §11.8.2.1.B.2 does not apply because the Carriage House is not considered a detached accessory structure. The applicant must assign the Urban House building form to the Carriage House, as it is the only Primary Structure Building Form available in the U-SU-B1 district. Any changes that the customer proposes to the Carriage House must meet the Urban House building form standards.

### *Are there any Exceptions to the Applicant Choosing the Initial Building Form? Answer: Yes*

As a general rule, the City does not pre-assign a building form to existing structures constructed before the adoption of the DZC in June 2010 in the absence of an application for development. There are, however, some important exceptions to this general rule:

- (1) In an application for a zone lot amendment, CPD staff may assign a building form to an existing structure that will be affected by the zone lot amendment to determine whether the amendment can be approved without creating any new, nonconforming building elements (e.g., setback or bulk).
- (2) In zoning enforcement actions, CPD staff may need to assign a building form to an existing structure to determine the nature or extent of zoning code violations (e.g., a violation of the permitted use of a detached garage).

When assigning the initial building form to an existing structure in the limited circumstances above, CPD staff will assign the building form that captures as many of the conforming elements of the subject

structure as possible, including use. In other words, staff will assign an initial building form that will result in the least amount and/or degree of structural or building form nonconformities under the choice of forms allowed in the subject zone district.

## Change of Building Form After Initial Assignment

Once a building form is initially assigned to an existing structure, regardless of who assigned it (the applicant or CPD staff), a zoning permit or other formal zoning review or determination is required to change or reassign a new building form to that same existing structure.

The general rule is that to change the building form of an existing structure that *already has an assigned building form*, the applicant must show that the existing structure fully conforms with all applicable standards of the new building form. For reference see DZC §4.3.3.2.B, or similar reference for other contexts. If the structure cannot 100% comply with the new building form standards, the applicant may choose to seek a zoning variance from the Board of Adjustment if there is an evidenced “unnecessary hardship” according to DZC, §12.4.7, Variance.

## Authority and Review Criteria for Interpretation

DZC §12.4.6.1.A.2 authorizes the Zoning Administrator (ZA) to make Code Interpretations when additional clarity is required to guide general application of the Code. DZC §12.4.6.4.A requires the ZA to make Code interpretations only upon finding that the interpretation is:

1. Consistent with the intent of this Code; and
2. Consistent with the intent of the subject Neighborhood Context and Zone District(s) and with the intent of any specific Code provision(s) at issue.

## Zoning Administrator Findings

1. Per DZC §12.4.6.4.A.1, the Zoning Administrator finds this interpretation is consistent with the intent of this code to guide Denver’s prosperous and sustainable future by providing clear regulations that result in predictable, efficient, and coordinated review processes.
2. Per DZC §12.4.6.4.A.2, the Zoning Administrator finds this interpretation is consistent with the intent of the Suburban, Urban Edge, Urban, and General Neighborhood contexts to provide certainty to property owners, developers and neighborhood interests about the limits of what is allowed in such areas. This interpretation is consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

## Effective Date

With regards to DZC §11.8.2.1.B.2 as shown in example #8 only, this code interpretation does not apply to projects that have been granted a Variance by the Board of Adjustment as of the date of this interpretation, November 25, 2019.

## Appeal

This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this interpretation according to DZC §12.4.8, Appeal of Administrative Decision.