March 5, 2012

Re: Appeal of decision by RDCC to allow .452 FAR at 3700 Lawton Avenue

Mr. John McDonald:

In accordance with LDC section 25-1-183 please see below the information regarding the appellant's request to appeal a denial decision made by the Residential Design and Compatibility Commission on Monday February 27, 2012. The appellant is the property owner, Kerri and Max Krupp, and as such is an interested party. I am the applicant on behalf of the appellant and thus an interested party.

In November 2011, an initial request was made to the Board of Adjustments as case #C15-2011-0122 to allow .452 FAR and a rear setback encroachment to erect a second story above an existing non-complying garage at 3700 Lawton Avenue. The proposed second story was 5' from the rear property line vs the required 10' for second story additions. The pre-existing non-complying garage was 3' from the property line.

At the November 8, 2011 hearing the BOA decided more information was necessary regarding a tree that was reported to block the proposed second story from moving away from the rear setback. This hearing was postponed based on that motion despite having an email from the City Arborist Office stating that further encroachment toward the tree canopy would substantially harm the tree.

On November 29, 2011 the Board heard the case again, only to approve the rear setback but defer the decision on FAR to the RDCC. It should be noted that in Subchapter F section 2.4 Rear Setback, the code allows for a 5' setback for accessory structures adjacent to an alley, however, for unknown reasons this provision was not applied by staff nor the BOA despite clear evidence the pre-existing 1 story garage and the proposed 2nd story addition abut a legal alley separating W 37th St and W 38th St, taking access from Lawton Avenue. Despite the evidence submitted to staff prior to the BOA, the city required the appellant to seek BOA approval to erect a 2nd story located 5' from a property line abutting an alley. Further the BOA exacted a variance to maintain the 3' pre-existing 1 story garage footprint at this hearing. It was not clear why they determined to do so.

At the January 29, 2012 RDCC hearing, case #C-1 2012-003528RA was presented with supporting evidence including proposed elevations and floor plans, 25+ letters of support from surrounding neighbors, and additional hardships such as the design of the pre-existing primary structure not being performed by the current owner; however, the item was postponed due to the commissioners' request of the appellant to further engage the surrounding neighbors. The RDCC did express some concern regarding the massing of the primary structure and site as a whole. However, it was articulated that the addition of a second story atop the detached garage would actually bring a sense of balance to the site. The primary structure was built in 2004 by a prior owner, prior to adoption of Subchapter F. This was clearly evidenced by a copy of the original application on file with the city and furnished to the RDCC.

This additional request to re-engage the neighbors was asked of the appellant despite providing evidence of BOA approval, proof of 25+ signatures of support, and limited opposition but additional supporting responses to the separate public notice sent as a result of the RDCC case. The RDCC's request to re-engage neighbors not only put the appellant in an awkward position, it overshadowed and already comprehensive effort to send proper public notice on 3 separate occasions. It should be noted that only 5 RDCC members were present at the January 29, 2012 hearing.

At the special called February 27, 2012 hearing, 4 RDCC commissioners attended, requiring a unanimous decision to win approval of said request. Again, they were concerned about the massing of the primary, legal non-complying structure with regard to its encroachment into the McMansion Tent albeit more adamantly than in prior meetings. So a stronger emphasis on this issue caught the appellant off guard to some degree.

The item before them was whether or not to allow a secondary apartment atop a detached 1 story garage – not whether the 8 year old, primary structure should be partially demolished in light of zero adjacent neighbor opposition. It was clearly articulated that the point of tent encroachment on the primary structure was due to the prior owner's design and the area only consisted of an interior stairwell that leads to a rooftop deck that is rarely if ever used by the appellant – not a true 3rd story as some Commissioners kept referring to it. The area is literally a stairwell with zero habitable space capability.

Despite some Commissioner's stating they drove by the site and around the neighborhood, they stated in the meeting they were having a hard time getting a sense of the property. Other statements or questions from the Commissioners indicated they failed to review the submitted paperwork and/or perform a property street survey of the site and surrounding homes. These statements left an indelible impression on the appellant as to the Commissioner's understanding of and commitment to the case at hand.

At his meeting, additional information was supplied to the Commission that reinforced the City of Austin's Land Use guidelines for denser development in the central Austin area that provided a broader mix of affordable living spaces. Further, the Commission requested the appellant demolish part of the 2nd story roof on the detached primary structure in order to better accommodate their opinion of what a suitable design should be. Despite the appellant seeking further positive responses from the adjacent neighbors, providing more photographs of this and surrounding sites, the Commission motioned to deny the request 4-1.

Worth noting, there was a violation of Robert's Rules and a re-vote occurred in our absence whereby a motion to approve the request was made, yet the motion failed with one RDCC commissioner reversing his vote after in our presence adamantly supporting the request to allow the .45 FAR. The only reason we were made aware of this activity is because one RDCC commissioner approached us after the hearing. The city staff failed to make the appellant aware of this occurrence. Overall, it left the appellant with a feeling of incompetence and arbitrary decision making on behalf of appointed officials.

It is our opinion the primary structure is a legal, non-complying structure (with regard to current Subchapter F tent regulations) and thus, should not be counted against the new owner's inherited problem and relative request to allow only .05 FAR above the maximum allowed .40. There are several large buildings in the neighborhood; however, this home is only a 3 bedroom, 2 bath structure. The current owners wish to remain here in order to accommodate the husband's active duty military career and relative proximity to Camp Mabry. If this request is denied, the owners will be forced to move from the central Austin area and commute from a further suburban location against their wishes.

Many neighbors support this specific request. And the appellant has attended no less than 4 public hearings on the matter. It appears the RDCC is penalizing the current owner for a design that was not in her control. What's more, their request to demolish the west side of the second story is short sighted and impractical.

Although we respect and appreciate the volunteer efforts put forth by the RDCC Commissioners and many other Board members, we ask: If the RDCC Commissioners had such an issue with the overall design, then why did they postpone the January 29, 2012 hearing based on lack of neighbor engagement? The Commission asked the appellant to address one issue, and when that was done, found a new issue to base their decision on. This appears arbitrary and capricious as the board has approved many cases requesting more than .45 FAR.

Thus we feel it justified to appeal the RDCC's February 27, 2012 decision to deny the request for .452 FAR at 3700 Lawton Avenue and ask the case be filed for appeal to the City Council on the next available agenda.

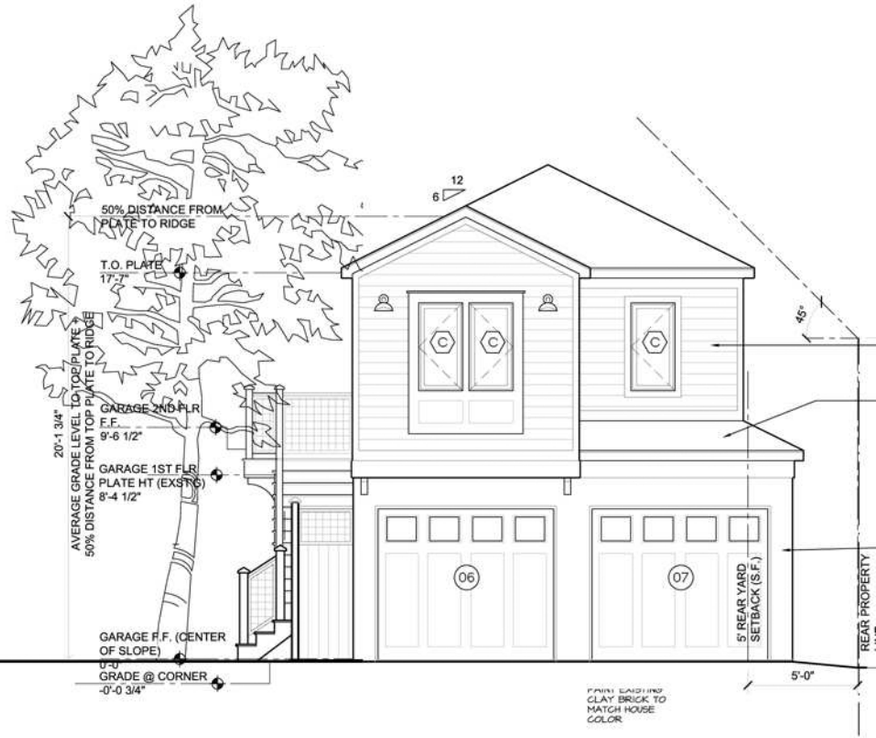
We look forward to discussing this case before the City Council and resolving an otherwise simple issue.

Sincerely,

David C. Cancialosi, agent for appellant

Cc: Keri and Max Krupp, owner
Sarah Bullock Mcyntire, designer

KRUPP RESIDENCE
3700 LAWTON AVENUE



PROPOSED FRONT ELEVATION scale: 1/8" = 1'-0'