



To: Mr. Jeff Jack, Chair and
Members of the Board of Adjustment

From: John M. McDonald, Development Services Manager
Planning and Development Review Department

Date: June 11, 2012

Re: An Administrative Appeal Request
Case No. C15-2012-0071
7600 Downridge Drive

Ms. Betty Epstein (the "Appellant") has filed an administrative appeal requesting an interpretation of whether the Planning and Development Review Department's Director properly applied and interpreted Chapter 25-2 of the City of Austin's Land Development Code (LDC) when approving a residential application and building permit at 7600 Downridge Drive.

The Appellant has submitted an appeal outlining her twenty six (26) concerns and this information is attached in the backup material for this appeal. After reviewing all 26 concerns there is only one relevant interpretation. I will attempt to address the 26 items as follows:

1. The approved plans show an accessory building and not a dwelling unit as outlined in the CI 2010-004 code interpretation issued by the City of Austin's Building Official (attached).
2. There are no definitions for an accessory building or structure in the City of Austin's LDC. There is a definition for an accessory structure in the 2006 International Residential Code (IRC) and it states, "A structure not greater than 3,000 square feet (279 m²) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot" (**Reference 1**). There are no provisions in the LDC or the 2006 IRC that specifically state an accessory building or structure has to be attached or detached. The LDC defines an accessory use as is incidental to and customarily associated with a principal use; unless otherwise provided, is located on the same site as the principal use; and may include parking for the principal use. In addition, Section 25-2-839 (**Reference 2**) of the LDC allows certain uses as accessory for a principal residence use.
3. See the explanation provided in number two (2).
4. See the explanation provided in number two (2).
5. See the explanation provided in number one (1).
6. See the explanation provided in number one (1).
7. See the attached letter from Greg Guernsey (Director) addressed to Ms. Betty Epstein.
8. See the explanation provided in number one (1) and seven (7).
9. See the explanation provided in number one (1) and seven (7).
10. Irrelevant, the proposed addition could be done above an elevated porch or deck.
11. Irrelevant, the proposed addition could be done above an elevated porch or deck.

12. The proposed addition meets the requirements of both the side and rear setback planes as outlined in Section 2.6 of Subchapter F.
13. Irrelevant. Tent surveys, boundary surveys and backup material in the approved plan set went through much iteration in an effort by the applicant to achieve compliance.
14. Irrelevant. The numbers of bathrooms are only noted in the "Info" fields of the AMANDA permitting database to determine the proper meter size and a ¾" meter is required for 3.5 bathrooms and 4 bathrooms.
15. Irrelevant. The land use on the site is single family residential.
16. Irrelevant. The rear setback in an SF-3 zoning district is ten feet. Single-story accessory buildings no greater than fifteen feet in height are allowed to encroach five feet into the ten foot rear yard setback under Section 25-2-555 (*Reference 3*) in a SF-3 based zoning district.
17. Irrelevant. Garages are allowed to be detached or minimally attached under Section 3.3.2(A)(2)(b) (*Reference 4*) of Subchapter F.
18. The accessory building is one story under the definition of Story (*Reference 5*) in the 2006 IRC. There are no definitions for "story" in the LDC.
19. Irrelevant. A partial demolition application was applied for and approved with the residential application.
20. Irrelevant. Third party verification will be required during the inspection stage and is not required at the plan review stage.
21. Irrelevant.
22. Only a zoning review is required at the plan review stage.
23. Irrelevant. The proposed plan meets all requirements of Subchapter F.
24. Only a zoning review is required at the plan review stage.
25. Only a zoning review is required at the plan review stage.
26. The proposed plan meets all regulations of the base zoning code, SF-3 regulations and Subchapter F.

FINDINGS

Staff does not believe there is reasonable doubt or difference of interpretation as to the specific intent of the regulations, because an accessory building that is no more than one-story and fifteen feet in height is allowed to be five feet from the rear lot line in a SF-3 based zoning district. All SF-1 through SF-3 based zoning districts have this allowance or provision.

Staff believes the use provisions clearly permit the use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because the SF-3 zoning district allows for a single family use. All residential zoning districts allow for accessory buildings or structures.

The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated; in that, the proposed plan complies with the base zoning code, the SF-3 zoning regulations and Subchapter F.

If you have any questions, please contact me at 974-2728 or by e-mail at john.mcdonald@austintexas.gov.

cc: Greg Guernsey, Director, PDRD
Brent Lloyd, Law Department
Donald Birkner, Assistant Director, PDRD
Kathy Haught, Division Manager, PDRD
Chris Johnson, Development Assistance Center Manager, PDRD

Relevant Code Sections in Sequential Order of Reference

2006 INTERNATIONAL RESIDENTIAL CODE FOR ONE AND TWO-FAMILY DWELLINGS

SECTION R202 DEFINITIONS

Reference 1: ACCESSORY STRUCTURE. A structure not greater than 3,000 square feet (279 m²) in floor area, and not over two stories in height, the use of which is customarily accessory to and incidental to that of the dwelling(s) and which is located on the same lot.

Reference 5: STORY. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

CHAPTER 25-2, ZONING CITY OF AUSTIN'S LAND DEVELOPMENT CODE

Reference 2: § 25-2-893 ACCESSORY USES FOR A PRINCIPAL RESIDENTIAL USE.

(A) For a principal residential use, this section prescribes the requirements for an accessory use.

(B) This subsection provides for vehicle storage as an accessory use.

(1) Not more than one motor vehicle for each licensed driver residing on the premises may be stored on the premises.

(2) Notwithstanding the limitation of Subsection (B)(1), a private garage for the storage of not more than four motor vehicles is permitted.

(3) Except for an antique vehicle or recreational vehicle, a motor vehicle with a capacity of one ton or greater is prohibited.

(4) Not more than one commercial vehicle may be stored on the premises.

(5) Except as provided in Subsection (B)(6), an inoperable motor vehicle may not be stored on an adjacent public right-of-way. A motor vehicle is inoperable if, for more than 72 hours, the vehicle:

(a) does not have license plates or has license plates that have been expired for more than 90 days;

(b) does not have a motor vehicle safety inspection sticker or has a motor vehicle inspection safety sticker that has been expired for more than 90 days; or

(c) cannot be started or legally operated in a public right-of-way.

(6) The prohibition of Subsection (B)(5) does not apply to:

(a) an antique or recreational vehicle stored at an owner's residence; or

(b) a vehicle under repair for less than 60 days, if not more than one other vehicle is also under repair.

(7) Up to two vehicles that are either antique or recreational vehicles may be stored on the premises, if the storage area is not a health hazard and is either in an enclosed building or screened from public view with a solid wood or masonry fence at least six feet high.

(C) The following are permitted as accessory uses:

- (1) recreational activities and recreational facilities for use by residents;
- (2) religious study meetings;
- (3) playhouses, patios, cabanas, porches, gazebos, and household storage buildings;
- (4) radio and television receiving antenna and dish-type satellite receivers;
- (5) solar collectors;
- (6) home occupations that comply with Section 25-2-900 (Home Occupations);
- (7) on-site sales as authorized by Section 25-2-901 (Residential Tours) or Section 25-2-902 (Garage Sales);
- (8) the keeping of dogs, cats, and similar small animals as household pets; and
- (9) a single accessory apartment that complies with the requirements of Section 25-2-901 (Accessory Apartments).

(D) A guest house is permitted if the principal use is a single-family residential use located on a lot with at least 10,000 square feet of area. A guest house may be occupied only by occasional nonpaying guests of the permanent residents.

(E) A single accessory dwelling is permitted if the principal use is a single-family residential use located on a lot with at least 15,000 square feet of area. An accessory dwelling may be occupied only by a family that has at least one member employed on-site for security, maintenance, management, supervision, or personal service.

(F) A residential convenience service is permitted if the principal use is a multifamily use or a mobile home park use. A residential convenience service is a commercial use that is operated as an integral part of the principal use, is not identifiable from outside the site, and is intended to be patronized solely by the residents of the principal use.

(G) A residential dock, pier, wharf, float, island, or other similar structure is permitted as an accessory use in an SF-6 or more restrictive district and may be located off-site.

(H) A use other than one described in this section is permitted as an accessory use if the director of the Neighborhood Planning and Zoning Department determines that the use is necessary, customary, appropriate, incidental, and subordinate to a principal use.

(I) An accessory use may generate not more than ten guest vehicles trips a day or 30 guest vehicles trips a week.

Reference 3: § 25-2-555 FAMILY RESIDENCE (SF-3) DISTRICT REGULATIONS.

(A) This section applies in a family residence (SF-3) district.

(B) The rear yard setback is five feet for an accessory building that is not more than one story or 15 feet in height.

SUBCHAPTER F: RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS.

ARTICLE 3: DEFINITIONS AND MEASUREMENT.

§ 3.3. GROSS FLOOR AREA.

Reference 4: 3.3.2. Subject to the limitations in paragraph C below, the following parking areas and structures are excluded from gross floor area for purposes of this Subchapter:

A. Up to 450 square feet of:

1. A detached rear parking area that is separated from the principal structure by not less than 10 feet;

2. A rear parking area that is 10 feet or more from the principal structure, provided that the parking area is either:

a. **detached** from the principal structure; or

b. **attached** by a covered breezeway that is completely open on all sides, with a walkway not exceeding 6 feet in width and a roof not exceeding 8 feet in width