

Lisa Elgin

From: Carey Gagnon <carey_gagnon@yahoo.com>
Sent: Tuesday, August 20, 2024 6:36 PM
To: Lisa Elgin
Subject: PCD File No. AL2413, 11130 Burgess Lane ALQ for Permanent Occupancy
Attachments: brickleysusa.com_colorado-springs.pdf; DWR_3570666.pdf

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To whom it may concern,

We live adjacent to the subject property and are writing with our concerns regarding the application.

Accessory Living Quarters are an allowed use in the RR-5 Residential Zone District provided the use must comply with the General Accessory Structure and Use Standards in the Use-Specific Development Standards Section of the El Paso County Land Development Code. As described below, the application fails to meet the County's Standards.

First, the application contains no information demonstrating the proposed occupant is an immediate family member as defined by Section 5.2.1(H)(1).

Second, there is no information to support that there is a family hardship that justifies the request for extended family housing (e.g. there is no evidence of unemployment, health condition, etc.) as required by Section 5.2.1(H)(2).

Third, caretaking of the property is not a valid reason to allow detached accessory living quarters to be utilized for permanent occupancy since it is not for the purpose of having "immediate family providing for the needs of the residents of the primary residence on the property." See Section 5.2.1(H)(1). Here, the owners do not occupy the primary residence on the property.

Fourth, the submission of the electric bill from Mountain View Electric does not confirm that electric services to the trailer are interconnected and indistinguishable from the principal dwelling per Section 5.2.1(E). (To the contrary, there is no "B" in the legal address for the property, which suggests there might be a separate bill for "11130 Burgess Lane A.")

Fifth, the existing septic system was permitted in 1979, prior to the placement of the trailer, to provide sewage disposal for a 2 bedroom residence (upon information and belief the current residence is 3 bedrooms, and it is not clear how many bedrooms are in the trailer). There is no documentation in the application, such as a wastewater capacity letter, stating that the current capacity is sufficient to include the trailer. As such, the application fails to satisfy the requirement that it conforms with all other applicable County rules, regulations and ordinances and does not endanger public health as required by Section 5.3.2.(C).

Sixth, the proposed use of the existing well to serve the trailer does not appear to comply with the Colorado Division of Water Resources Guideline 2016-1 for Auxiliary Living Spaces (attached) and therefore cannot satisfy Section 5.3.2(C), compliance with all applicable state laws regarding water.

Finally, both the primary residence and the trailer have historically been used as rentals, and noted by the label on the attached photos downloaded from Zillow. (Brickleys Property Solutions is a property rental company, as the screen shot of its website shows.) Given the history of this property and the prior involvement of Code Enforcement -- explained in the other letters of opposition -- the neighbors in this area have a right to be concerned that, Affidavit notwithstanding, the owners will continue to rent the trailer if this application is granted.



Brickleys Property Solutions



For all these reasons we urge you to deny the application.

Sincerely,
Carey Gagnon & Eddie Villa
11115 Milam Road



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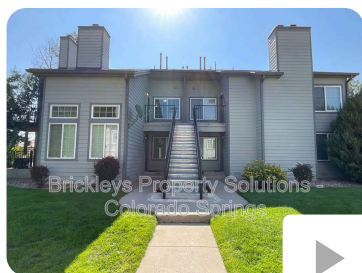
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Guideline 2016-1

CONCERNING WATER SUPPLIES FOR AUXILIARY LIVING SPACES (AMENDED)

Purpose:

This document provides guidance regarding the availability of a legal water supply for attached or detached auxiliary living spaces, which may include anything from a bathroom inside a garage or barn to a fully independent dwelling, and whether the auxiliary living space may be considered part of the main single-family residence for the purposes of well permitting. Colorado counties have varying names for auxiliary living spaces, including accessory buildings, accessory structures, accessory dwelling units (“ADUs”), secondary dwelling units (“SDUs”), guest houses, and more. This document is intended to encompass and provide guidance regarding all of these types of buildings, or portions of the main building, which will collectively be referred to in this document as “Auxiliary Living Spaces”.

Guideline:

Water Supply from a Water District

For those cases where the water supply is provided by a municipal or quasi-municipal water district, as long as the water provider operates within the terms and conditions of its water rights and decrees, the State Engineer’s Office would have no objection to the water provider servicing the subject property, including the Auxiliary Living Space.

Water Supply from a Well

Generally, well permits are issued with a limit on the number of single-family dwellings that can be served by the well. Therefore, the State Engineer’s Office must consider if the Auxiliary Living Space is a separate single-family dwelling or an extension of the main single-family dwelling.

State Engineer’s Office Determination of what Constitutes a Single-Family Dwelling

The State Engineer’s Office will consider the Auxiliary Living Space to be an extension of the main residence if it is able to meet all of the following criteria:

- The Auxiliary Living Space will not be rented, leased, or otherwise occupied by a party other than a guest or member of the family that would otherwise reside in the main single-family dwelling, or by nannies, health care workers, or other employees who provide supervision or care to residents of the main single-family dwelling and who would otherwise reside in the main single-family dwelling.



- The Auxiliary Living Space will not use water for non-residential purposes such as businesses, manufacturing, or a facility providing restrooms for customer or public access, etc. (Please refer to item 2.1 of State Engineer Guideline 2023-1 for information regarding commercial activities that may be conducted on the property including allowances and limitations for home offices.)
- For Auxiliary Living Spaces that are separated from the main living area and that have an independent entry, the space does not contain kitchen facilities, which the State Engineer's Office considers enabling an independent living area. Based upon the Division of Water Resources review of current Colorado county zoning regulations, the State Engineer's Office will consider an Auxiliary Living Space to have kitchen facilities if it has either:
 - a stove or oven or a 240-V electric hookup or equivalent gas piping for cooking facilities; or
 - a refrigerator more than 6 cubic feet in size. A wet bar with a sink and a refrigerator no more than 6 cubic feet in size is acceptable.

If the Auxiliary Living Space meets all the criteria above it would be considered by the State Engineer's Office to be an extension of the main residence and a well permitted to serve only one single-family dwelling may legally supply both the main residence and the Auxiliary Living Space. No changes or amendments to the permit are required.

If the Auxiliary Living Space does not meet all of the criteria above it would be considered by the State Engineer's Office to constitute a single-family dwelling and a well permit must allow for use in two (or more) single-family dwellings, one for the main residence and one for each Auxiliary Living Space.

When only a part of the dwelling is rented, such as a bedroom and bathroom, and the renter is not allowed shared use of other parts of the home, such as the kitchen or living room, the dwelling use is not equivalent to that of a single family regardless of whether the space otherwise meets the above criteria. Such use would need to be served by a well permitted for commercial use.

Please note that some counties have regulations that require an Auxiliary Living Space to meet certain requirements that result in the Auxiliary Living Space not meeting the above criteria. For example, if a county definition of an Accessory Dwelling Unit requires that the space be able to be rented out or to have kitchen facilities, all Accessory Dwelling Units in that county will be considered a single-family dwelling, and a well permit must allow for use in two (or more) single-family dwellings, one for the main residence and one for each Auxiliary Living Space, regardless of whether or not the owner intends to rent the Accessory Dwelling Unit.

Additional Information:

A well permitted pursuant to section 37-92-602 (3)(b)(II)(A), C.R.S., as the only well on a parcel of 35 acres or more may be permitted for uses that include ordinary household purposes inside up to three single-family dwellings, one of which could be the Auxiliary Living Space, which is considered by the State Engineer to constitute a single-family dwelling. If the permit is issued as the only well on a 35+ acre parcel, but the permit conditions do not specifically identify the number of dwellings that can be served, it may be

possible to amend this type of permit to specify that up to three single-family dwellings can be served pursuant to State Engineer [Policy 1993-4](#).

A well on a parcel of less than 35 acres, which is permitted for ordinary household use inside one single-family dwelling, could typically only be re-permitted for use inside two single-family dwellings pursuant to a decreed plan for augmentation. Similarly, a well first put to use prior to May 8, 1972 for “domestic” purposes that historically (before May 8, 1972) only served one single-family dwelling could typically only be expanded to allow for use inside two single-family dwellings pursuant to a decreed plan for augmentation.

For a residential well located within a Designated Ground Water Basin that is permitted pursuant to section 37-90-105, C.R.S., if the well is on a parcel of land that qualifies for a well permit that may supply more than one single-family dwelling, one of the dwellings could be the Auxiliary Living Space. If the well is on a parcel that only qualifies for a permit to serve one single-family dwelling, the well could typically only be re-permitted for use inside two single-family dwellings pursuant to a replacement plan approved by the Ground Water Commission. Questions regarding whether a specific parcel would qualify for a well permit that allows for more than one single-family dwelling should be referred to Ground Water Commission staff. For a well first put to use prior to May 8, 1972 for “domestic” purposes that historically (before May 8, 1972) only served one single-family dwelling, this well could typically only be expanded to allow for use inside two single-family dwellings pursuant to a replacement plan approved by the Ground Water Commission.

If the well is located within the Denver Basin or a river basin that is not over-appropriated, it *may* be possible to obtain a permit allowing for the use of the well in an additional single-family dwelling.

If the existing well is permitted for “ordinary household use inside one single-family dwelling” and is already included in a plan for augmentation decreed by the water court or replacement plan approved by the Ground Water Commission, the terms and conditions of the decree or replacement plan will determine if a new permit could be issued allowing for use in an additional single-family dwelling. If the decree or replacement plan explicitly states that the use of each well permitted pursuant to the augmentation plan is limited to serving one single-family dwelling, then a new or amended augmentation plan or replacement plan would need to be obtained to allow for use in a second single-family dwelling.

For an Auxiliary Living Space that is intended to be used for commercial rental purposes and occupied on an intermittent or seasonal basis only, the Division of Water Resources will allow the main house and the rental unit to be served by a well permitted for use in commercial drinking and sanitary facilities as described in section 37-92-602(1)(c). The use of water from a commercial exempt well will be limited to indoor drinking and sanitary use, and the total amount of water that could be withdrawn from the well for use in both spaces will be limited to 1/3 acre-foot (108,600 gallons) per year. A totalizing flow meter will be required to be installed on the well, with monthly or annual meter readings reported to this office to ensure water use does not exceed this amount. Refer to [Policy 1985-1](#) for additional information regarding the use of wells permitted for exempt commercial uses. Note again that counties may have regulations that require Auxiliary Living Spaces to be rented on a long-term basis or that prohibit the use of these spaces for commercial short-term rental purposes, which conflict with the allowances in this guideline.

If the State Engineer's Office has previously provided written comments regarding a specific proposal that conflict with the positions taken in this Guideline, the written comments will be honored.

Customers should contact the Division of Water Resources at 303-866-3581 or through the [AskDWR Form](#) on our website if they have any questions.

Approval:

This guideline originally became effective December 7, 2016. It was amended on December 20, 2023 to be consistent with State Engineer Guideline 2023-1 and to incorporate additional guidance for permit evaluators and water users.

A handwritten signature in black ink that reads "Kevin G. Rein". The signature is written in a cursive style and is positioned above a horizontal line.

Kevin G. Rein, P.E.
State Engineer/Director