

**CITY OF AUSTIN**  
**Board of Adjustment (Special called meeting)**  
**Decision Sheet**

**DATE:** Tuesday, November 29, 2011

**CASE NUMBER:** C15-2011-0110

\_\_\_\_ Jeff Jack  
1st Michael Von Ohlen - *to postpone*  
\_\_\_\_ Nora Salinas  
2nd Bryan King  
\_\_\_\_ Susan Morrison  
\_\_\_\_ Melissa Hawthorne  
\_\_\_\_ Heidi Goebel  
\_\_\_\_ Cathy French (SRB only)

**OWNER/APPLICANT:** S. Lynn, Hill

**ADDRESS:** 3704 BONNELL DR

**VARIANCE REQUESTED:** This appeal challenges the Planning & Development Review Department's interpretation of the McMansion ordinance, codified in Subchapter F of City Code Chapter 25-2, in connection with a permit to construct a single-family home at 3704 Bonnell Drive. The appeal alleges that the department incorrectly interpreted and applied the "attic exemption" in Section 3.3.3 of the ordinance, as well as other errors related to plan approval.

**BOARD'S DECISION:** October 27, 2011 Postponed

**BOARD'S DECISION:** November 29, 2011

*Postponed for them  
to have go over  
to 12-12-11*

**FINDING:**

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

\_\_\_\_\_  
Susan Walker  
Executive Liaison

\_\_\_\_\_  
Jeff Jack  
Chairman

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
INTERPRETATIONS  
ADDITIONAL ARGUMENTS FOR CASE C15-2011-0110

STREET ADDRESS: 3704 Bonnell Drive, Austin, TX 78731

LEGAL DESCRIPTION: Subdivision – Mount Bonnell Terrace Section 3

Lot 1 Block E Outlot --- Division ---

ZONING DISTRICT: SF-3

WE John Deigh and Sarah Lynn Hill on behalf of ourselves affirm that on the 22nd Day of November, 2011, hereby add two additional arguments, labeled Appeal #3 and Appeal #4, to our case. Our new arguments are made in response to the October 14, 2011 decision of Greg Guernsey to grant a grandfathering exemption from current City of Austin zoning regulations, particularly the Floor-to-Area (FAR) provisions of the "McMansion" Ordinance, to Bill Clark for the purpose of building a house on his property at 3704 Bonnell Drive. Mr. Guernsey granted this exemption by approving the H.B. 1704/Chapter 245 Project Application for 3704 Bonnell Drive (Case # 2011-077103 BP), and then deciding that his determination exempted Mr. Clark's project from the FAR provisions of the ordinance. This resulted in Mr. Guernsey's approval of the decision to "approve for permit" Mr. Clark's building plans for 3704 Bonnell Drive. We allege that error was made in the decision by an administrative official. (Email from Mr. Guernsey stating he approved the application and that the FAR limitations of the ordinance "were not in effect in the 1970s" attached as Exhibit Ex27. Project Application Determination attached as Exhibit Ex29. Other exhibits explaining the application and grandfathering decision attached as Exhibits Ex28 and Ex30.)

We originally submitted our new arguments under a separate appeal to the Board made under Texas Local Government Code Chapter 211, sec. 211.009 and sec. 211.010, which state that the Board of Adjustment may hear appeals by aggrieved parties of decisions made by an administrative official in the enforcement of an ordinance adopted under chapter 211, subchapter A. That appeal was not forwarded to the Board. However, Mr. Guernsey and Mr. Brent Lloyd informed us that we could add our new arguments to the others we previously submitted for the appeal that is currently before the Board – Case C15-2011-0110.

Mr. Clark's property is located in the Mount Bonnell Terrace Section 3 subdivision, and on June 18, 1979 the developer of that subdivision (KMS Ventures Inc., Trustees) submitted to the City of Austin their application for the Final Plat for that subdivision. In filing a H.B. 1704/Chapter 245 Project Application, Mr. Clark was seeking coverage of his project to build a house under

Chapter 245 of the Texas Local Government Code. Mr. Guernsey, by granting this application, has determined that the city will enforce the zoning regulations that were in effect on June 18, 1979, and that are grandfathered under Chapter 245. In particular, Mr. Guernsey has decided that the FAR provisions of the McMansion ordinance do not apply for the purpose of determining whether the house Mr. Clark proposes to build on his property complies with the city of Austin's zoning regulations. Mr. Guernsey erred in his interpretation of chapter 245 of the Texas Local Government Code.

### **Appeal #3:**

We assert that Mr. Guernsey, the administrative official, erred in his interpretation of subsection 245.002(b) which says, "If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project."

Mr. Guernsey's interpretation is: subsection 245.002(b) applies to Mr. Clark's project because Mr. Clark's project of building a house on his property at 3704 Bonnell Dr. is the same project as the one undertaken in the 1970s by the developer to subdivide and plat Mount Bonnell Terrace Section 3, where Mr. Clark's property is located.

We feel the correct interpretation is: The two projects are not the same. The project undertaken by KMS Ventures in 1979 was to subdivide Mt. Bonnell Terrace section 3 into lots that would be suitable for the construction of single family homes for the purpose of selling those lots to parties interested in owning such properties. (See vol. 6661, p. 1502, Deed Records of Travis County Texas - attached as Exhibit Ex31 - where it is said that KMS Ventures will assist in the sale of the lots.) KMS Ventures had no plans to undertake construction of houses on any of the lots in the area. Once all of the lots were sold the project KMS Ventures had undertaken was completed. Individual purchasers of these lots undertook their own projects, typically, to build residential homes. Since no one has constructed any building on the lot at 3704 Bonnell Dr., it is uncertain with what purpose past owners of the lot had in purchasing it. Mr. Clark's purpose is to build a house in 2011, and he has applied for a permit to do so. This is a different project from the project KMS Ventures had in subdividing Mount Bonnell Terrace, section 3. Hence, Mr. Guernsey erred in supposing them to be the same project.

We are asking the Board of Adjustment to find that Mr. Guernsey made an error in his decision to approve the H.B. 1704/Chapter 245 Project Application. Mr. Guernsey should follow our interpretation and reverse his decision.

1. There is a reasonable doubt or difference of interpretation as to the specific intent of the regulations in that:

There are no decisions by Texas Appellate Courts that are contrary to the proposition that KMS Ventures' project is *not* the same project as Mr. Clark's. The decisions of Texas Appellate Courts that speak to the question of the difference between the platting phase and building phase of a development project concern developers whose projects included both subdividing an area and constructing buildings on the subdivided lots in that area. (See *Hartsell v. Town of Talty* and *Harper Park Two, LP v. City of Austin*.)

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:  
This item is not applicable to this appeal. The appeal relates to zoning regulations that do not affect the use of the property.
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: our interpretation should be applied to other properties that are similarly situated.



#### **Appeal #4:**

We also assert that Mr. Guernsey has erred in his enforcement of the FAR provisions of the McMansion ordinance because he erred in his interpretation of subsection 245.004(2), which says, "This chapter does not apply to: . . . municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;"

Mr. Guernsey's interpretation is: Mr. Clark's project of building a house at 3704 Bonnell Drive is not subject to the FAR provisions of the McMansion ordinance because "the FAR limitations under the McMansion ordinance were not in effect in the 1970s." (See Exhibit Ex27.)

We feel the correct interpretation is: Mr. Clark's project of building a house at 3704 Bonnell Drive is subject to the FAR provisions of the McMansion ordinance because the FAR provisions regulate the bulk of buildings and – per subsection 245.004(2) - chapter 245 does not apply to bulk zoning regulations.

We are asking the Board of Adjustment to find that Mr. Guernsey made an error in his decision to exempt Mr. Clark's project from the FAR provisions of the McMansion ordinance. Mr. Guernsey should follow our interpretation and reverse his decision.

1. There is a reasonable doubt or difference of interpretation as to the specific intent of the regulations in that:

For the past 90 years the State of Texas has granted to home-rule municipalities the authority to regulate the bulk of buildings. Senate Bill 312, which was enacted in the 37<sup>th</sup> regular legislative session and took effect April 2, 1921, provided that "the governing authorities of cities or towns having more than five thousand inhabitants [home-rule municipalities] may provide that such cities and towns shall be divided into zones or districts, may regulate the location, size, height, bulk and use of buildings within such zones or districts, may establish building lines within such zones or districts or otherwise, and may make different regulations for different districts for any such city or town and may thereafter alter the same."

Since 1921 the authority to regulate zoning has been expanded and extended to all municipalities, and today the zoning regulatory powers granted to municipalities by the State are codified in Chapter 211 of the Texas Local Government Code. With one exception, the items that can be regulated by home-rule municipalities are also regulated by all municipalities.

The one exception is the authority to regulate the “bulk” of buildings, which is extended to only home-rule municipalities by Subsection 211.003(c).

The language “This chapter does not apply to” . . . “municipal zoning regulations that do not” in subsection 245.004(2) is slightly awkward, but it means that chapter 245 applies to the types of municipal zoning regulations that are listed – landscaping, tree preservation, open space, etc., – and it does *not* apply to types of municipal zoning regulations that are not included in the list. Bulk zoning regulations are not included in the list. Therefore, chapter 245 does not apply to bulk zoning regulations.

The McMansion ordinance is a zoning ordinance that regulates the bulk of buildings, and FAR is a measure of a building’s bulk. The intent of the McMansion ordinance is spelled out in Section 1.1 of that ordinance, which says, “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.”

The City of Austin’s Zoning Information home page defines bulk as “density/floor-to-area ratio” (see attached Exhibit Ex32); and section 2.1 of the ordinance defines the maximum development permitted on a lot in terms of the FAR.

Bulk zoning originated in the U.S. in 1916, when the first Standard State Zoning Enabling Act (SZA) was written for New York City. The SZA arose largely in reaction to the construction of an office building (the Equitable Building) that towered over its neighbors, covered the entire lot on which it stood, and blocked windows of neighboring buildings. The bulk zoning regulations that were adopted defined an acceptable buildable area for a lot and restricted buildings to a percentage of the lot size. They were designed to ensure that neighboring properties and people were not deprived of an adequate amount of light, air, and openness.

In everyday conversation people may think of bulk and size as terms with similar meanings. But as evidenced by the zoning powers granted to municipalities by the State of Texas – by listing them separately, and by separately extending the power to regulate size to all municipalities and bulk to only home-rule municipalities – it is clear that the State considers the power to regulate the bulk of buildings to be a different sort of power from the power to regulate the size of buildings. We will explain the difference between bulk and size by offering the following examples:

The size of something is how big it is. This magnitude is either determined by comparison to other things in the same class or by standard measures. When it is determined by comparison with other things in the same class, we understand that to say it is big is to say it is larger than most things in the class. A big tomato is a tomato that is larger than most tomatoes. A big cherry tomato is a cherry tomato that is larger than most cherry tomatoes, even though cherry tomatoes are smaller than most other types of tomatoes. When size is determined by standard measures, we understand that to say a man's shoe is a size nine is to give its size according to the standard metric for men's shoe sizes. Sometimes the standard measure is amount. A city's size is thus measured by its population – the number of people who reside in the city. Whether size is determined by comparison with other things in the same class or by standard measures, the magnitude is absolute. Thus population size is an absolute magnitude, whereas the density of a population is not an absolute magnitude – it is a ratio of the population size to the size of the area in which the population resides. The size of a building, then, is an absolute magnitude that is usually measured in square footage or cubic footage.

The bulk of a building, as measured by its FAR, is not an absolute magnitude. It is a ratio of the gross floor area to the size of the lot on which the building sits. It is therefore different from the building's size. A zoning ordinance that regulates the bulk of buildings as measured by their FARs does not regulate the size of buildings. A plan for a small house may fail to meet the FAR requirement because the lot on which it will sit is too small for a house of that size; and a plan for a big house, even a very big house, may meet the FAR requirement, because it will sit on a lot that is not too small for a house of that size.

2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:  
This item is not applicable to this appeal. The appeal relates to zoning regulations that do not affect the use of the property.
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: our interpretation should be applied to other properties that are similarly situated.

AGGRIEVED PARTY CERTIFICATE – We affirm that our statements contained in these additional arguments are true and correct to the best of our knowledge and belief.

Signed John Deigh Printed: John Deigh

Signed S. Lynn Hill Printed: Sarah Lynn Hill

Addenda included supporting our additional arguments (appeals #3 and #4):

Exhibit	Description
Ex27	10/26/2011 email from Greg Guernsey stating that he approved grandfathering of the property located at 3704 Bonnell Drive under Chapter 245 of the Texas Local Government Code.
Ex28	10/14/2011 email from Brent Lloyd explaining Mr. Clark's grandfathering application, approval of the application, and his understanding of the effects of the approval.
Ex29	Project Application HB 1704/Chapter 245 Determination form completed by Susan Scallon on 10/14/2011, showing grandfathering date is 6/18/1979
Ex30	10/12/2011 letter from Terrence Irion to Greg Guernsey explaining the grandfathering application and including the grandfathering application and a plat of Mount Bonnell Terrace Section 3.
Ex31	Restrictive Covenants imposed by KMS Ventures Inc., Trustees on Mount Bonnell Terrace Section 3, filed with the Travis County Clerk on 8/9/1979. Found at Volume 6661 Page 1502 Travis County Deed Records.
Ex32	City of Austin's Zoning Information home page – definition of bulk
Ex33	Definitions from LDC 25-1-21
Ex34	Relevant sections of current electronic/print version of McMansion ordinance
Ex35	Relevant sections of Texas Local Government Code Chapter 211
Ex36	Relevant sections of Texas Local Government Code Chapter 245

Exhibit Ex 27

Wed, October 26, 2011 8:11:26 AM

RE: What body will hear our appeal of your administrative decision to approve the HB 1704 Grandfathering claim for 3704 Bonnell Drive?

From: "Guernsey, Greg" <Greg.Guernsey@austintexas.gov>

To: S Lynn Hill <s-lynn-hill@sbcglobal.net>

Cc: John Deigh <jdeigh@sbcglobal.net>; "Lloyd, Brent" <Brent.Lloyd@austintexas.gov>; "Scallon, Susan" <Susan.Scallon@austintexas.gov>; "McDonald, John" <John.McDonald@austintexas.gov>

Hi Lynn:

Sorry for my delay. I have reviewed the information you provided regarding my decision to approve grandfathering of the property located at 3704 Mt Bonnell Drive under Chapter 245 of the Texas Local Government Code. After reviewing your information, the application submitted by Mr. Irion, discussing this matter further with my Staff and consulting with the City Law Department, I have decided not to overturn my previous decision. There is no administrative appeal of my determination on grandfathering claims, as stated previously by Mr. Lloyd. Your zoning interpretation appeal before the Board of Adjustment may proceed; however, it will not affect the property at 3704 Mt. Bonnell Drive because the FAR limitations under the McMansion ordinance were not in effect in the 1970s.

Greg

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**From:** S Lynn Hill [mailto:s-lynn-hill@sbcglobal.net]

**Sent:** Wednesday, October 26, 2011 12:59 AM

**To:** Guernsey, Greg

**Cc:** John Deigh; Lloyd, Brent; Scallon, Susan

**Subject:** What body will hear our appeal of your administrative decision to approve the HB 1704 Grandfathering claim for 3704 Bonnell Drive ?

Hello Greg,

We think that you must have decided to deny our appeal because we have not had a response from you, and so we must ask you to tell us what body will hear our appeal. We are assuming that there is additional paperwork that needs to be filed, and probably a fee to pay, and that the deadline for doing so is Thursday November the 3rd - the 20th day after your October 14 administrative decision to approve the HB 1704 grandfathering application for 3704 Bonnell Drive .

Please let us have your response as soon as possible.

Regards,

Lynn Hill  
3701 Mount Bonnell Road  
371-1254 (home)

Exhibit Ex 27

Exhibit Ex 28

Fri, October 14, 2011 4:04:21 PM

FW: 3407 Bonnell Dr 2011-077103BP

From: "Lloyd, Brent" <Brent.Lloyd@austintexas.gov>

[View Contact](#)

To: S Lynn Hill <s-lynn-hill@sbcglobal.net>

3 Files Download All

1768\_001.pdf (1586KB); FW: 3407 Bonnell Dr 2011-077103BP.eml (2396KB); Clark.Guernsey.ltr.10.12.pdf (1789KB)

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Lynn -

Per our discussion, I am writing to follow-up on the 3 items:

First, attached please find the grandfathering application approved by staff earlier today. The blue notations at the top reflect staff's determination that the applicant is subject to:

- "1979 A Residence" requirements, which are an older set of single-family development regulations
- Any applicable provisions of McMansion, such as height or tent, except for FAR, gross floor area, etc.
- Current code with regard to setbacks and other provisions that don't effect building size, impervious cover, etc.

Feel free to call Susan Scallon, the lead staff person on grandfathering claims, if you have any questions regarding the determination. Her number is 974-2659.

Second, attached is the letter submitted by the applicant's attorney asserting his grandfathering claim. Staff agrees with the applicant that the project is grandfathered out of the key provisions of McMansion at issue in your appeal. However, the hearing on your appeal will remain posted because the Director made an interpretation of the attic exemption, and you have the right to challenge that interpretation whether or not it will directly impact this project.

Should you decide to withdraw your appeal, please notify staff ASAP. The meeting is being specially scheduled and will require extra time for staff and the boardmembers.

Finally, here is a link to the state grandfathering statute, which is sometimes referred to as "Chapter 245" (its statutory code chapter) or 1704 (the original bill number).

<http://www.statutes.legis.state.tx.us/Docs/LG/pdf/LG.245.pdf>

Thanks,

**Brent D. Lloyd**

Assistant City Attorney

(512) 974-2974

Exhibit Ex 28

Exhibit Ex 29

Exhibit D

PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION

(Chapter 245, Texas Local Government Code)

(This completed form must accompany all subdivision and site plan applications.)

FOR DEPARTMENTAL USE ONLY

File # Assigned: 201107710386P Date Filed: 8/26/2011 *Came to Chapter 245 on 10/12/2011*

Original Application Date: 6/18/1979\* Signature: [Signature] Date: 10/14/2011

Comments: \*1977 A residence requirements: Current code for height maximum, insufficient information to establish Chapter 245 rights (except FAR) cannot code set back

Proposed Project Name: Single Family Residential Construction

Address / Location: 3704 Bonnell Drive

Legal Description: Lot 1, Block E, Mount Bonnell Terrace Section 3

A. ☐ The proposed application is for a New Project and is submitted under regulations currently in effect.

NOTE: If A is checked above, proceed to signature block below.

B. ☐ The proposed application is for an ongoing project not requesting House Bill 1704 consideration. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. ☐ The proposed application is for a project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: \_\_\_\_\_

D. ☐ The proposed application is for a project requesting review under a specific agreement, not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: \_\_\_\_\_

E. ☒ Original Application Filing Date: June 18, 1979 File #: C8f-79-57

The proposed application is submitted as a Project in Progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state law. The determination will be based on information submitted on and with this form.

The following information is required for Chapter 245 Review:

Attach supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals. Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which Chapter 245 vesting is claimed.

Project Application History	File #	Application Date	Approval Date
Annexation/zoning (if applicable to history)	_____	_____	_____
Preliminary Subdivision	_____	_____	_____
Final Subdivision Plat	<u>C8f-79-57</u>	<u>June 18, 1979</u>	<u>August 9, 1979</u>
Site Plan / Devel. Permit	_____	_____	_____

Proposed Project Application (check one): Preliminary Subdivision \_\_\_\_\_ Final Plat \_\_\_\_\_ Bldg. Permit X

Proposed Project Land Use: Specify acreage in each of the following land use categories:

Single Family / Duplex X Townhouse / Condo / Multi-family \_\_\_\_\_ Office \_\_\_\_\_

Commercial \_\_\_\_\_ Industrial / R&D \_\_\_\_\_ Other (Specify) \_\_\_\_\_

Total acreage: .262 Watershed Dry Cree/Lake Austin Watershed Classification Water Supply Suburban

This proposed project application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls, and regulations to protect critical/significant recharge features.

Signature - Property Owner or Agent [Signature] Date: 10/12/11

Printed Name Terrence L. Irion tirion@tirionlaw.com Phone / Fax (512) 347-9977; (512) 306-8903

Form Date 5/06/2005

Exhibit Ex 29

Exhibit Ex 30

**LAW OFFICE OF TERRENCE L. IRION**

1250 S. Capital of Texas Highway  
3 Cielo Center, Suite 601  
Austin, Texas 78746

**Terrence L. Irion**  
Attorney at Law  
(512) 347-9977  
(512) 306-8903-FAX  
tirion@tirionlaw.com

October 12, 2011

VIA EMAIL: greg.guernsey@austintexas.gov

Mr. Greg Guernsey  
Director  
Planning and Development  
Review Department  
City of Austin  
505 Barton Springs Road  
Austin, Texas 78704

Re: 3704 Bonnell Drive, Austin, TX; Lot 1, Block E, Mount Bonnell Terrace Section 3

Dear Mr. Guernsey:

Attached please find a 1704 Project Application, which is being filed with the Intake Office today by the owner of the above referenced Property, Bill Clark, and in connection with the building permit previously issued for a new home, single family construction on this lot.

As you know after the building permit was issued to Mr. Clark and before construction could commence, an appeal was filed by a neighbor, Lynn Hill, challenging the Building Official's interpretation that the home met the area requirements under the "McMansion" Ordinance's exempt attic space provisions.

Based upon the timing of the challenge to your determination of the compliance with the applicable "McMansion" Ordinance rules, my client, Mr. Clark, was advised that a hold was being placed on his building permit and he would not be able to proceed with construction until the Board of Adjustment had heard the appeal and affirmed your decision as Building Official to issue the permit.

The hearing could not be scheduled at the regular September Board of Adjustment meeting because the agenda was full. For some inexplicable reason, it was not scheduled on the regular October Board of Adjustment meeting on October 10, 2011 and it is my understanding it has been tentatively set for October 27, 2011.

We believe the hearing should be canceled and the hold lifted on the building permit immediately because issuance of the permit is exempt from the zoning performance standard requirements of the "McMansion" Ordinance originally adopted in February of 2006 pursuant to the statutory vested rights provisions of Chapter 245, Local Gov't. Code.

Exhibit Ex 30



The proposed home construction on Mr. Clark's lot is the original vertical construction on the lot following its platting in 1979. The building permit in question is the last permit in the series of required permits to complete the Mount Bonnell Terrace Section 3 project with respect to Lot 1, Block E.

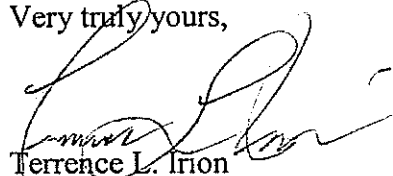
Under Chapter 245, Local Gov't. Code, only the rules, regulations, ordinances and requirements in effect on the date the first permit in the series of required permits to initiate, continue or complete the project are to be the basis for the issuance of all required permits.

Section 245.004(2) exempts zoning regulations from the requirements of the vested rights statute, provided they "do not affect...lot coverage or building size...". It has been generally accepted by the City that the "McMansion" Ordinance is an ordinance designed to regulate and limit the mass of building structure placed on a lot and it affects directly lot coverage and building size. The "McMansion" Ordinance is an ordinance requirement adopted in 2006 after the initiation of the Mount Bonnell Terrace Section 3 plat project and is therefore not applicable to the permitting of a single family residential structure on the subject lot. The proposed use as a single family residence is a permitted land use under the current zoning on Lot 1, Block E of this subdivision project and, accordingly, the permit was properly issued and is not subject to challenge for non-compliance with the "McMansion" Ordinance which is not applicable to this project.

Your immediate attention to this matter is requested as the public notice will be sent out in the next few days for the scheduled hearing later this month unless the appeal is ruled out of order as inapplicable to the Mount Bonnell Terrace Section 3 plat project.

Thank you for your prompt attention to this matter.

Very truly yours,



Terrence L. Irion

TLI:lm

Cc: Don Birkner  
John McDonald  
Susan Walker  
Bill Clark

Exhibit Ex30 p.2

**Exhibit D**  
**PROJECT APPLICATION H.B. 1704/Chapter 245 DETERMINATION**  
**(Chapter 245, Texas Local Government Code)**  
*(This completed form must accompany all subdivision and site plan applications.)*

FOR DEPARTMENTAL USE ONLY

File # Assigned: \_\_\_\_\_ Date Filed: \_\_\_\_\_

Original Application Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Comments:

\_\_\_\_\_ Insufficient Information to establish Chapter 245 rights.

Proposed Project Name: Single Family Residential Construction

Address / Location: 3704 Bonnell Drive

Legal Description: Lot 1, Block E, Mount Bonnell Terrace Section 3

A. ☐ The proposed application is for a New Project and is submitted under regulations currently in effect.

**NOTE: If A is checked above, proceed to signature block below.**

B. ☐ The proposed application is for an ongoing project not requesting House Bill 1704 consideration. The choice of this option does not constitute a waiver of any rights under Chapter 245.

C. ☐ The proposed application is for a project requesting review under regulations other than those currently in effect, but not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: \_\_\_\_\_

D. ☐ The proposed application is for a project requesting review under a specific agreement, not on the basis of House Bill 1704. All appropriate supporting documentation must be attached to this request. Provide a brief description of the basis for this request here: \_\_\_\_\_

E. ☐ Original Application Filing Date: June 18, 1979 File #: C8f-79-57

The proposed application is submitted as a Project in Progress under Chapter 245 (HB 1704) and should be reviewed under the applicable regulations pursuant to state law. The determination will be based on information submitted on and with this form.

**The following information is required for Chapter 245 Review:**

Attach supporting documentation, including a summary letter with a complete project history from the Original Application to the present, with a copy of the original subdivision or site plan approval by the City and subsequent application approvals. Specify project information for date claiming 1704 grandfathering; include a copy of the relevant permit upon which Chapter 245 vesting is claimed.

Project Application History	File #	Application Date	Approval Date
Annexation/zoning (if applicable to history)	_____	_____	_____
Preliminary Subdivision	_____	_____	_____
Final Subdivision Plat	<u>C8f-79-57</u>	<u>June 18, 1979</u>	<u>August 9, 1979</u>
Site Plan / Devel. Permit	_____	_____	_____

Proposed Project Application (check one): Preliminary Subdivision \_\_\_\_\_ Final Plat \_\_\_\_\_ Bldg. Permit X

Proposed Project Land Use: Specify acreage in each of the following land use categories:

Single Family / Duplex X Townhouse / Condo / Multi-family \_\_\_\_\_ Office \_\_\_\_\_

Commercial \_\_\_\_\_ Industrial / R&D \_\_\_\_\_ Other (Specify) \_\_\_\_\_

Total acreage: .262 Watershed Dry Cree/Lake Austin Watershed Classification Water Supply Suburban

This proposed project application will still be reviewed under those rules and regulations that are not subject to Chapter 245, such as those to prevent imminent destruction of property or injury to persons, including regulations dealing with stormwater detention, temporary erosion and sedimentation controls and regulations to protect critical/significant recharge features.

Signature - Property Owner or Agent [Signature] Date: 10/12/11

Printed Name Terrence L. Irion tirion@tirionlaw.com Phone / Fax (512) 347-9977; (512) 306-8903

Form Date 5/06/2005

Exhibit Ex30 p.3

FOR EDITIONS SEE BOOK 6661, PAGE 1502, ALSO RECORDS  
TRAVIS COUNTY, TEXAS

DORIS EMBERSHAW, COUNTY CLERK,  
TRAVIS COUNTY, TEXAS  
By *John Davol* DEPUTY

E.R. BARROW  
VOL. 838 PG. 291

ALBERT SILSBEE SURVEY NO. 1

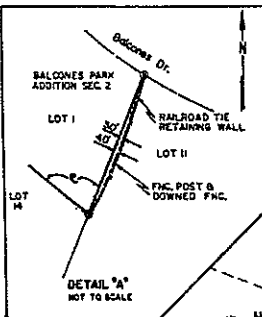


Vol. 98 Page 173  
Aug 9 1979 REC'D CIVIL & CO. 11:40 AM

2-103-1403 Vol. 98 Page 173

**CURVE DATA**

1	2	3	4	5
18°12'	18°12'	17°42'	17°42'	17°32'
159.72'	249.72'	371.12'	321.12'	15.12'
63.44'	79.32'	114.85'	99.32'	25.74'
61.18'	78.99'	114.15'	98.81'	22.74'
31.89'	40.00'	57.79'	50.00'	17.35'
6	7	8	9	10
280°00'	50°00'	37°28'	64°20'	64°20'
50.00'	19.89'	15.09'	322.06'	282.04'
244.35'	17.64'	25.82'	372.85'	428.99'
64.28'	16.89'	21.85'	333.37'	406.81'
9.32'	17.24'	208.84'	240.29'	
11	12	13	14	15
84°12'	37°18'	37°18'	80°58'	31°12'
15.14'	119.60'	289.60'	20.00'	30.00'
21.21'	211.78'	178.15'	38.24'	27.23'
20.30'	207.93'	175.40'	25.97'	26.90'
13.68'	109.84'	92.74'	17.07'	13.94'
16	17	18	19	20
34°50'	19°02'	01°53'	41°53'	37°36'
50.00'	425.52'	1793.80'	550.26'	616.46'
30.48'	141.36'	59.06'	433.48'	189.36'
29.99'	140.71'	59.06'	431.98'	188.61'
15.72'	71.34'	29.55'	225.89'	93.43'



The 100-year flood plain is contained within the drainage easements as shown. The following minimum finished slab elevations are hereby set for the following lots:

LOT NO.	SLAB ELEVATION
Lot 14, Block E	658.0
Lot 19, Block D	668.0
Lot 18, Block D	646.0
Lot 17, Block D	646.0
Lot 16, Block D	646.0



**NOTES:**

- This subdivision is subject to a subsurface sanitary sewer easement (cross-town tunnel) as described and recorded in Volume 6647, Page 274 of the Travis County Deed Records, and subsequent or correcting instrument. The latter or latest recorded instrument shall govern the location of such easement.
- Homeowner's deed restrictions for this subdivision are recorded in Volume 6661, Page 1502.

JOHN DAVOL et al.  
VOL. 6568 PG. 2316

- LEGEND**
- IRON ROD SET
  - IRON ROD FOUND
  - IRON PIPE FOUND
  - CONCRETE MONUMENT SET
  - CONCRETE MONUMENT FOUND

**DRIVEWAY ACCESS NOTE:**  
DRIVEWAY ACCESS FOR LOTS 8 & 7 BLK "E" ARE RESTRICTED TO ALTA COURT. DRIVEWAY ACCESS FOR LOTS 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 ARE RESTRICTED TO BONNELL DRIVE.



**ESPEY, HUSTON & ASSOCIATES, INC.**  
Engineering & Environmental Consultants

**MOUNT BONNELL  
TERRACE  
section 3**

SHT. 2 OF 2

Exhibit Ex 30 p. 4

THE STATE OF TEXAS  
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

THAT K.M.S. VENTURES, INC., TRUSTEE, a corporation organized and existing under the laws of the State of Delaware, and having its home office in the City of Austin, Travis County, Texas, being the owner of 14.18 acres of land out of the Albert Silabee Survey No. 1 situated in Travis County, Texas, said 14.18 acres being out of and a part of that certain 21.716 acre tract of land as conveyed by deed from Mt. Bonnell Terrace, Inc. to K.M.S. Ventures, Inc., Trustee, and recorded in Volume 6151, Page 911 of the Deed Records of Travis County, Texas; the said K.M.S. Ventures, Inc., Trustee acting herein by and through its President, Gregory A. Kornetelsky jointly with Charles S. Teeple IV and his wife Mary M. Teeple, both being individuals of residence in the City of Austin, Travis County, Texas, being the owners of 1.81 acres of land out of the Albert Silabee Survey No. 1 and the C.J. Struther Survey No. 610 situated in Travis County, Texas; said 1.81 acres being a 1.158 acre tract of land covered by deed recorded in Volume 6151, Page 911 and a 0.65 acre tract of land conveyed by deed recorded in Volume 6151, Page 948 of the Deed Records of Travis County, Texas; do hereby jointly subdivide 16.00 acres in accordance with this plat and do hereby adopt this plat as their subdivision to be known as "MT. BONNELL TERRACE, SECTION 3," and do hereby dedicate to the public all streets and easements as shown hereon;

IN WITNESS WHEREOF, K.M.S. VENTURES, INC., TRUSTEE has caused these presents to be executed by its President this the 19th day of August, 1979 A.D.

ATTEST:  
K.M.S. VENTURES, INC., TRUSTEE  
Robert D. Fowler  
Secretary  
ROBERT D. FOWLER  
Gregory A. Kornetelsky  
President  
Gregory A. Kornetelsky

IN WITNESS WHEREOF, Charles S. Teeple, IV has caused these presents to be executed this the 19th day of August, 1979 A.D.

Charles S. Teeple, IV  
Charles S. Teeple, IV

IN WITNESS WHEREOF, Mary M. Teeple has caused these presents to be executed this the 19th day of August, 1979 A.D.

Mary M. Teeple  
Mary M. Teeple

THE STATE OF TEXAS  
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, on this day personally appeared Gregory A. Kornetelsky of K.M.S. Ventures, Inc. known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Alan F. Ethernedge  
Notary Public in and for Travis County, Texas  
ALAN F. ETHERNEDGE

THE STATE OF TEXAS  
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, a notary public in and for Travis County, Texas, on this day personally appeared Charles S. Teeple, IV known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity herein stated.

Alan F. Ethernedge  
Notary Public in and for Travis County, Texas  
ALAN F. ETHERNEDGE

THE STATE OF TEXAS  
COUNTY OF TRAVIS

KNOW ALL MEN BY THESE PRESENTS:

BEFORE ME, the undersigned authority, a notary public in and for Travis County, Texas, on this day personally appeared Mary M. Teeple known to me to be the person whose name is subscribed to the foregoing instrument of writing, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity herein stated.

Alan F. Ethernedge  
Notary Public in and for Travis County, Texas  
ALAN F. ETHERNEDGE

APPROVED FOR ACCEPTANCE:  
August 6, 1979  
DATE  
Richard Lillis  
RICHARD R. LILLIS, DIRECTOR OF PLANNING

ACCEPTED AND AUTHORIZED FOR RECORD BY THE PLANNING COMMISSION, CITY OF AUSTIN, TEXAS THIS THE 7th DAY OF August, A.D., 1979.

Mary E. Schumaker  
SECRETARY  
MARY E. SCHUMAKER  
Miguel A. Lugo  
CHAIRMAN  
MIGUEL A. LUGO  
FILED FOR RECORD AT 3:55 O'CLOCK P.M., THIS THE 9th DAY OF August, A.D., 1979.

Linda Klea-Dier  
DEPUTY  
LINDA KLEA-DIER  
Doris Shropshire  
DORIS SHROPSHIRE, CLERK, COUNTY COURT  
TRAVIS COUNTY, TEXAS

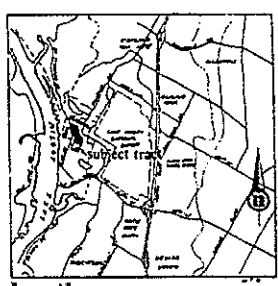
STATE OF TEXAS  
COUNTY OF TRAVIS

I, DORIS SHROPSHIRE, CLERK OF THE COUNTY COURT, WITHIN AND FOR THE COUNTY AND STATE AFORESAID, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 9th DAY OF August, A.D., 1979, AT 3:55 O'CLOCK P.M., AND DULY RECORDED ON THE 9th DAY OF August, A.D., 1979 IN THE 172nd VOLUME OF SAID COUNTY AND STATE IN PLAT BOOK 172 PAGE 172 TO 4:20 P.M.

WITNESS MY HAND AND SEAL OF THE COUNTY COURT OF SAID COUNTY, THE DATE LAST WRITTEN ABOVE.  
Linda Klea-Dier  
DEPUTY LINDA KLEA-DIER  
Doris Shropshire  
DORIS SHROPSHIRE, CLERK, COUNTY COURT  
TRAVIS COUNTY, TEXAS

I, Samir G. Hanna, a Registered Public Surveyor, Authorized under the Laws of the State of Texas to practice the profession of surveying, do hereby certify that this plat complies with Chapter 41 of the Austin City Code; is true and correct to the best of my knowledge; and was prepared from a survey made on the ground, under my direction and supervision.

Certified to this 19th day of July, A.D., 1978.  
SAMIR G. HANNA  
Samir G. Hanna  
Registered Public Surveyor  
No. 1870, State of Texas



location map  
SIDEWALK NOTE: No sidewalk shall be constructed within this subdivision.

**eh**

**ESPEY, HUSTON & ASSOCIATES, INC.**  
Engineering & Environmental Consultants

**MOUNT BONNELL  
TERRACE  
section 3**

SHEET 1 OF 2

Exhibit Ex 30 p. 5

Exhibit Ex 31

THE STATE OF TEXAS

X

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

ASS-9-79251- 2560

\* 9:00

ASS-9-79251- 6618

\* 3:00

2-08-2304

903  
3/2/04  
J. J. J.

THAT, KMS Ventures, Inc., Trustee, a corporation, as Owner of all Lot 1, Block A; Lots 1 + 2, Block B; Lot 1, Block C; of Section Two and Lots 1 through 14, Block E; Lots 1 through 10 and Lots 14 through 19, Block F of Section Three of Mt. Bonnell Terrace, a Subdivision in the City of Austin, Travis County, Texas, according to Plat of Mt. Bonnell Terrace, Section Two of record in Volume 78, Page 171 and Plat of Mt. Bonnell Terrace, Section Three of record in Volume 78, Page 172-173 both recording references to the Plat Records of Travis County, Texas, does hereby impress upon all of said lots (except those described in Paragraph 9 below) the following minimum restrictions and declare the same to be covenants running with the said land:

1. Uses of Property

- a. Each of said lots in Mt. Bonnell Terrace, Sections Two and Three, shall be used only for single unit resident dwellings.
- b. No horses, cattle, cows, goats, sheep, rabbits, reptiles or other animals, pigeons, pheasants, game birds, fowl or poultry shall be raised, kept or permitted upon said property or any part thereof, except that dogs and cats and other household pets may be kept provided they are not kept, bred or raised for commercial purpose.
- c. No trade, profession or commercial activity of any character shall be carried on upon any of said lots, nor shall anything be done thereon which may be or become a nuisance to the neighborhood.

2. Type of Buildings

- a. No residential building may be erected or maintained on any lot except one single-family dwelling with private appurtenant garage. An outbuilding not to exceed six hundred (600) square feet in floor space shall be permitted, provided that the main dwelling has been substantially completed and the plans are approved under paragraph 4a.
- b. No trailer, outhouse, garage, shed, tent or temporary buildings of any kind shall be erected or maintained on any of said lots prior to the construction of the principal dwelling; provided, however, that this restriction shall not apply to any temporary building or improvement used by KMS Ventures, Inc., Trustee, its successors or assigns, in the development, subdivision or sale of said lots or improvements thereon.

3. Retention of Easements, Set Backs, Side and Rear Lines

Easements, Set Backs, Side and Rear Lines are reserved as indicated on the recorded plats and according to the City of Austin Zoning Ordinance. These minimum restrictions may be adjusted by the Architectural Committee.

4. Architectural Control and Approval of Plans

- a. For the purpose of insuring the development of the subdivision as a residential area of high standards, no building, fence, wall or other structure shall be erected, constructed, altered, or maintained upon any portion of said lots unless the complete plans, specifications and site plan therefor shall have been first approved in writing by the Architectural Committee as described in Paragraph 4b hereof. No house or other structure shall remain unfinished for more than two years after the same has been commenced. It is understood that the Architectural Committee may withhold its consent and approval of any plans or specifications solely on the basis of such Committee's dissatisfaction with the style, design, size, building materials, appearance, height, or location on the lot of the proposed structure or for any other reason contrary to the general scheme of development for the subdivision. Some structures may be limited to one story in height or to a specific location on the lot to preserve lake or city views from other lots. Notice of such disapproval by the Architectural Committee must be delivered in writing by certified letter within twenty (20) working days after plans have been submitted to the Committee. If notice of disapproval is given it must give the reasons for disapproval, but need not contain suggestions as to what is necessary for approval.

Exhibit Ex 31

b. The Architectural Committee shall be composed of Gregory A. Kozmetaky, Charles S. Teeple, Harry M. Whittington, R. Gonnell Roesser, and Roland Roesser, Jr., but RMS Ventures, Inc., its successors or assigns, shall have the continuing right and power to remove and replace any members of the Committee, and to fill any vacancies in the membership of such Committee. The address of the Committee shall be RMS Ventures, Inc., 902 Vaughn Building, Austin, Texas 78701. Any substitution, replacement or appointment of members shall be evidenced by a written instrument executed by the undersigned, its successors or assigns, and filed with the County Clerk of Travis County, Texas. The decision of any three members of the Committee shall be binding upon the Committee.

2-08-2005

5. Storage and Off- Street Parking

- a. No boats, trucks, trailers or other vehicles shall be stored or kept for the purpose of repair on any lots or drives, except in enclosed garages or storage facilities protected from the view of the public or other residents of Mt. Bonnell Terrace, Sections Two and Three.
- b. No outside clothesline shall be placed on any lot unless it is screened from the view of the public and other residents of Mt. Bonnell Terrace, Sections Two and Three.
- c. No building material shall be placed or stored on any lot except during construction.
- d. The owner of each lot shall provide off-street parking on such lot for all of the owner's vehicles owned which will be regularly parked at the owner's residence.

6. Signs

- a. No signs denoting "For Sale" or "For Rent" shall be placed on any lot or on any structure in Mt. Bonnell Terrace, Sections Two and Three without the prior written consent of the Architectural Committee. No other type of sign or advertising shall ever be placed on any lot or upon any structure in the Mt. Bonnell Terrace, Sections Two and Three. A sign may be maintained by RMS Ventures, Inc., Trustee, the developer, advertising the subdivision and assisting in the sale of lots or improvements thereon.

7. Minimum Lot Size

- a. No resubdivision of the said lots in Mt. Bonnell Terrace, Sections Two and Three, shall be made in order to create an additional lot or plot for residence purposes: however, nothing herein shall prevent the modification of boundaries of original lots if first approved by the Architectural Committee.

8. Sales and Leases

- a. Each owner for himself, his heirs and assigns, by acceptance of a deed to any of the said lots in Mt. Bonnell Terrace, Sections Two and Three, covenants that any agreement to sell, lease or rent any lot (and all improvements thereon) shall be in writing and shall specifically be subject to the prior right of RMS Ventures, Inc., Trustee, its successors and assigns, to purchase, lease or rent upon the same terms or conditions acceptable to the owner of the lot and made to such owner in a written bona fide proposal. Each such bona fide written proposal which is acceptable to an owner desiring to sell or lease shall be forwarded to RMS Ventures, Inc., at 902 Vaughn Building, Austin, Texas. If, within seven days following receipt of such proposal, RMS Ventures, Inc., Trustee, does not elect to purchase or lease in accordance with such written proposal, the owner of said lot may proceed to consummate the sale or lease contained in such written proposal. If, RMS Ventures, Inc., Trustee, its successors and assigns, within such seven day period elects to exercise its option to purchase or lease, written notice shall be delivered to the owner of the lot advising that RMS Ventures, Inc., Trustee, has assumed all of the obligations imposed upon the purchaser or lessee under such written proposal.

6661 1503

Exhibit Ex 3 p. 2

9. Exclusion of Properties

None of the restrictions herein, except for Paragraph 10, shall be applicable in any way or binding upon the owner of Lots 11, 12, and 13, Block D, Section Three.

2-08-2306

10. City of Austin Requirements

- a. No fill on any lot shall exceed a maximum of three feet of depth. Except for structural excavation, no cut on any lot shall be greater than six feet.
- b. All building foundations on slopes of fifteen percent and over and on fill placed upon slopes fifteen percent and over must utilize design and construction practices certified by a registered professional engineer qualified to practice in this field and such designs shall be placed on file with the City Engineering Department.
- c. Every lot shall be reasonably accessible by a vehicle from the roadway to the probable building site. For a minimum travel distance of twenty-five (25) feet from the roadway edge the driveway grade may exceed fourteen (14) percent only with specific approval of surface and geometric design proposals by the director of the engineering department or his designee.
- d. The restrictions of Paragraph 10 of this agreement are derived from the City of Austin, Texas, Ordinance No. 780105-C. In the event that said ordinance becomes less restrictive concerning building foundations, building sites and driveways this covenant shall be amended to follow such less restrictive ordinance, but in the event that such possible ordinance changes become more restrictive the restrictions of this covenant shall remain in effect. This agreement may be modified, amended or terminated only by a majority vote of a quorum of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and joined by the then owner or 51% of owners of the above described property at the time of such modification, amendment or termination.
- e. If any persons, person, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant specified in Paragraph 10 only, it shall be lawful for the City of Austin, a municipal corporation, its successor and assigns, to prosecute proceedings at law, or in equity, against said persons or entity from violating or attempting to violate such agreement or covenant.


11. Enforceability and Severability

- a. KMS Ventures, Inc., Trustee, its successors and assigns, shall have the right to enforce the performance of these restrictions and shall have the right, in addition to all legal and equitable remedies, to seek injunctive relief to prevent a breach or enforce the observance of same. It is understood, however, that invalidation of any restriction herein contained shall not in any way affect the validity of all other such restrictions.

Executed this 30 day of July, 1979.

KMS Ventures, Inc., Trustee

(NO SEAL)

  
Gregory A. Koznetsky  
President

Attest:

  
Robert D. Fowler  
Secretary

6661 1504

Exhibit Ex 31 p. 3

THE STATE OF TEXAS X  
X  
COUNTY OF TRAVIS X

2-08-2307

BEFORE ME, the undersigned authority, on this day personally appeared Gregory A. Koznetsky, President of RMS Ventures, Inc., a corporation organized and existing under the laws of the State of Delaware, having its home office in Austin, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30 day of July, 1979.

NOTARY SEAL

Paula A. Kirchner  
Paula A. Kirchner  
Notary Public in and for Travis County,  
Texas  
My commission expires 11-08-80.

STATE OF TEXAS  
COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on the  
date and at the time stamped hereon by me; and was duly  
RECORDED, in the Volume and Page of the named RECORDS  
of Travis County, Texas, as Stamped hereon by me, on

AUG 9 1979



Baris Shapovalov  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED  
AUG 9 4 19 PM '79  
Baris Shapovalov  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

6661 1505

Exhibit Ex 31 p. 4



Exhibit Ex 32

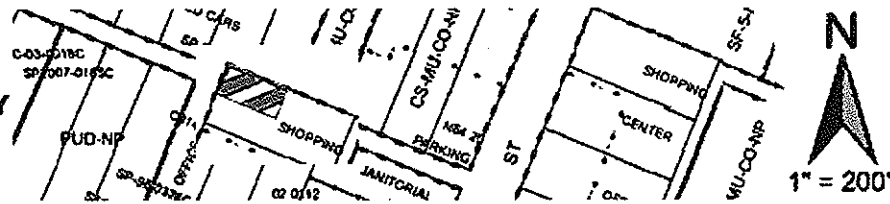


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**SUBJECT TRACT**
**ZONING BOUNDARY**
**PENDING CASE**

[Home](#) :: [Zoning Information](#) :: [FAQ](#) :: [Zoning Districts](#) :: [Permitted Use Chart](#)

## ZONING

### What is zoning?

Zoning is the division of land within a jurisdiction into separate districts within which uses are permitted, prohibited or permitted with conditions. Zoning establishes site regulations, such as building heights, bulk (density/floor-to-area ratio), setbacks, building coverage, impervious cover, etc. Zoning is a power granted to municipalities by the State in order to promote public health, safety, morals, or general welfare, and to protect and preserve places and areas of historical, cultural, or architectural importance and significance.

Zoning is usually the first step in the City of Austin's development process. A Neighborhood Plan Amendment may also be required if the property is located within an adopted Neighborhood Plan area and a change to the adopted plan and/or the property's future land use map (FLUM) designation is necessary, a Neighborhood Plan Amendment may be processed concurrently with a request for a zoning change. Prior to the construction or occupation of a new or expanded land use/business on a site, other steps including subdivision, site plan, or building permit and inspection, may be required. Contact the Development Assistance Center for additional information.



Austin City Connection - The Official Web site of the City of Austin

Contact Us: Send Email or 512-974-7668.

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P.O. Box 1088, Austin, TX 78767 (512) 974-2000

Exhibit Ex 32

Exhibit Ex 33

# Land Development Code - Relevant Definitions

## CHAPTER 25-1. GENERAL REQUIREMENTS AND PROCEDURES.

### ARTICLE 2. DEFINITIONS; MEASUREMENTS.

#### § 25-1-21 DEFINITIONS.

Unless a different definition is expressly provided, in this title:

[Definitions relevant to our Board of Adjustment Interpretation Appeal are shown.]

(37) ENCLOSED means a roofed or covered space fully surrounded by walls, including windows, doors, and similar openings or architectural features, or an open space of less than 100 square feet fully surrounded by a building or walls exceeding eight feet in height.

(39) FLOOR AREA RATIO means the ratio of gross floor area to gross site area.

(43) GROSS FLOOR AREA means the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls. The term includes loading docks and excludes atria airspace, parking facilities, driveways, and enclosed loading berths and off-street maneuvering areas.

[Section 3.3 of the McMansion Ordinance in attached Exhibit Ex<sup>34</sup> modifies the above definition of Gross Floor when it is used for purposes of that Ordinance.]

(44) GROSS SITE AREA means the total site area.

Source: Sections 13-1-22, 13-2-1, 13-2-401, 13-2-435, and 13-5-61; Ord. 990225-70; Ord. 990805-46; Ord. 000309-39; Ord. 000406-85; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 041202-16.

Exhibit Ex 33

Exhibit Ex 34

McMansions Ordinance - Relevant Sections

## **SUBCHAPTER F: RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS.**

### **ARTICLE 1: GENERAL PROVISIONS.**

#### **§ 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.

*Source: Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022.*

### **ARTICLE 2: DEVELOPMENT STANDARDS.**

#### **§ 2.1. MAXIMUM DEVELOPMENT PERMITTED.**

The maximum amount of development permitted on a property subject to this Subchapter is limited to the greater of 0.4 to 1.0 floor-to-area ratio or 2,300 square feet of gross floor area, as defined in Section 3.3. Floor-to-area ratio shall be measured using gross floor area as defined in Section 3.3, except that the lot area of a flag lot is calculated consistent with the requirements of Section 25-1-22 (*Measurements*).

*Source: Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022; Ord. 20080618-093.*

### **ARTICLE 3: DEFINITIONS AND MEASUREMENT.**

#### **§ 3.1. BUILDABLE AREA.**

In this Subchapter, BUILDABLE AREA means the area in which development subject to this Subchapter may occur, and which is defined by the side and rear setback planes required by this Subchapter, together with the area defined by the front, side, and rear yard setbacks and the maximum height limit.

*Source: Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022.*

Exhibit Ex 34

### § 3.3. GROSS FLOOR AREA.

In this Subchapter, GROSS FLOOR AREA has the meaning assigned by Section 25-1-21 (*Definitions*), with the following modifications:

**3.3.1.** In this Subchapter, GROSS FLOOR AREA means all enclosed space, regardless of its dimensions, that is not exempted under subsections 3.3.2, 3.3.3, or 3.3.4.

**3.3.2.** [Exempts parking areas and structures that meet specified conditions] from gross floor area for purposes of this Subchapter:

**3.3.3.** Porches, basements, and attics that meet [certain specified conditions] shall be excluded from the calculation of gross floor area:

**3.3.4.** An enclosed area shall be excluded from the calculation of gross floor area if it is five feet or less in height. For purposes of this subsection:

A. Area is measured on the outside surface of the exterior walls; and

B. Height is measured from the finished floor elevation, up to either:

1. the underside of the roof rafters; or

2. the bottom of the top chord of the roof truss, but not to collar ties, ceiling joists, or any type of furred-down ceiling.

*Source: Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022; Ord. 20080618-093.*

Exhibit Ex 34 p. 2

Exhibit Ex 35

## Relevant Sections

### LOCAL GOVERNMENT CODE

#### TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

##### SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

##### CHAPTER 211. MUNICIPAL ZONING AUTHORITY

##### SUBCHAPTER A. GENERAL ZONING REGULATIONS

#### Sec. 211.003. ZONING REGULATIONS GENERALLY.

(a) The governing body of a municipality may regulate:

- (1) the height, number of stories, and size of buildings and other structures;
- (2) the percentage of a lot that may be occupied;
- (3) the size of yards, courts, and other open spaces;
- (4) population density;
- (5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- (6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 731, Sec. 2, eff. Sept. 1, 2003.

#### Sec. 211.009. AUTHORITY OF BOARD.

(a) The board of adjustment may:

- (1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;
- (2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;
- (3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

Exhibit Ex 35

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Sec. 211.010. APPEAL TO BOARD.

(a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) a person aggrieved by the decision;

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Exhibit Ex 35 p. 2

Exhibit Ex 36  
Relevant Sections  
LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED  
ACTIVITIES

SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE TYPE OF LOCAL  
GOVERNMENT

CHAPTER 245. ISSUANCE OF LOCAL PERMITS

Sec. 245.001. DEFINITIONS. In this chapter:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by: Acts 2005, 79th Leg., Ch. 6, Sec. 1, eff. April 27, 2005.

Sec. 245.002. UNIFORMITY OF REQUIREMENTS.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by: Acts 2005, 79th Leg., Ch. 6, Sec. 2, eff. April 27, 2005.

Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by Acts 2003, 78th Leg., ch. 646, Sec. 1.

Amended by: Acts 2005, 79th Leg., Ch. 31, Sec. 1, eff. September 1, 2005.

Exhibit Ex 36

# FAR CALCULATIONS FOR HOUSES WITHIN 300' OF SUBJECT LOT



FAR ≤ 30%



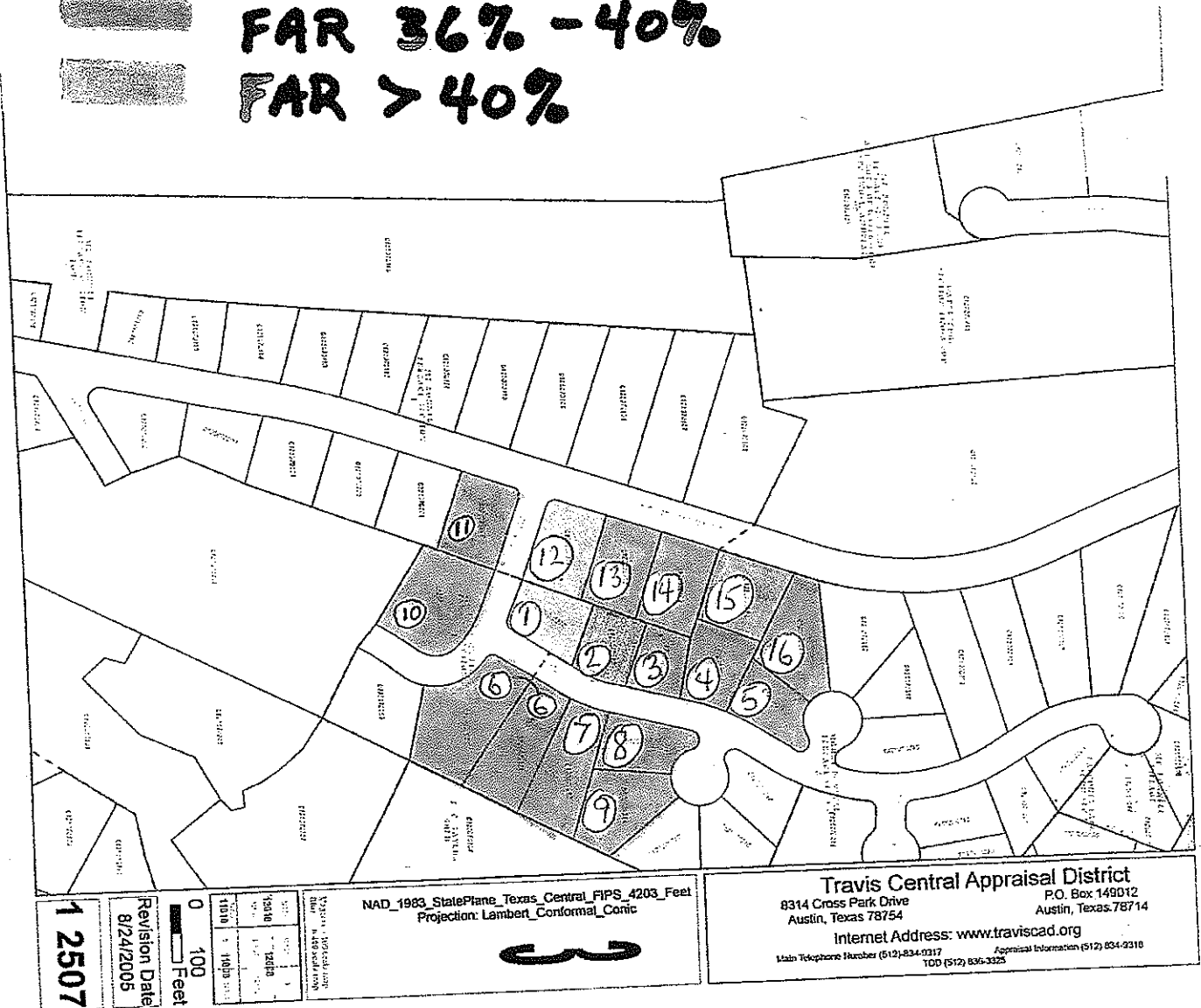
FAR 31%-35%



FAR 36%-40%



FAR > 40%



NAD\_1983\_StatePlane\_Texas\_Central\_FIPS\_4203\_Feet  
Projection: Lambert\_Conformal\_Conic

Travis Central Appraisal District

8314 Cross Park Drive  
Austin, Texas 78754

P.O. Box 149012  
Austin, Texas 78714

Internet Address: [www.traviscad.org](http://www.traviscad.org)

Main Telephone Number (512) 834-9317

Appraisal Information (512) 834-9318  
TDD (512) 835-3325

MAP



Address	Lot Area	FAR SF		Home size of	
		FAR	used	lot compared to other	proposed home compared to other homes
1 3609 Fall Trail	12999	33%	4,301	11% smaller	16% bigger
2 3704 Bonnell Dr*	11586	43%	5,007	18% bigger	83% bigger
3 3710 Bonnell Dr	9830	28%	2,735	17% smaller	23% bigger
4 3708 Bonnell Dr	13944	29%	4,066	7% smaller	47% bigger
5 3802 Bonnell Dr	12468	27%	3,414	75% smaller	34% smaller
6 3703 Bonnell Dr	45943	17%	7,626	41% smaller	46% bigger
7 3705 Bonnell Dr	19578	17%	3,418	12% smaller	43% bigger
8 3503 Bonnell Ct	13168	27%	3,510	33% smaller	26% bigger
9 3501 Bonnell Ct	17300	23%	3,987	52% smaller	6% bigger
10 3606 Fall Trail	24099	20%	4,735	25% smaller	18% bigger
11 3603 Mt Bonnell Rd	15549	27%	4,245	27% smaller	4% smaller
12 3605 Mt Bonnell Rd	15932	33%	5,207	26% smaller	86% bigger
13 3701 Mt Bonnell Rd	15577	17%	2,685	29% smaller	50% bigger
14 3703 Mt Bonnell Rd	16263	21%	3,343	29% smaller	20% smaller
15 3803 Mt Bonnell Rd	16392	38%	6,278	37% smaller	33% bigger
16 3603 Alta Ct	18331	21%	3,773		
Block E Mt Bonnell Terrace Sec 3					
3604 Alta Ct	21836	14%	3,060	47% smaller	64% bigger
3602 Alta Ct	13953	25%	3,438	17% smaller	46% bigger
3806 Bonnell Dr	16943	22%	3,756	32% smaller	33% bigger
3810 Bonnell Dr	27167	13%	3,398	57% smaller	47% bigger
Block D Mt Bonnell Terrace Sec 3					
3500 Bonnell Ct	15469	22%	3,459	25% smaller	45% bigger
3502 Bonnell Ct	17880	23%	4,034	35% smaller	24% bigger
3801 Bonnell Dr	12862	34%	4,383	10% smaller	14% bigger

this is the empty lot.

**Abbreviated Timeline regarding building on the lot – starting with KMS Ventures Inc., Trustees subdivision**

**6/18/1979:** KMS Ventures Inc., Trustees, submits application for final plat of Mount Bonnell Terrace Section 3 subdivision to CoA.

**8/9/1979:** Plat of subdivision recorded by Travis County Clerk

**4/23/1982:** KMS Ventures Inc., Trustees sells (empty) lot (3704 Bonnell Drive) to private owners

**12/29/86 and 6/30/1993:** ownership of the property (still empty lot) changes to other private owners

**12/31/2010:** Bill Clark purchases still empty lot

**4/13/2011 - 8/26/2011:** Bill Clark submits building plans that are denied by RDCC; then alternative plans that are approved by Greg Guernsey

**8/29/2011 - 9/14/2011:** Aggrieved parties file Notice of Appeal with PDRD and Appeal to BoA

**10/12/2011 - 10/14/2011:** Bill Clark's attorney files HB 1704/Chapter 245 project application which is approved by Greg Guernsey with grandfather date of 6/18/1979

40%. This plan, dated 6/11/2011, vaults the ceiling in the family room above 15 feet and continues to claim habitable attic exemption for bed 5/bath 4. On 6/28 Mr. McDonald again tells aggrieved parties that new alternative plan does not qualify for habitable attic exemption because bed 5/bath 4 are part of second floor, not part of an attic.

7/6/2011: RDCC votes to deny application to allow an increased FAR and says house is too large for the lot and incompatible with neighboring homes.

8/26/2011: Applicant submits alternative plan to PDRD. Plan is same as the one reviewed by Mr. McDonald on 6/28 except that a small balcony has been added outside bedroom 5/bathroom 4 and new windows were added to the master bath. As before, Foyer and Family room have 20 – 22 foot high ceilings and areas of these rooms are counted once. Habitable attic exemption is claimed for bedroom 5 / bathroom 4. PDRD accepts the applicant's FAR calculation and Greg Guernsey approves the application. These plans have a revision date of 7/21/2011.

8/29/2011 – 9/14/2011: Mr. McDonald tells aggrieved parties (on 8/29) that he reversed his prior position on the habitable attic exemption on the advice of his supervisor. Aggrieved parties file Notice of Appeal with Mr. McDonald on 8/31 and file paperwork for appeal of FAR calculation to BoA on 9/14.

10/12/2011: Applicant's attorney (Terrence Irion) submits application for HB 1704 / Chapter 245 project determination for Mr. Clark's plans to build a house at 3704 Bonnell Drive. Mr. Irion's cover letter tells Greg Guernsey that our FAR appeal to the BoA should be found out of order and the hold on the building permit for 3704 Bonnell Drive should be removed.

10/14/2011: Greg Guernsey approves the HB 1704 / Chapter 245 project application, applying a grandfather date of 6/18/1979. Decides that FAR provisions of McMansion ordinance do not apply to Mr. Clark's plans.

10/28/2011: Applicant submits revised plan for retaining wall to DAC and these are approved. Site Plan – Final Grade is revised so that height of retaining wall and grading of rear of lot comply with CoA cut and fill requirements. Building plans for proposed house are not changed – remain the same as in 8/26/2011 application approved by Greg Guernsey. The FAR calculations that we are appealing remain in the approved plans, though Greg Guernsey and Brent Lloyd say the plans are not subject to the FAR limitations of McMansion – due to the Chapter 245 grandfathering exemption.

11/2/2011: Applicant begins grading lot.

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11/2/2011: Applicant begins grading lot.

Tests to see whether Habitable Attic (HA) adds mass to structure

Applicant claims HA space is inside attic over one-story section of house (cross-hatched); rest of house is two-story house

Test 1. Visual Inspection: Looks like full two-story house, not part one-story

HA roof ridge is about:  
18" lower than main roof ridge  
18" higher than roof over BR 3

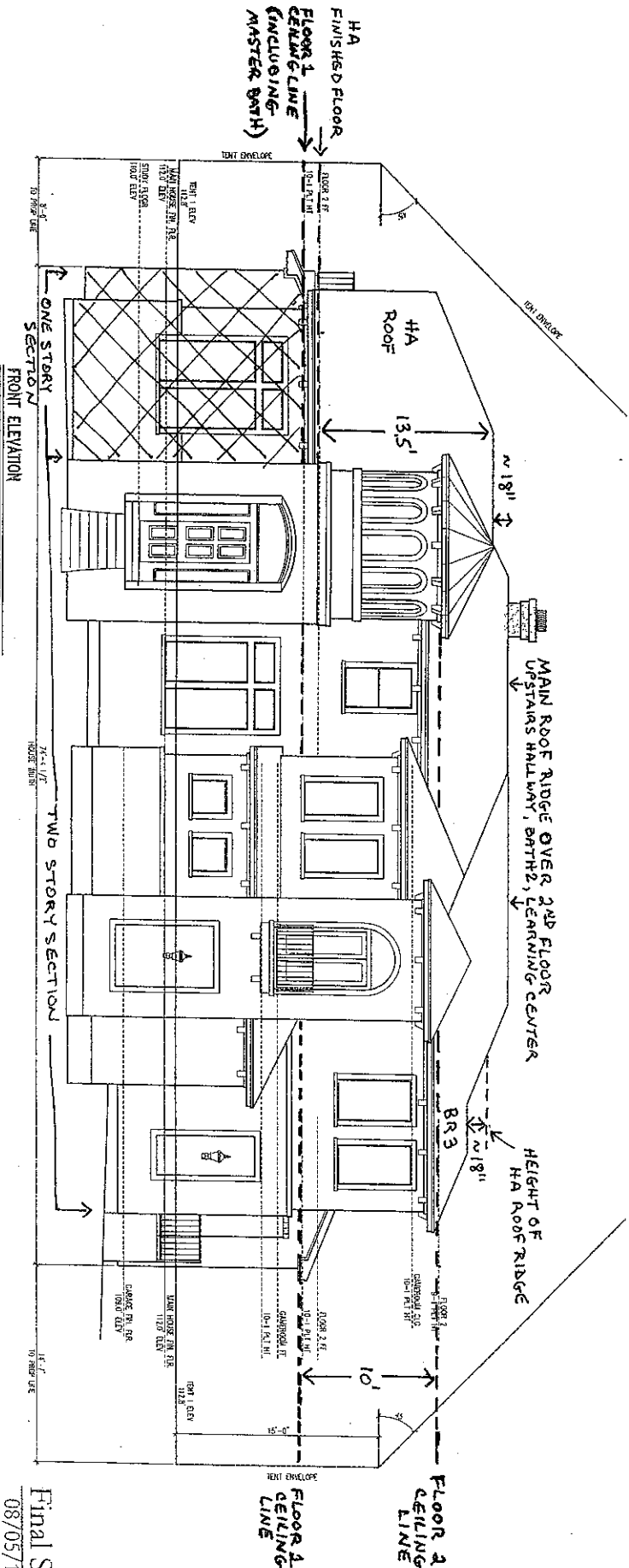
Test 2. Ridge of HA roof is over 1<sup>st</sup> floor master bath

Ceiling of master bath is 10 feet below ceiling of 2<sup>nd</sup> floor rooms, so would expect ridge of HA roof to be considerably lower than other roof ridges, but see Test 1 results

Test 3. Rear roof slopes are 5.5 to 12 over HA and 4 to 12 over main house (see Exhibit Ex25)

Ridge of HA roof is 13.5 feet above finished floor of HA  
If slope reduced to match main house, height would be 13.5 feet x (4 / 5.5) = 9.8 feet; i.e., 3.7 feet lower!

Conclusion: HA attic roof disproportionately large compared to roof over two-story section of house; so adds mass to house.



Final Set  
08/05/11

NORTH  
3688-B  
MCM-1  
LUNDY  
BOLY, AUSTIN

MOUNT BONNELL DRIVE  
3704 Bonnell Drive  
Austin, TX 78731

Proj No.:  
2023  
Job No.:  
1122  
Lot: 1  
Blk: E  
Sect: 3

David Weekley Homes

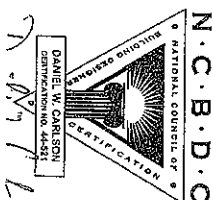
MM/CL3/AJ  
Date: 02/26/08  
Scale: 1/8" = 1'-0"  
Rev: 7/21/11

© Weekley Homes L.P. 2008  
The measurements, dimensions, and other specifications shown on this document are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.

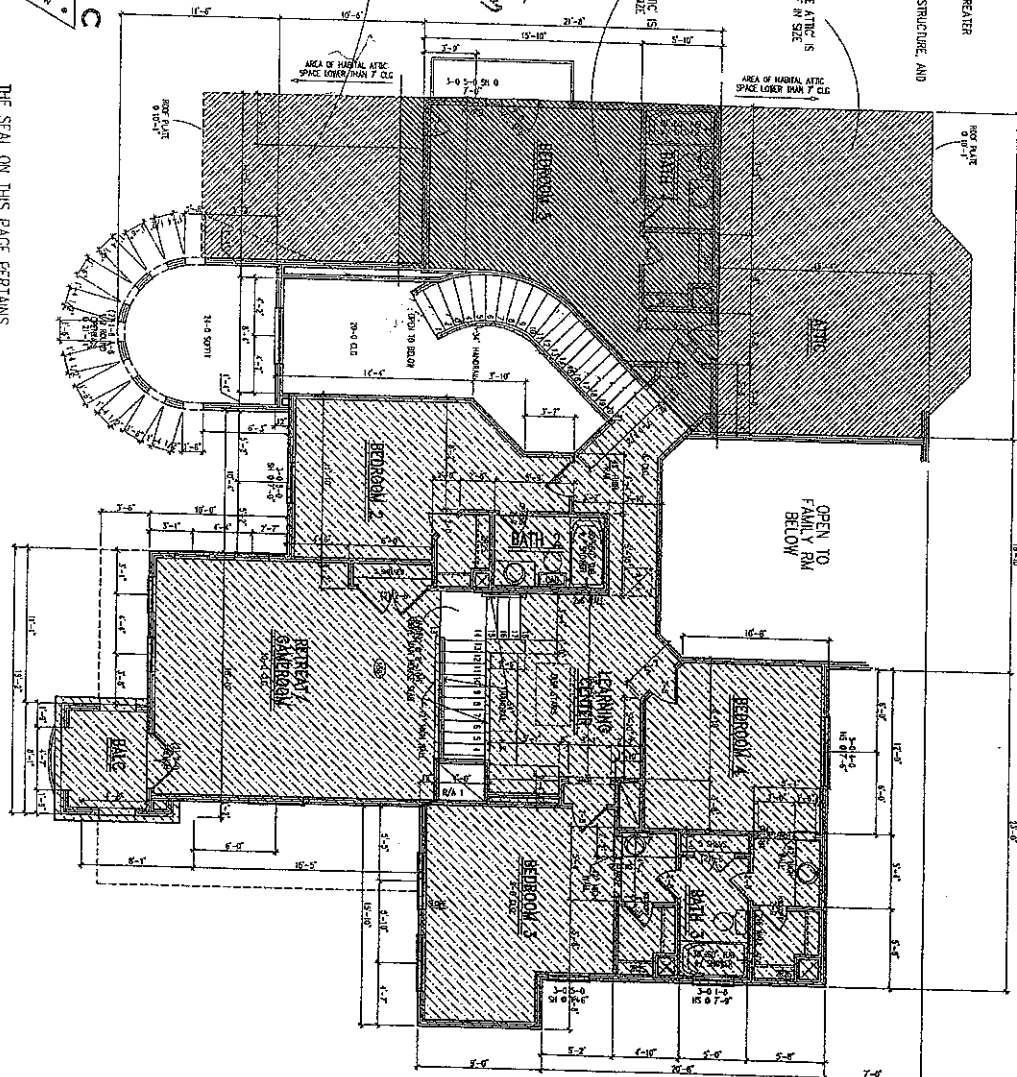
- NOTE: TO SATISFY THE REQUIREMENT THAT THIS AREA BE THE HIGHEST HABITABLE PORTION OF THE BUILDING, NO ATTIC ABOVE THIS FLOOR WILL BE HABITABLE. SUCH ATTIC SPACE WILL EITHER BE TRUSSES OR BE LESS THAN 5' IN HEIGHT.

TOTAL FLOOR 2 AREA COVERED BY ROOF -	2447 SF
TOTAL EXEMPT AREAS -	-944 SF
FLOOR 2 F.A.R. -	<u>1503 SF</u>

THIS 'HABITABLE PORTION OF THE ATTIC' IS UNDER 7' HIGH, AND IS 122 SF IN SIZE.

[illegible]

THE SEAL ON THIS PAGE PERTAINS ONLY TO THE AFFIRMATION OF THE COMPLIANCE OF THESE PLANS TO THE RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS FOR THE CITY OF AUSTIN



SECOND FLOOR F.A.R. AREAS

Final Set  
08/05/11

**NORTH**  
**3688-B**  
**PLN-3**  
**LUNDY**  
**BOY AUSTIN**

**MOUNT BONNELL TERRACE**  
3704 Bonnell Drive  
Austin, TX 78731

Proj. No.:	2023
Job No.:	1122

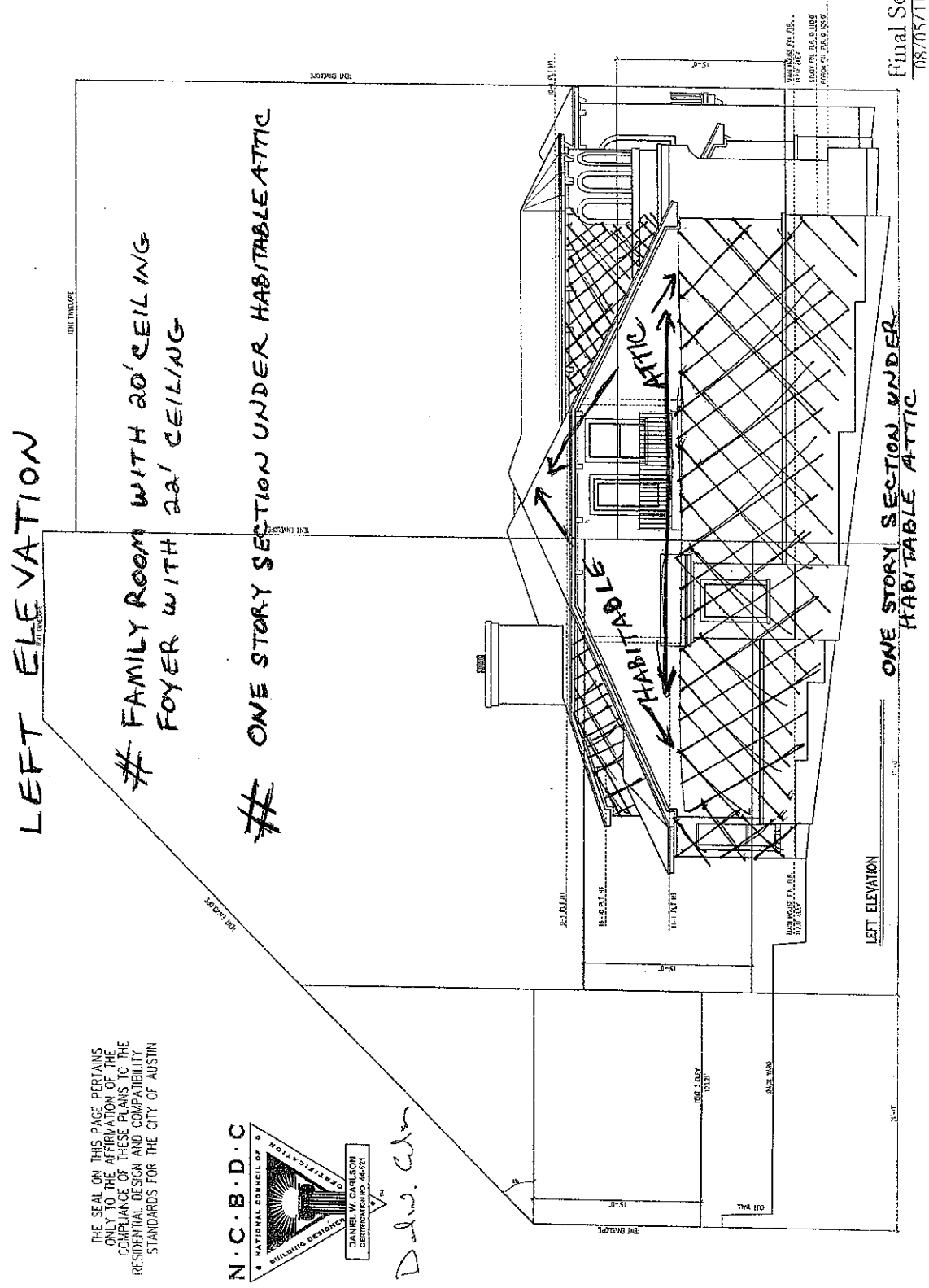
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Blk:	E
Seal:	3

David Weekley Homes

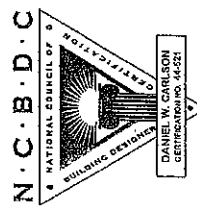
MM/CL3/AJ

Scale:  $1/8" = 1'-0"$   
Rev: 7/21/11

**O'Leary House L.P. 2008**  
The measurements, dimensions, and other specifications, shown on this document, are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.

Final Set  
08/05/11

THE SEAL ON THIS PAGE PERTAINS  
ONLY TO THE AFFIRMATION OF THE  
COMPLIANCE OF THESE PLANS TO THE  
RESIDENTIAL DESIGN AND COMPATIBILITY  
STANDARDS FOR THE CITY OF AUSTIN

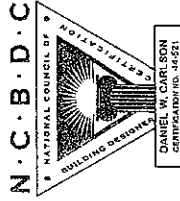


22

FAMILY ROOM  
WITH 20' CEILING

ONE STORY SECTION  
UNDER HABITABLE  
ATTIC (CHA)

THE SEAL ON THIS PAGE PERTAINS  
ONLY TO THE AFFIRMATION OF THE  
COMPLIANCE OF THESE PLANS TO THE  
RESIDENTIAL DESIGN AND COMPATIBILITY  
STANDARDS FOR THE CITY OF AUSTIN



△ 3. 2

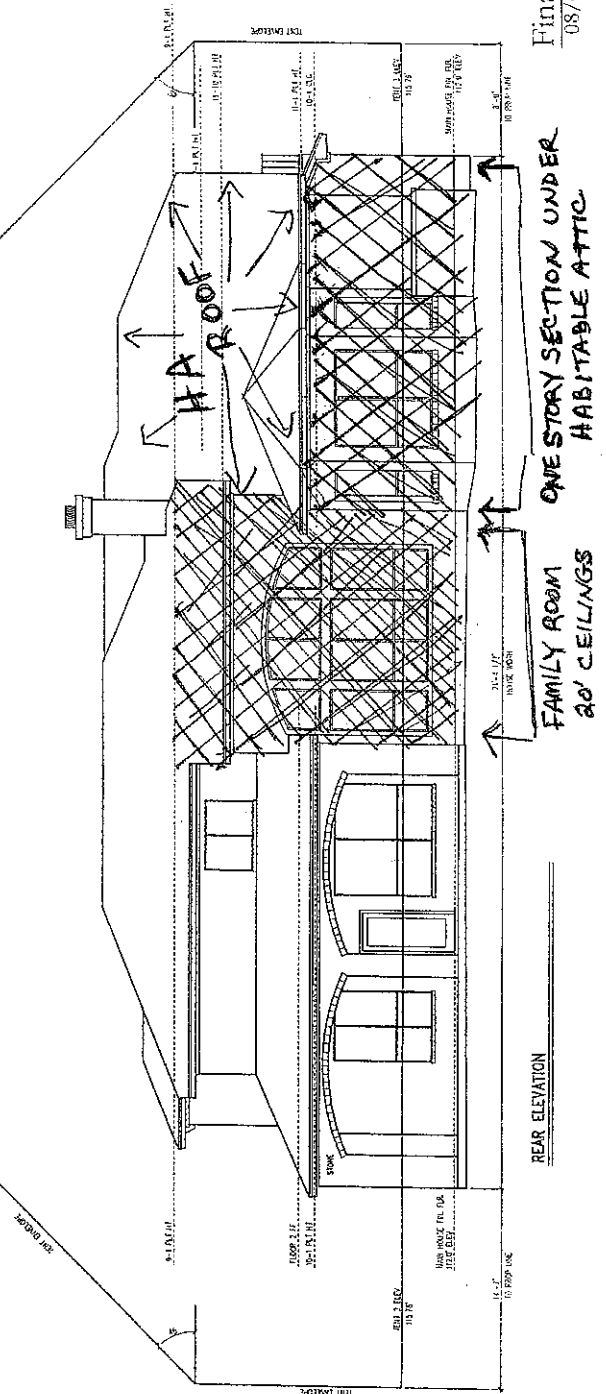
© Jockley Hobbs L.P. 2008  
The measurements, dimensions, and other specifications, shown on this document are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.

David Weekley Homes	
MM/CL3/AJ	Scale: 1/8" = 1'-0"
Date: 02/26/08	Rev: 7/12/11

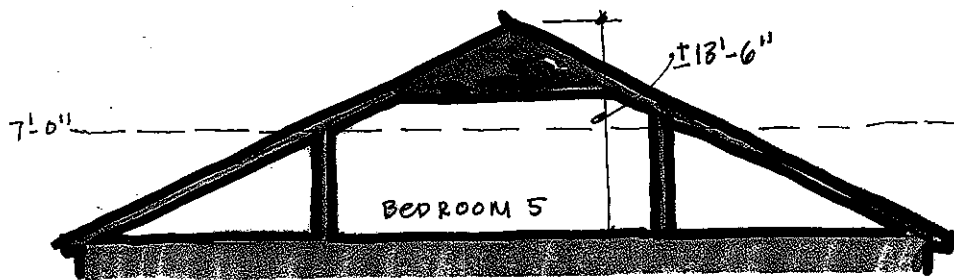
Proj. No.: 2023	Lot. 1
Jobs No.: 1122	Bk.: E
	Sheet: 3

MOUNT BONNELL DRIVE  
3704 BONNELL DRIVE  
Austin, TX 78731

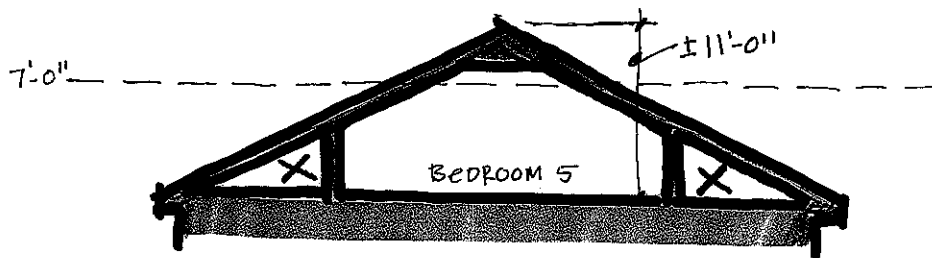
NORTH  
3688-B  
MCM-3  
LUNDY  
BOYL AUSTIN

Final Set  
08/05/11

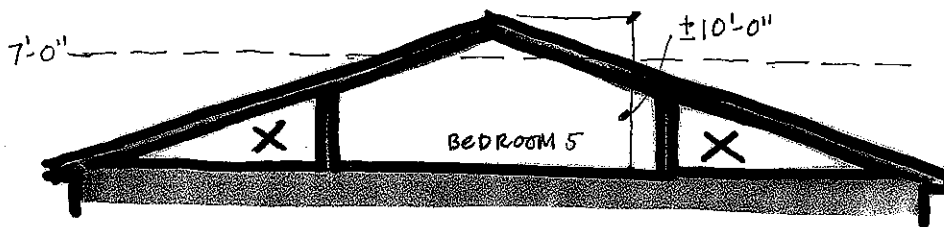




3704 BONNELL DRIVE



ALTERNATE #1  
SAME ROOF SLOPE



ALTERNATE #2.  
SHALLOWER ROOF SLOPE




A-1 C15-2011-0110

---

Sarah Lynn Hill & John Deigh  
3704 Bonnell Drive

Agenda Item A-1



As aggrieved parties who reside at 3701 Mount Bonnell Drive, the Appellants' appeal the August 26, 2011 decision of Greg Guernsey, Director of Planning and Development Review to "approve for permit" the building plans for 3704 Bonnell Drive alleging error was made in the decision by an administration official.



Appellants assert that error was made by an administrative official relating to:

1. The calculation of Floor-to-Area-Ratio (FAR) as same relates to ceiling heights greater than 15 feet.
2. The calculation of Floor-to-Area-Ratio (FAR) as same relates to habitable attic space in new construction.



3. The determination that the regulations in effect on June 18, 1979 and not current regulations shall govern construction.

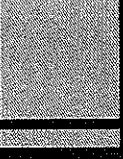
4. The determination that the project of building a house at 3704 Bonnell Drive is not subject to the FAR provisions of the McMansion Ordinance.

## Appeal 1:

Undisputed that the McMansion ordinance as originally enacted in 2006 contained the provision:

---

3.3.3. An area with a ceiling height greater than 15 feet is counted twice.




Undisputed that the 2008  
Amendments were never intended  
to remove the original 3.3.3

See Exhibit 6,7 & 8

Should be renumbered as 3.3.5





Undisputed that staff error occurred in the  
enacted 2008 amendments resulting in  
the inadvertent omission of the  
original section 3.3.3.

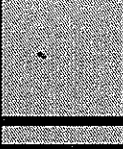
Clear Legislative intent that Section 3.3.3 was to remain in the ordinance





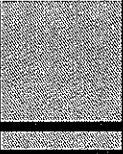
Staff continued to apply the  
15 foot provision into  
August 2011

See Exhibit 18



The City of Austin promulgated Residential  
Permit Application “D” FAR information  
continues to include a request for the  
15 feet calculation.

See Exhibit 9



Action is underway initiated by RDCC and individuals to correct staff error. Planning Commission voted 6-0 on 10/25 to “initiate an action” to research, review and draft a proposed code amendment to correct error.

## Appeal 2:

ERROR WAS MADE BY AN  
ADMINISTRATIVE OFFICIAL  
regarding the calculation of FAR as  
same relates to habitable attic space in  
new construction.



3.3.3. Attics that meet the following requirements shall be excluded from the calculation of gross floor area:

C. A habitable portion of an attic, if:

1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
2. It is fully contained within the roof structure
3. It has only one floor;
4. It does not extend beyond the footprint of the floors below.
5. It is the highest habitable portion of the building, or a section of the building and adds no additional mass to the structure; and
6. Fifty percent or more of the area has a ceiling height of seven feet or less.

# Exhibit 20:

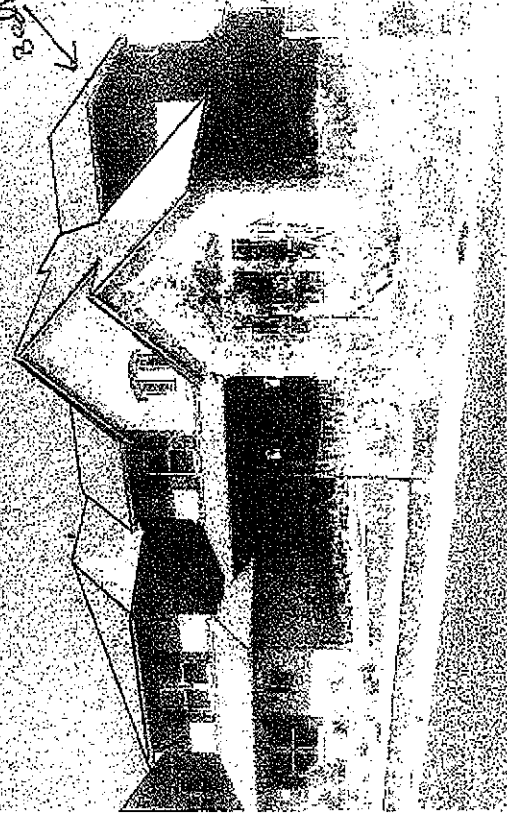
VERSIONS OF THE LUNDY IN ROUND ROCK

Exhibit  
EX20



MODEL 1 2104 PARK PLACE CIRCLE 4-Bedroom

Bedroom  
5



MODEL 2 2124 PARK PLACE CIRCLE 5-Bedroom

PHOTOGRAPHS





THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATIONS  
155 E. 42ND STREET  
NEW YORK 17, N.Y.

David Wockley Homes	Scale 1/8" = 1'-0"	Plan 12/27/11
---------------------	--------------------	---------------

HA roof ridge is about:

Ceiling of master bath is 10 feet below ceiling of 2<sup>nd</sup> floor rooms, so would expect ridge of H/A roof to be considerably lower than other roof ridges, but see Test 1.

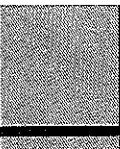
edges of H4, roof is 13.5 feet above finished floor of H4. If slope reduced to match main house, height would be 13.

DATE	10/22
TIME	10:00
BY	1



Final Set  
11/50/20





Staff interpretation is that the area identified as “habitable attic space” adds no additional mass to the structure because it fits inside the building envelope or “tent.”

The interpretation is applied by staff only to new construction since applicant has no existing structure and no mass exists just plans.

Staff applies this increase in mass  
only to existing structures.

## FACTS OF THIS CASE:

3704 Bonnell Road is the only vacant lot in the subdivision and is claimed to be 11,683 sq. feet and permissible 40% FAR is 4,673 sq. feet.

In April 2011 lot owner submitted a 5 bedroom plan which exceeded 40% FAR.

On July 6, 2011 the RDCC voted to deny the Application for a FAR increase based upon a determination that the house was too large for the lot in comparison to surrounding existing homes.



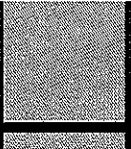
The plans submitted by lot owner and approved by Director on August 26 are nearly identical to the RDCC denied plans:

- a. Footprint of house and garage is unchanged
- b. Layouts and gross floor area of finished rooms and garage are unchanged.
- c. **Difference:** Owner increased the mass of the structure by raising the roof and extending the second floor exterior wall and converting the 5<sup>th</sup> bedroom into a 944 sq. ft. attic which staff found to meet the habitable attic exemption thus reducing from 5,481 sq. ft. to 4,537 sq. ft. used in FAR calculation.



## Examination of plans show:

1. In both the front and rear of the house the slope of the habitable attic roof is greater (steeper) than the slope of the roof over the main living areas of the home.
2. We contend that this adds mass and violates 3.3.3 (c) 5.



In this case a 5-bedroom house deemed incompatible in scale & bulk by RDCC has been altered to increase its mass but due to staff interpretation that the plans meet their interpretation of “habitable attic”, the administrative decision made by the Director resulted in treating the structure as though its mass had been reduced.





## Intent of McMansion ordinance found in Section 1.1

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 building 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.



## Interpretation 3


Mr. Guernsey, the administrative official erred in his interpretation of Subsection 245.002(b) of the Local Government Code



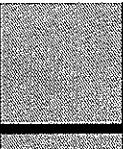


## **Section 245.002(b)**

If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time of the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.



Mr. Guernsey's interpretation implies that Clark's project of building a house at 3704 Bonnell Drive is the same project that the developer KMS Ventures undertook in the 1970's to subdivide and plat Mount Bonnell Terrace Section 3.



The two projects are not the same. KMS Ventures project was to subdivide into lots suitable for the construction of single family homes for the purpose of selling those lots. That project was completed 30 years ago.

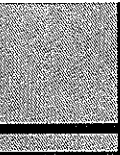
Clark's project in 2011 is to build a house.



Mr. Guernsey erred in supposing them to be the same project and that the regulations in effect on June 18, 1979 apply.

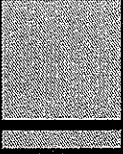
## Interpretation 4

Mr. Guernsey erred in his enforcement of the FAR provisions of the McMansion Ordinance.



Mr. Guernsey determined that Clark's project of building a house is not subject to the FAR provisions of the McMansion Ordinance because they were not in effect in the 1970s.





We assert that the correct interpretation is that the project of building a house at 3704 Bonnell Drive is subject to the FAR provisions of the McMansion Ordinance because FAR provisions regulate the bulk of a building and pursuant to Subsection 245.004(2) Chapter 245 does not apply to bulk zoning regulations.

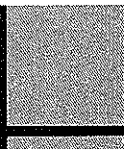


## Sec, 245.004 Exemptions.

This chapter does not apply to:

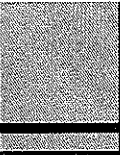
(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;





The McManson ordinance is a zoning ordinance that regulates the bulk of buildings and FAR is a measure of a building's bulk.

The COA's Zoning Information home page define bulk as "density/floor to area ratio"




Since 1921 the State of Texas has granted home-rule municipalities the authority to regulate the bulk of buildings pursuant to Senate Bill 312 enacted by the 37th Legislature. The authority to regulate zoning has been expanded and extended to all municipalities, and today the zoning regulatory powers granted to municipalities are codified in Chapter 211 of the Texas Local Government Code. With one exception, the items that can be regulated by home rule municipalities are also regulated by all municipalities with one exception that being the authority to regulate the "bulk" of buildings, which is extended to only home-rule municipalities by Subsection 211.003 (c).



In everyday conversation we tend to think of bulk and size as terms with similar meanings.

It is clear that the State of Texas by listing the power to regulate size and bulk separately and by extending the power to regulate size to all municipalities and the power to regulate bulk only to home-rule municipalities that the State considers the power to regulate the bulk of building to be a different sort of power from the power to regulate the size of buildings.

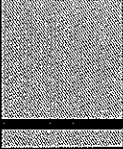


The size of a building is an absolute magnitude that is measured by square footage. The bulk of a building, measured by FAR, is not an absolute magnitude. It is the ratio of the gross floor area to the size of the lot on which the building sits.



We are asking the BOA to find that PDRD made errors in its decision to “approve for permit” by its interpretations and follow our interpretations that:

1. The areas of the proposed structure that have ceiling height greater than 15 ft. need to be counted twice and recalculate the gross floor area.
2. Deny the habitable attic exemption because the habitable attic space increases the mass and recalculate the gross floor area.



3. Current regulations shall govern the project of building a house at 3704 Bonnell Drive as it is not the same project that the developer of the subdivision undertook in 1979 that being the selling of lots.

4. The project of building a house at 3704 Bonnell Drive is subject to the FAR provisions of the McMansion Ordinance in that FAR regulates the bulk of a building.



## PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: [www.ci.austin.tx.us/development](http://www.ci.austin.tx.us/development).

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2011-0110 - 3704 Bonnell Drive

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, November 29th, 2011

Your Name (please print)

Tom Shelton

☒ I am in favor  
☐ I object

Your address(es) affected by this application

3703 Mt. Bonnell Road

Don Shetter

Signature

Date

Daytime Telephone: 512-453-5949

11-20-11

Comments:

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088