

MEMORANDUM

To: CPD Development Services Staff
 From: Matthew Seubert for Tina Axelrad, Zoning Administrator
 Date: January 17, 2020 (Revised: 6/10/2020)
 Re: **Denver Zoning Code Interpretation — Setback from Primary Street Facing Façade of Primary Structure**

Summary

The Denver Zoning Code (DZC) includes the following requirement in the building form tables for certain detached accessory structures:

“Setback from Primary Street Facing Façade of Primary Structure (min).”

The DZC does not contain a Rule of Measurement for this standard. This written Interpretation of the Denver Zoning Code clarifies that:

When measuring the minimum Setback from Primary Street Facing Façade of Primary Structure, the required setback is measured from any given point of the Primary Street Facing Façade of the Primary Structure. Measurement is to be taken by projecting a line from the ends of each primary street facing façade perpendicular to the zone lot line, and then offsetting the projected line by the specified distance.

Background

Where required, this requirement for Setback from Primary Street Facing Façade of Primary Structure is generally 10’ for the following detached accessory building forms:

- Detached Garage
- Other Detached Accessory Structures
- Detached Accessory Structures

Applicability

The above requirement and this Interpretation applies to detached accessory building forms in the Suburban, Urban Edge, and Urban context. It applies in more limited circumstances in the General Urban, Urban Center, and Master Planned contexts, as shown in the table below.

Detached Accessory Building Form	Suburban	Urban Edge	Urban	General Urban	Urban Center	Master Planned
Detached Garage	§3.3.4.5.B	§4.3.4.5.B	§5.3.4.5.B	§6.3.4.5.B (0’)		§9.7.4.5.B
Other Detached Accessory Structures	§3.3.4.5.C	§4.3.4.5.C	§5.3.4.5.C	§6.3.4.5.C		
Detached Accessory Structures	§3.3.4.5.D	§4.3.4.5.D	§5.3.4.5.D	§6.3.4.5.D	§7.3.4.5.A (0’ for C-CCN)	§9.7.4.5.C

The requirement does not apply to the Detached Accessory Dwelling Unit building form. Certain detached accessory structures that are listed as Service & Utility Elements in the Setback Exceptions section of each neighborhood context are allowed to encroach into the Primary Street setback. These include but are not limited to: basketball goals on a fixed post, gas and electric meters, utility pedestals and transformers not exceeding 3' in height, and mailboxes. Please see the Service & Utility Elements in the Setback Exceptions section of each neighborhood context article (eg. §4.3.7.4.B.3) for a complete list of elements and the allowed setback encroachment.

Analysis

The DZC does not contain an intent statement regarding the minimum setback from the primary street facing façade of the primary structure requirement. However, the definition of Accessory Structure in §13.3 specifies that such structures shall be subordinate, incidental, and customary (to the Primary Structure).

“Structure, Accessory: A subordinate structure located on the same zone lot with the primary building, structure, or use, and which is incidental and customary to the primary building, structure, or use...”

Therefore, we can infer that part of the intent of this setback requirement is to require and maintain the subordinate status of Detached Accessory Structures in relationship to the Primary Structure. Detached Accessory Structures are required to be sited at least 10 feet behind the Primary Street Facing Façade of Primary Structure so that they are not visually prominent and that they remain subordinate and incidental in nature, when compared to the Primary Structure. Although ‘front yard’ is not defined in the DZC, the DZC generally discourages location of accessory structures in the ‘front yard.’ This can be seen in the illustrations for the detached accessory building form tables (although these are not regulatory), the prohibition of fences over 4 feet in height when forward of *any* Primary street facing Primary Structure Façade (§10.5.5.2.A.3.a), and the requirement that attached garages shall not project beyond the portion of the Primary Street facing façade that constitutes at least 65% of the total width of the primary structure enclosing the primary use (§13.1.6.1.K.1). Please note that the fence height requirement prohibits fences over 4 feet in height forward of any part of the Primary Street facing Façade of the Primary Structure. The Attached Garage requirement uses a 65% threshold to define the Primary Street facing Façade of the Primary Structure. In both cases a small projection of the Primary Structure (for example, less than 35%) would not ‘count’ as the Primary Street facing Façade of the Primary Structure.

Interpretation

This written Interpretation of the DZC specifies that:

When measuring the minimum Setback from Primary Street Facing Façade of Primary Structure, the required setback is measured from any given point of the Primary Street Facing Façade of the Primary Structure. Measurement is to be taken by projecting a line from the ends of each primary street facing façade perpendicular to the zone lot line, and then offsetting the projected line by the specified distance.

The nearest zone lot line will usually be a side interior or side street zone lot line, although in some cases it may be a rear zone lot line (such as on a corner lot of a square block where the primary and rear zone lot lines are adjacent to each other).

Authority for Interpretation

DZC §12.4.6, Code Interpretations and Determination of Unlisted Uses, authorizes the Zoning Administrator to make Code interpretations if appropriate findings are made. DZC §12.4.6.1.A establishes a procedure whereby interpretation of the Code's provisions may be determined, including but not limited to:

1. Interpretations of terms, words, and phrases not otherwise defined in the Code;
2. Interpretations of Code provisions when additional clarity is required to apply such provisions to a specific case or to guide general application of the Code.

This interpretation provides additional clarity required to guide general application of the code.

Review Criteria for Interpretation

DZC §12.4.6.4.A requires the Zoning Administrator 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

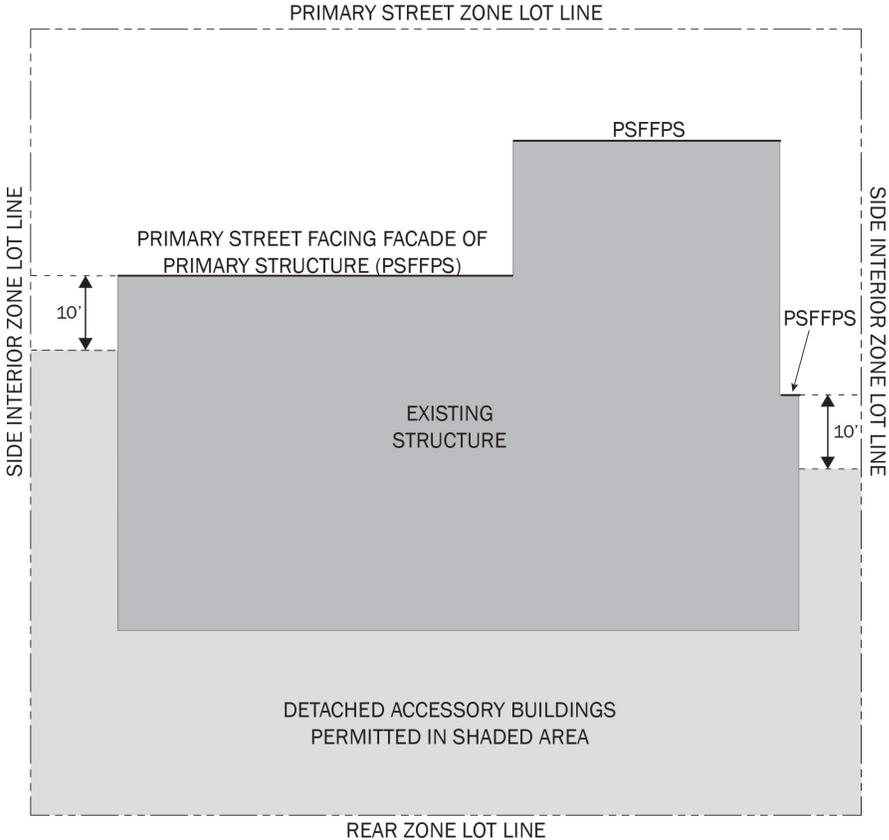
1. Per DZC §12.4.6.4.A.1, the Zoning Administrator finds this interpretation is consistent with the intent of this code to guide Denver's prosperous and sustainable future by providing clear regulations and processes that result in predictable, efficient, and coordinated review processes.
2. Per DZC §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 also 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.

Appeal

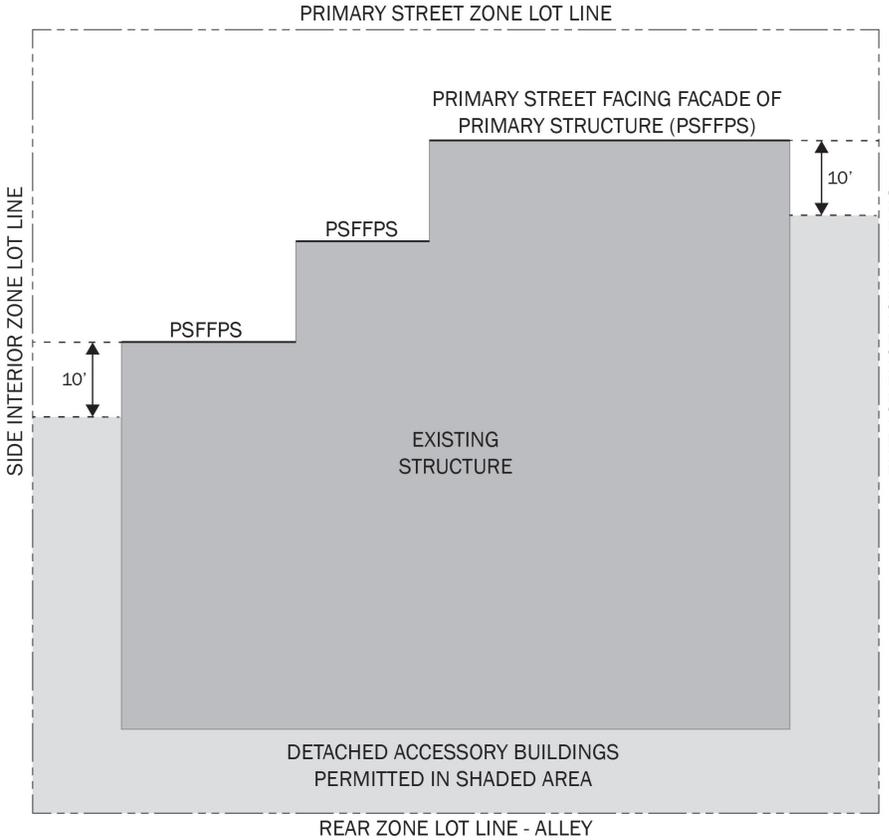
This code interpretation is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this interpretation according to DZC §12.4.8, Appeal of Administrative Decision.

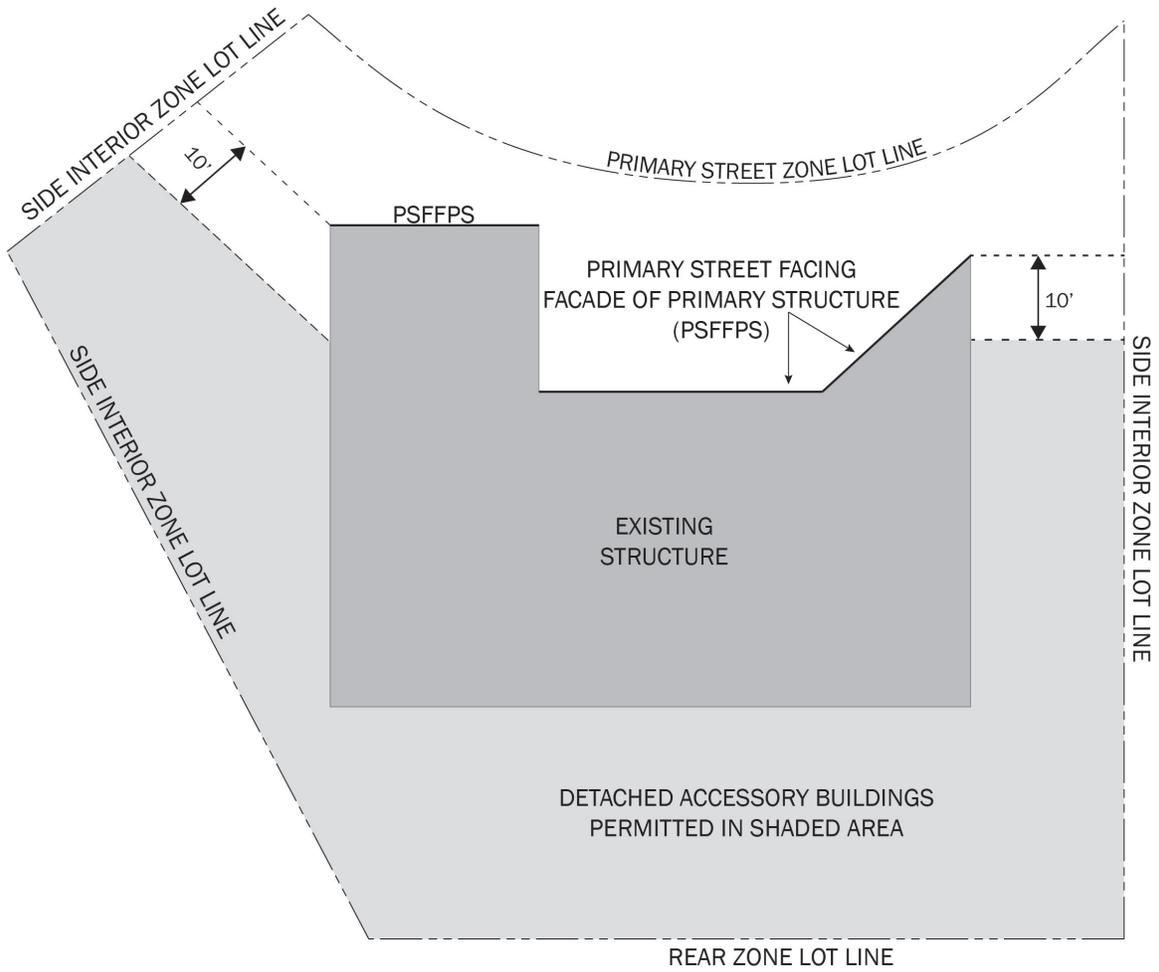
Examples

Example: 1



Example: 2





Example: 3