

3/9/2011

Request for Interpretation Appeal

Dear Board of Adjustments,

The real issue for me, as it has been all along, is discovering the appropriate guidelines for development of 1204 W. 9th Street. I didn't set out to be in this position, nor I'm sure did the owner, applicant or city staff. However, I feel the appropriate guidelines are not being followed and I've not been able to reconcile the events and facts of this case with city staff or the applicant, so here we are.

What went wrong? I feel like the Front Lot Line was re-defined in the "11th hour" to exist on 9 ½ Street, as opposed to 9th Street where it belongs, for the express purpose of moving the rear setback line, and the rear addition, closer to 9 ½ street and allowing for more height, closer to 9 ½ Street, than would otherwise be allowed by Code if 9 ½ Street was defined as the Rear-of-a-Through-Lot, which I believe it is. I will show that Land Development Code places the Front Lot Line, Front Yard and Front Setback Line on 9th Street and the Rear Lot Line, Rear Yard and Rear Setback Line on 9 ½ Street.

Exhibit A illustrates that a balanced and reasonable application of all the Land Development Code places the Front Lot Line on 9th Street. This includes LDC definitions for Front Yard, Rear Yard, Rear Lot Line and Setback Planes. This placement is also consistent with the Terms of the Permit, the home address and other evidence as listed in **Attachments 1, 2 & 3** (including quotes by City Staff and the Applicant that define the REAR of this lot as 9 ½ Street at the Public Hearing). This "unanimous" agreement of the Permit, LDC and other evidence, which places the Front Yard on 9th Street, means that the Rear Setback on 9 ½ Street is invalid because it was established using Subchapter F 2.3- FRONT YARD SETBACK-(B)3. City Staff used this provision of Subchapter F to apply set back averaging on the REAR YARD of the lot, not the FRONT YARD, as if this lot (and addition/home) faces 9 ½ Street, like other homes down the street which are not through lots.

The Code clearly instructs what to do with the REAR YARD of a lot in Subchapter F, 2.4- REAR YARD SETBACK - The principal structure shall comply with the rear yard setback prescribed by other provisions of this Code. The provisions for the REAR YARD of a through lot are found in 25-2-515 REAR YARD OF A THROUGH LOT - For a through lot, a rear yard must comply with the minimum requirements applicable to a front yard. The front setback on 9th Street is 25', it would seem that the rear setback on 9 1/2 Street should be 25' too. There has never been any Land Development Code cited, to me, to support how the 15' REAR set back was "established with COA on May, 2nd 2008" per the site plan included in the permit application and presented at public hearing by City Staff and the Applicant. The true setback for this lot may have been misrepresented from the start as 15' instead of the proper 25'.

Exhibit B illustrates the implications of applying all the LDC code and Terms of the Permit with the understanding that the Front Lot Line, Front Yard and Front Set Back Line, "have always existed on 9 ½, and will continue to exist on 9 ½ " as stated to me by City Staff. I'm not sure the applicant/owner is prepared to re-design their project to fit within these guidelines, although I may be wrong. Either way, it seems the accurate setback on 9 ½ may actually be 25', not 15' or 11.5' or 7.1'" (the different REAR setbacks" established with COA" at one point or another). In reality, City Staff has "temporarily" defined the Front Lot Line to be on 9 ½ Street in order to use setback averaging to unfairly move the addition closer to 9 ½ and in order to change the buildable "tent" to unfairly allow more height on 9 ½ Street. They now intend to allow the applicant to build using the REAR setback on 9 ½ as issued in the Permit, and as it was all along and will continue to be.

The applicant proclaimed at the public hearing that they had met with City Staff and the addition had been designed to conform to all provisions of the Land Development Code. This was with a REAR setback of 15' on 9 ½ Street and with expressed intent of designing around the protected trees on the lot. If it's been discovered through this process that this addition cannot be built within all the appropriate guidelines for this lot, then I suggest responsibility be placed where it belongs, on the applicant, to either design within the guidelines or apply for the necessary variances. It is not City Staff's responsibility to manipulate provisions of the code with the express purpose of moving the building closer to 9 ½ and allowing more height on 9 ½ so the building will "fit", without design changes or variances. This behavior short circuits another provision within the Land Development Code for how an applicant should get permission to design "outside" the guidelines of LDC, 30-1-251 APPLICATION FOR A VARIANCE. LDC exists for me and the affected neighbors, as much as it does for the Applicant (See **Attachment 4**—Subchapter F Intent).

City Staff will say it's within their rights to change the definition of the lot to employ another provision of the code if it's to the Applicant's benefit. However, this should be true only if the change is supported by all definitions and provisions of the LDC and the Permit, which clearly it is not in this case, especially if the change is a disadvantage to interested parties with 500 feet, which it clearly is in this case. City Staff will want to simply claim that "clerical mistakes" were made in scanning in the wrong site plan into the application, filling in the Permit wrong, using the wrong survey data for the tent and mis-labeling even the new site plans as the REAR on 9 1/2 even after the averaging data was submitted etc. However, there is a preponderance of evidence that suggest otherwise—that this is, has always been, and will continue to be a 9th Street FRONT lot. The City Attorney will recommend you not even consider the facts of this case because I'm not an "interested party in standing". That may or may not be true—I know I've done my best to simply verify that 1204 W. 9th Street is developed within the proper LDC guidelines and then follow proper protocol to the best of my ability when discovered otherwise (see **Attachment 3**-Timeline). Regardless, I'm being counseled that there may be some serious procedural issues with this Permit, for all the reasons stated, and its validity is in question. It seems to me the most fair and expedient course of action, for everyone involved, is to revoke this permit and start over.

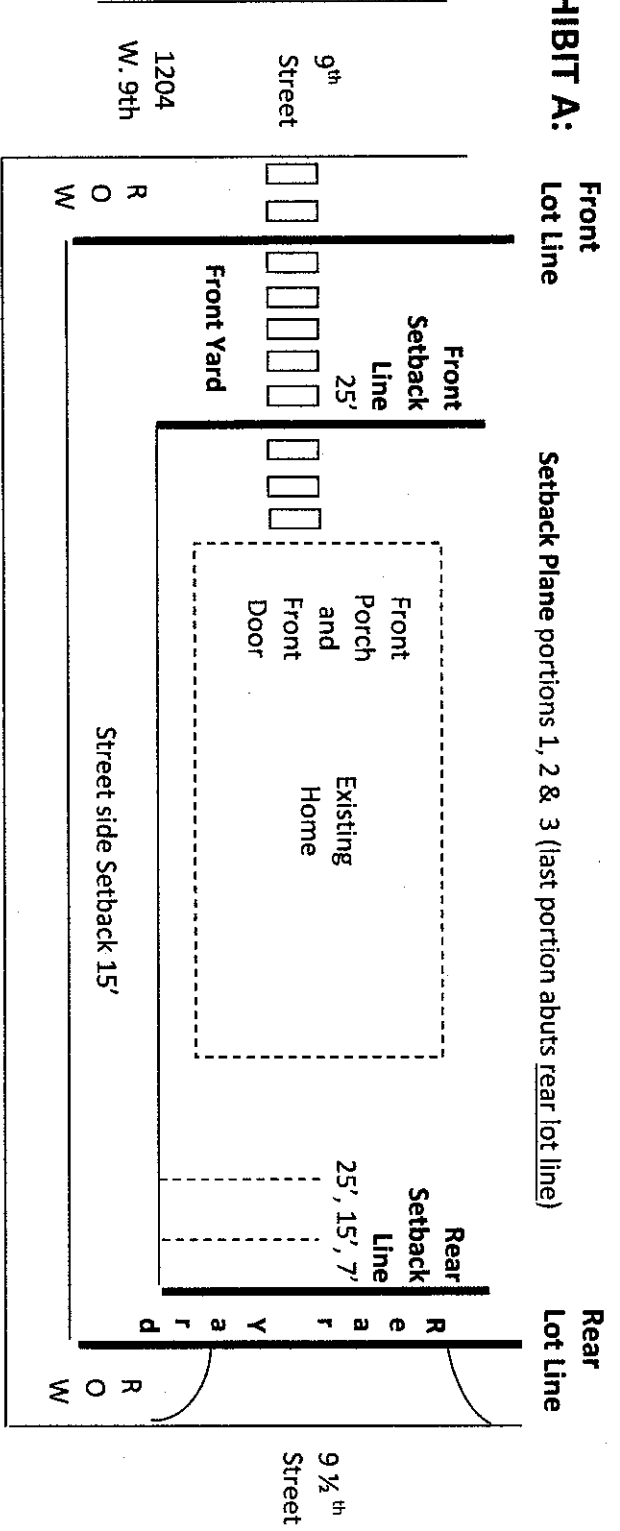
I respectfully request that this board confirm that the Front Lot Line, Front Yard and Front Setback Line exist on 9th Street and the Rear Lot Line, Rear Yard and Rear Setback Line exist on 9 ½ Street for this lot at 1204 W. 9th Street, now and for as long as it's address and orientation clearly faces 9th Street. I further request that you instruct City Staff to use the proper provisions within LDC to determine the accurate REAR setback: 25-2-515 REAR YARD OF A THROUGH LOT. Having read the LDC myself, for what it's worth, I feel the rear setback should have been established at 25' from the start (not 15'). So, if a mistake has been made by the Applicant & City Staff initially at the Public Hearing by mis-representing the Rear setback as "established by COA" at 15' (when it was actually 25'), and then another mistake by City Staff in the "11th hour" by misapplying Subchapter F to setback average on the REAR of a through lot, that together has given the Applicant a considerable unfair advantage in setback and height (and disadvantage to others) for what is truly allowable by code for this lot, then I think it's reasonable to require the Applicant to either design within the correct provisions of the code or request the proper variances, before the addition is built.

Thank you for your consideration.

David Bole
907 Shelley Avenue, 512-217-5454.



EXHIBIT A:



Front-Lot-Line
9th Street

Front-Lot-Line
9 1/2th Street

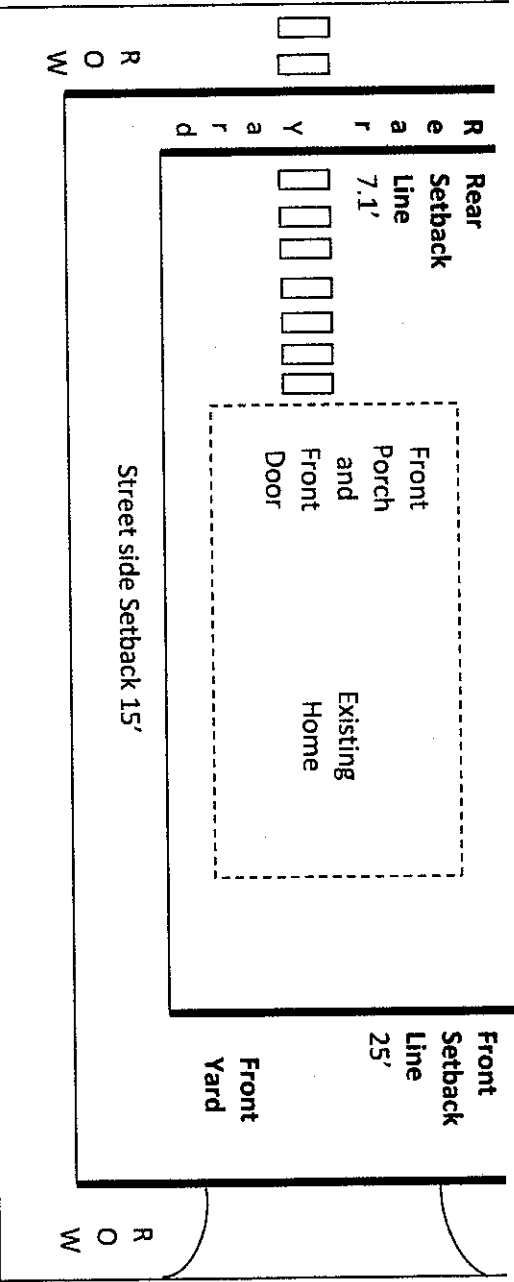
Yes	Consistent with reasonable application of <u>all</u> LDC, Permit and other evidence? Terms of Permit, i.e., <u>Setbacks lines</u>, <u>front setback of 25'</u>, <u>rear setback of 7.1'</u> (15' at start of process)	No
Yes	25-1-21 (41) FRONT YARD means a yard extending the full width of a lot between the <u>front lot line</u> and the <u>front setback line</u> .	No
Yes	25-1-21 (85) REAR YARD means a yard extending the full width of a lot between the <u>rear lot line</u> and the <u>rear setback line</u> , excluding any area located within the street side yard of a corner lot.	No
Yes	25-1-21(84) REAR LOT LINE means the lot line that does not intersect the <u>front lot line</u> .	No
Yes	Subchapter F 2.6 Setback Planes (A) (1, 2 and 3) – Last portion abuts <u>rear lot line</u> (portion 3 on 9 1/2 per survey)	No
Yes	25-1-21 (40)(c) FRONT LOT LINE means: for a through lot, the lot line abutting the street that provides the primary access to the lot. Primary Access: Can be pedestrian or vehicular ROW (pedestrian for many lots), not defined in LDC for this lot	NO
Undefined	Consistent with project description of front porch, site plan drawings etc. included in permit application?	Undefined
Yes	Consistent with Home Address?	No
Yes	Consistent with Other definitions of front/ primary access to lot (See Attachment 1)?	No
Yes		No

Front Lot Line	Narrowly define 9 1/2 Street as Primary Access and apply <u>all</u> LDC and Terms of Permit:	Front Lot Line
No	Primary Access: undefined in this case, can be either 9 th or 9 1/2 Street, ignore all evidence and force to 9 1/2	Yes
No	25-1-21 (40)(c) FRONT LOT LINE means: for a through lot, the lot line abutting the street that provides the primary access to the lot	Yes
No	25-1-21 (41) FRONT YARD means a yard extending the full width of a lot between the <u>front lot line</u> and the <u>front setback line</u> .	Yes
No	25-1-21 (85) REAR YARD means a yard extending the full width of a lot between the <u>rear lot line</u> and the <u>rear setback line</u> , excluding any area located within the street side yard of a corner lot.	Yes
No	25-1-21(84) REAR LOT LINE means the lot line that does not intersect the <u>front lot line</u> . Subchapter F 2.6 Setback Planes (A) (1, 2 and 3) – Last portion abuts <u>rear lot line</u>	Yes
Yes	Vested Terms of Permit, i.e., <u>Setbacks Lines</u>, rear setback of 7.1', front setback of 25'	Yes
Yes	Consistent with project description of front porch, site plan drawings etc. included in permit application?	No
Yes	Consistent with Home Address?	No
Yes	Consistent with Other definitions of front/ primary access to lot (See Attachment 1) ?	No

Rear Lot Line

Applicant should Re-design addition to fit the 25' front setback on 9 1/2 Street as vested in the Permit & defined by City Staff.

Front Lot Line



Re-survey **Setback Plane** portions 1, 2 and 3 (last portion abuts rear lot line on 9th)

Attachment 1

Other evidence of "FRONT" of lot at 1204 W. 9th Street:

9 th Street	9 ½ Street
<p>Official Address: 1204 9th Street</p> <p><u>Primary/Main Access for the following:</u></p> <ul style="list-style-type: none"> - Guests - Mail delivery by US Gov. - Parcel delivery by FedEx, UPS, etc. - Water services - Gas services - Power services - Phone, cable & other services - Owners, part of the time (pedestrian) <p><u>Defined as Front by following entities:</u></p> <ul style="list-style-type: none"> - Owner (HLC hearing video) - Architect (HLC hearing video & Site Plan) - Warranty Deed/ Deed of Trust (copy available) - City Staff/HLC (HLC hearing video) - National Historic Register District (Inventory log) - City of Austin Address Services (Validation available) - City of Austin on May 2nd, 2008 (Site Plan) - All Directories, Listings etc. <p><u>Represented Publically as Front to:</u></p> <ul style="list-style-type: none"> - City Staff & HLC at Public Hearing. - Interested Parties within 500 feet at Public Hearing - OWANA & other neighbors - COA Permit Department on initial Permit Application 	<p>n/a (not requesting address change)</p> <p><u>Primary Access for the following:</u></p> <ul style="list-style-type: none"> - Owners, part of the time (vehicular) - Close friends, part of the time (maybe) <p><u>Defined as Front by following entities:</u></p> <ul style="list-style-type: none"> - None <p><u>Represented Publically as Front to:</u></p> <ul style="list-style-type: none"> - No one

Attachment 2



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Issued Permit Report

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FOLDER DETAILS

Permit Case File Name	Reference	Description	Sub Type	Work Type	Project Name	Status	Application Date	Issue Date	Expiration Date
2011-001967 PR	2011-001967 PR	partial demo of existing sfres - removal of portion of eastern gable to accommodate reconstruction and addition of new enclosed sleeping porch, removal of floor covered wood porch to accommodate rebuild of new porch and removal of northern wall to accommodate second level walkway to new addition of ground floor garage, second floor master suite and third level study, addition of 123 sf storage cellar below existing home, full remodel of existing remaining structure - new wiring, plumbing, hvac and drywall throughout	R-434 Alterations	Addition and Remodel	1204 W 9TH ST	Approved	Jan 10, 2011	Feb 3, 2011	Jan 10, 2011

Related Folders: [YES](#)

FOLDER INFO

Information Description	Value
Smart Housing	No
Building Valuation Remodel	175000
Electrical Valuation Remodel	20000
Will Addition have Electrical Work?	Yes
Mechanical Valuation Remodel	25000
Will Addition have Mechanical Work?	Yes
Plumbing Valuation Remodel	20000
Will Addition have Plumbing Work?	Yes
Total Valuation Remodel	250000
Total Job Valuation	<00000
Is this property in MUD?	No
Current Zoning for Building	MF-4-NP
Name of Neighborhood Plan	OLD WEST AUSTIN
Subdistrict	NONE
Status	APPROVED WITH ZONING
Is Historical Review Required?	Yes
Approved by HLC or Hist Preserv. Officer	Yes
HLC or Hist. Preserv. Officer Apprv Date	Jan 20, 2011
Historical Recommendation Comments	none
:704 Flag?	No
Is there a Cut & Fill in excess of 4 ft	No
Building Height (in feet)	12
Parking Spaces Required	2
Number of Bathrooms	4
Size of Water Meter	1/4
Front Set Back	35
Rear Set Back	7.1
Side Set Back	0
Street Side Set Back	15
Does property access a paved alley?	No
Current Use	sfres
Proposed Use	sfres
Change of Use	No
Square Footage of Lot	3820
Trees greater than 19'	Yes
Existing 1st Flr Area Sq. Ft	1543
Existing 2nd Flr Area Sq. Ft	790
Existing 3rd Flr Area Sq. Ft	0
Existing Basement Sq. Ft	0
Existing Attached Garage/Carport Sq. Ft	0
Existing Detached Garage/Carport Sq. Ft	0
Existing Wood Decks Sq. Ft	0
Existing Breezeways Sq. Ft	0
Existing Covered Patios Sq. Ft	0
Existing Covered Porches Sq. Ft	326
Existing Balconies Sq. Ft	0
Existing Swimming Pool(s) Sq. Ft	0
Existing Other Bldg/Covered Areas Sq. Ft	0
Total Existing Building Square Footage	2659
New/Addn 1st Flr Area Sq. Ft	57
New/Addn 2nd Flr Area Sq. Ft	791
New/Addn 3rd Flr Area Sq. Ft	289
New/Addn Basement Sq. Ft	123
New/Addn Attached Garage/Carport Sq. Ft	261
New/Addn Detached Garage/Carport Sq. Ft	0
New/Addn Wood Decks Sq. Ft	357
New/Addn Breezeway Sq. Ft	0

Front
Rear

25'
7.1'

↑ established using: Subchapter F, 2.3 Front Yard Setback (B)3, which allows for averaging with other homes on 9 1/2 Street as if the front yard of this lot (and addition/home) faces 9 1/2 Street.

Attachment 3

Timeline (dlb is David L. Bole)

9/17/10 – dlb receives Notice of Public Hearing National Historic District Building Permit in the mail.

- Contact, Steve Sadowsky, Planning & Development Review Department. Case# NRD-2010-0107
- Site Plan has REAR setback on 9 ½ Street of 15', "established with COA May 2nd, 2008"

9/27/10 – Building Permit Public Hearing:

- Steve Sadowsky quotes, "...constructing a 3 story addition to the REAR of this house...the addition on the back is going to be connected through the REAR dormer...it is in the BACK YARD...recommendation is to release the building permit"
- Applicant quote, "...the main corner is Shelley & 9th Street...this house is a through lot...on 9th Street, this is the front porch of the house, this is the front door of the house, this is the address of the house...by any ones evaluation, this is the front of the house right here" (referring to the 9th Street side)" ...and what we're doing is at the back of the house."
- Applicant quote, "Our design complies...we've already sat with some of the people from the City on that [referring to LDC]...we're working very hard to make sure that this large post oak is preserved...what we've had to do is carefully place that addition a little bit to the North [towards 9 ½]" note: Site Plan shows 15' Rear setback on 9 1/2 at this point.
- dlb speaks informally, but only after applicant continues to insist Shelley & 9 ½ is not a prominent corner

9/30/10 – dlb Follow up in Writing

- dlb sends an email to the entire HLC board and Steve Sadowsky in part acknowledging frustration about the Applicants comment that Shelley & 9 ½ Street (where I live) "was not a prominent corner" for the property in question

Sometime in 2010

- dlb talks with Chris Johnson in Development Assistant Office. He confirms no re-zoning or address changes have been issued for 1204 W. 9th Street. He confirms that Sec. 25-2-515 REAR YARD of a THROUGH LOT is appropriate code for this lot. He says doesn't know how 15' would have been established—can't reference any code.
- dlb decides to track the permit process to make sure public statements regarding the permit are true and up help, i.e., design is compliant with LDC, no variances, tree will be preserved etc.

1/05/11 – Applicant signs and dates COA Residential Permit Application. Application includes site plan with Rear setback of 15' "established with COA May 2nd, 2008" as part of application.

1/07/11 – Same site plan with Rear setback of 15' "established with COA" is stamped "AE APPROVED, Jan 07 2011, by JGM" in comments of ESPA says "Rear House Addition" for 1204 W. 9th Street

1/10/11 – Permit #2011-001967 Residential Zoning Review is "Rejected"(5 attempts), Tree Ordinance Review is "Open".

No contacts listed on permit for Residential Zoning Review.

1/27/11 – dlb calls Chris Johnson and leaves message inquiring why permit was rejected. Assumes setback was discovered to be 25' and Applicant will need to redesign or request variances. No return call.

1/31/11 – Setback averaging data on 9 ½ Street is initialed over a stamp of Greg Guernsey (although it's been marked through with magic marker) and new setback "tent" is also initialed and dated 1/31.

2/3/11 – Permit approved still with Rear setback on 9 ½ Street but at 7.1', not 15', Front setback still 25', **No contact listed on permit for Residential Zoning Review** (indicates 15 attempts)

2/7/11 – dlb calls John McDonald and Tony Hernandez alerting them that LDC has been mis-applied for this permit, i.e., Front Yard setback averaging on REAR of a through lot.

2/8/11 – dlb sends an email detailing claims and citing specific Code which supports position, including question whether the real setback should be 25'. This leads to a series of emails in which John McDonald (and the Applicant) admit that setback averaging data had been measured incorrectly. However, all City Staff defend the decision to Setback Average on 9 ½.

2/17/11 – dlb-After much deliberation and council from several people regarding this issue, including members of the Residential Design and Compatibility Commission plus current and past COA employees, I decide to appeal the permit.

Attachment 4

Subchapter F

1.1. INTENT.

This Subchapter is intended to minimize the impact of new construction, remodeling, and additions to existing buildings on surrounding properties in residential neighborhoods by defining an acceptable buildable area for each lot within which new development may occur. The standards are designed to protect the character of Austin's older neighborhoods by ensuring that new construction and additions are compatible in scale and bulk with existing neighborhoods.

dlb "The irony is all of this is that City Staff has incorrectly employed a provision from Subchapter F. i.e. Setback Averaging on the Rear of a Through Lot, that is allowing the Applicant to build an addition with more scale, bulk and height than is otherwise allowed in other provisions of the code. And this is taking place, in the shadow of Shelley Flats, which is one of the projects that was the motivation for adding the Subchapter F provisions for our neighborhood. "

REAR Setback Plane

