

Written Code Interpretation and Clarification — Maximum Floor Area and Habitable Space Limits for Detached Accessory Dwelling Units

DZC Sections Affected: §11.8.2.2.5 — Maximum floor area of accessory dwelling unit use; §13.3 — Definition of the term “Habitable Space”
Issued by: Tina Axelrad, Zoning Administrator
Date of Interpretation: June 4, 2018
Authority for Interpretation: Denver Zoning Code, §12.4.6

Executive Summary: Maximum Floor Area and Habitable Space Limits for Detached ADUs

This memo provides a written interpretation of a non-defined term in the Denver Zoning Code (DZC) — ‘maximum floor area,’ which is used as a standard to limit permitted Accessory Dwelling Unit (ADU) uses in Single Unit (“SU”) Zone districts. It also provides clarification on how the limitation on maximum floor area is different from limits on Habitable Space, as the latter term is used to regulate the Detached Accessory Dwelling Unit building form in SU districts. More specifically, this memo provides the following DZC interpretation and clarifications:

1. **Maximum Floor Area is interpreted to mean, and is calculated the same as “Gross Floor Area”.** “Gross Floor Area” (“GFA”) is defined in DZC, Division 13.3., and is calculated to include only those interior building spaces specified in the definition of GFA, calculated as the sum of the gross horizontal area of each building floor, measured from the exterior faces of the exterior walls of each floor. Accordingly, Maximum Floor Area looks to where an ADU use occupies gross floor area on a building’s floors, and will include in its calculation floor area occupied by an ADU use that is located both above-grade and below-grade (basements). However, it will exclude space not considered part of the ADU use, such as floor area used for vehicle parking.
2. **Maximum Floor Area is not the same as “Habitable Space”.** Once a building story or portion of a building story is identified as “Habitable Space,” the measurement is like the measurement for Maximum Floor Area, but Habitable Space excludes habitable space below ground level (e.g., a finished basement). As with Maximum Floor Area, floor space used for vehicle parking (e.g., garage) is not included in the calculation of Habitable Space.

Issue, Analysis, Interpretation and Clarification

Issue – Use of an Undefined Term – “Maximum Floor Area”

In Single Unit (SU) zone districts, the ‘maximum floor area’ of the ADU **use** is limited and varies based on the subject zone lot size. The use limitations in DZC Section 11.8.2.2.5 state requirements for ‘maximum floor area of accessory dwelling unit use.’ However, this term is neither defined nor addressed in the Rules of Measurement. This has led to confusion over how to calculate ‘maximum floor area.’ This

requirement only applies to establishment of ADU *uses* in SU zone districts. Since ‘maximum floor area’ is a *use* limitation, it is intended to limit the scale and intensity of the ADU use and thereby limit the potential for any adverse land use impacts on the surrounding neighborhood or context.

Analysis – Related “Gross Floor Area” Term in the Denver Zoning Code

The DZC defines “Gross Floor Area” (Division 13.3) as:

The sum of the gross horizontal areas of the several floors of a building, including interior balconies and mezzanines, but excluding exterior balconies; all horizontal dimensions of each floor are measured from the exterior faces of the exterior walls of each such floor....

The defined term Gross Floor Area in the Denver Zoning Code is used to regulate the scale and intensity of land uses and activities allowed inside a building, and to calculate minimum parking requirements. Because the intent of Gross Floor Area to limit the intensity or scale of land uses is like the intended use of Maximum Floor Area standard, the defined term Gross Floor Area provides good direction for a reasonable interpretation of Maximum Floor Area.

Interpretation of ‘Maximum Floor Area’

Based on the analysis above, the undefined term “Maximum Floor Area,” as applied to limit ADU uses in a SU zone district, is interpreted to mean the same thing as “Gross Floor Area”.

Therefore, according to this interpretation, Maximum Floor Area will include:

1. The sum of all horizontal floor area of both above-grade and below-grade floors in a building, including floor area in a below-grade basement accessible to and/or used for the permitted ADU use.
2. The entire gross horizontal floor area of a building story or half-story, regardless of the height of the ceiling above. Maximum Floor Area includes the entire horizontal floor area in a building’s half-story including floor area where the floor-to-ceiling height is less than 5 feet.

Please Note: Maximum Floor Area of the ADU use will exclude interior space and floor area not part of the ADU use, such as a space in a garage used for vehicle parking.

Clarification – Maximum Floor Area Use Limitation Compared to Habitable Space Building Form Standard

Another term defined in the Denver Zoning Code is “Habitable Space.” Habitable Space is used in the Detached ADU building form standards to regulate the amount of interior building space commonly intended for ADU-related purposes in SU districts (see DZC, Sections 3.3.4.5.A, 4.3.4.5.A, 5.3.4.5.A). Please note, this regulation is not applicable to non-SU districts, such as TU, RH, TH, and MU. Because the Habitable Space standard, as applied, may also control the intensity or scale of the Detached ADU use occupying such building, it is helpful to consider the definition of Habitable Space and how it is different from Maximum Floor Area, as interpreted above.

The DZC defines “Habitable Space” (Division 13.3) as:

A story that has at least 4 feet between the ground level and the ceiling joists and which has enough area to provide a room with net floor-to-ceiling distance of 7 feet over half the area of

the room. A “habitable space” may or may not constitute a habitable room.

According to this definition, the Habitable Space has enough area to provide a room meeting the above conditions; however, the Habitable Space does not have to be a “habitable room” as defined in Article 13, or as defined in the Denver Building Code. Please note also that the terms “Room”, “Habitable Room”, and “Habitable Space”, all defined in DZC Article 13, are not equivalent to each other.

According to the definition above, Habitable Space includes interior building space in a story that meets ALL of the following criteria:

1. The interior building space is in a story that is above ground level. **Note:** If there’s any question of whether a “story” is above ground level, the rule of measurement in DZC, Section 13.1.2.3.B.2, which states when a “story” will count toward the maximum height standard, shall be used.
2. The interior building space is in a story that has enough area to provide a room with net floor-to-ceiling distance of 7 feet over at least half the room’s area.
3. Under this zoning definition, the following interior spaces are **included** in the calculation of Habitable Space: Utility rooms, bathrooms, closets, stairwell (footprint only where stairwell lands), and similar interior spaces.

According to the definition above, Habitable Space will NOT include the following:

1. Interior building space in a story below ground level (e.g., a finished or unfinished below-grade basement will not count toward Habitable Space).
2. Floor space used for vehicle parking (e.g. a garage).

Once it’s determined that a specific building story (or portion of a story) meets the definition of ‘Habitable Space’, Habitable Space is calculated as the sum of the gross horizontal floor area of all Habitable Spaces in that building story. **Note:** What spaces are “Habitable Space” under zoning can be notably different than what counts as “habitable” space under the Denver Building Code.

In sum, Habitable Space captures different types of interior space in a building story than Maximum Floor Area. Once a building story or portion of a building story is identified as “Habitable Space,” the measurement is like the measurement for Maximum Floor Area, but Habitable Space excludes habitable space below ground level (e.g., a finished basement used for the ADU use). Both Maximum Floor Area and Habitable Space, as clarified in this memo, exclude floor area/interior space used for vehicle parking.

Clarification – Habitable Story Definition Compared to Habitable Space Building Form Standard

The DZC defines “Habitable Story” differently than Habitable Space. Please see the DZC definition below, as well as the relevant DZC Clarification issued on February 7, 2018.

The DZC definition of “Habitable Story” (Division 13.3) is a story which:

1. Has at least four feet between the ground level and the ceiling joists;
2. Has enough area to provide a habitable room with net floor-to-ceiling distance of 7 feet-6 inches over half the area of the room; and
3. Constitutes a habitable room as defined in the building code.

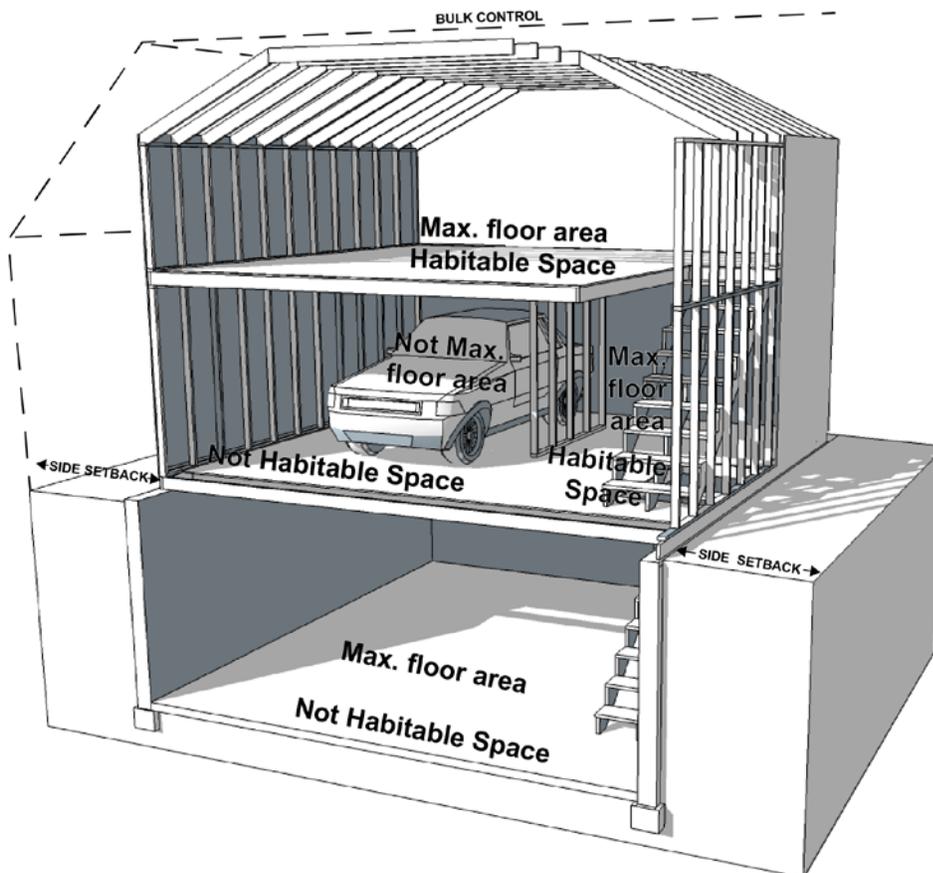
In DZC, Section 13.1.2.B.3.b.ii, the Rule of Measurement (ROM) for building height states that where a half story is permitted, the space shall meet the above definition of Habitable Story, and the gross floor area of the half story, not counting floor area with a net floor-to-ceiling distance less than 5 feet, shall be no greater than 75% of the floor below. However, this ROM is used only to clarify what constitutes a half-story in a building for purposes of measuring building height, and should not be referenced or used to calculate the allowed Maximum Floor Area inside the half story. To calculate the Maximum Floor Area in a half story, please refer to the definition of Gross Floor Area in the DZC and the interpretation of Maximum Floor Area above; the calculation of Maximum Floor Area will include the horizontal floor area in the half story with a net floor-to-ceiling height of less than 5 feet.

Please note that per this interpretation and clarification, in SU districts, projects establishing an ADU use in a Detached ADU building form must comply with:

1. The Maximum Floor Area limitation on the size of the use, and
2. The building form limitation on total amount of Habitable Space inside the building.

These two calculations may not be the same, as explained above, and shown in the example below.

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 Denver Zoning Code, Section 12.4.8, *Appeal of Administrative Decision*.



Not to Scale. Illustrative Only.