

3/11/11

Request for Interpretation Appeal

Case # C15-2011-0022

Dear Board of Adjustments,

I've met with City Staff and the owner since submitting my appeal application and initial back up data. Kathy Haught, John Mc Donald, Leon Barba, Greg Guernsey, Brent Lloyd, Eric Smith and myself were present. Please consider the addition information below in your deliberation of this case.

- 1) I was asked by the Owner if I would support the ruling of your board as resolution of the issues, and not further appeal or pursue other avenues of resolution. I have since confirmed to the owner and everyone in the meeting that, "Yes, I will support the Board of Adjustment ruling on Monday night assuming they hear and rule on the points of the appeal."
- 2) Greg Guernsey and others dug into the City Code to confirm whether the initial site plan presented at public hearing and included with the permit application, which established a Front Setback on 9th Street of 25', was correct for this property. The following code was cited and confirmed as correct. There was mention of a Setback Averaging provision "outside of Subchapter F" but that code was never explored in this meeting and, of course, has not been cited at any point during this application process. It seems a correct judgment was made by City Staff and the Applicant to at the start of the permit process to employ the following code for the purposes of defining the lot and establishing the correct buildable guidelines for the FRONT YARD (9th Street). This same definition has carried all the way through to the issuance of the Permit, which stated a Front Setback of 25' on 9th Street.

25-2-771 SINGLE-FAMILY RESIDENTIAL USE IN A MULTIFAMILY DISTRICT. A single-family residential use in a multi-family district must comply with the site development regulations for a family residence (SF-3) district prescribed by Section [25-2-492](#) (*Site Development Regulations*).

25-2-492 (D) Site Development Regulation Table

	LA	RR	SF-1***	SF-2	SF-3
MINIMUM LOT SIZE (square feet):	43,560	43,560	10,000	5,750	5,750
MINIMUM LOT WIDTH:	100	100	60	50	50
MAXIMUM DWELLING UNITS PER LOT:	1	1	1	1	**
MAXIMUM HEIGHT:	35	35	35	35	35
MINIMUM SETBACKS:					
FRONT YARD:	40	40	25	25	25

- 3) There was still no LDC code cited that could substantiate a 15' setback on the REAR of this through lot on 9 1/2 Street as "established with COA on May 2nd, 2008" per the site plan

presented at public hearing and “AE Approved” at the start of the Residential Permit Application. City Staff maintains that this determination of a 15’ Rear setback is irrelevant to the current permit process since their department has now determined that the FRONT YARD is on 9 ½ Street and the FRONT YARD averaging from Subchapter F has been used to establish a new “FRONT setback” on 9 ½, still referred to as Rear setback in the permit and all other plans etc.

- 4) There is still no dispute that in general, for a through lot, it’s appropriate to employ section 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. However, City Staff maintains that for this lot, it’s appropriate to have changed the definition of where the FRONT YARD is defined as initially presented by City Staff & the Applicant at public hearing and as represented in the site plan in the Residential Permit Application. They now claim it may be appropriate to allow the same setback on 9th Street (now defined as the REAR YARD) as what was calculated using Setback averaging from SubChapter F on 9 ½ Street (now defined as the FRONT YARD). So the Applicant may believe they now have the right to build to a setback of 7.1 feet (or the modified 11.45’) on both Streets if the corrections can be made to the permit.
- 5) It was established that the only site plan ever AE Approved prior to the release of the permit was the original site plan showing a Front Setback on 9th Street of 25’ and a Rear Setback on 9 ½ of 15’
- 6) It was acknowledged that a new buildable tent was never re-surveyed as if the “front” were on 9 ½ as redefined by city staff. The new addition is still being judged by the highpoints in the Tent Portions as if the Front were on 9th Street and Rear on 9 1/2 . All that’s changed is the removal of 45 degree angle of the tent on the 9 ½ Street side of the tent (officially the Rear of the tent as currently surveyed).
- 7) There was much discussion of “primary access” for this lot. City Staff’s determination of the “FRONT” this lot hinges on the argument that “primary access” must be on 9 ½ since that is where the lot takes its vehicular Right of Way. It was established that this is not true in many cases where LDC more clearly defines the Front Lot Line. For instance, for a corner lot, Front Lot Line is determined by the shorter of the two lot lines. That means there are many, many lots where the Front Lot Line (primary access) is the Pedestrian Only access even though the Vehicular ROW is taken from another side of the lot. Also, for interior lots that take their vehicular access from the Rear of the lot by alley, the Front Lot Line (primary access) is the Pedestrian Only Access at the “Front” of the lot. I have counted 10 lots, within 1 block of 1204 W. 9th Street, where the Primary Access for the lot is the Pedestrian Only access (and Front Street Address). There was also a question about how often primary access is not where the lot has its Street Address. Again, it’s not obvious to me there are any lots in our neighborhood, where Front Lot Line (primary access) for the primary residence is not also the Street Address. There are clearly other uses of primary access in LDC where its intent is to mean vehicular ROW but it’s not specifically defined as such, nor is it uncommon for primary access NOT to be the vehicular ROW (like for corner lots). The fact remains, that for this lot, primary access is not clearly defined. So, I assert that a broader application of LDC code would clearly place the FRONT YARD on 9th Street, which means the FRONT LOT LINE is on 9th so primary access is also 9th. This is not at all inconsistent with many, many other lots where primary access is the Front Address and Pedestrian Only access—very common. Perhaps most importantly, this is how the lot was defined, i.e, FRONT YARD, FRONT SETABCK, FRONT LOT LINE etc. on 9th Street, by City Staff and the Applicant at the start of the permit process in September at the public hearing, and at the start of the Residential Permit Application process in January.

- 8) The signature page of the application has the following statement "I understand that in accordance with Sections **25-1-411** and **25-11-66** of the Land Development Code (LDC), non-compliance with the LDC may be cause for the Building Official to suspend or revoke a permit and/or license."

25-1-411 SUSPENSION OF A PERMIT OR LICENSE.

- (A) The accountable official may suspend a permit or license if the official determines that:
- (1) the permit or license was issued in error; or
 - (2) the permit or license holder has not complied with the requirements of this title.
- (B) A suspension is effective until the official determines that the permit holder has complied with the requirements of this title.

25-11-66 ERRORS IN PERMIT SUPPORT DOCUMENTS.

If the building official discovers an error in the plans, specifications, or other data submitted in support of a permit application, the building official may:

- (1) require an applicant to correct the error; and
- (2) stop building operations at the site if the error results in a violation of City regulations.

Per the code cited on the signature page, I believe the permit was issued in error, the permit should be suspended until the design can conform to the proper guidelines of the lot or the appropriate variances have been secured.