



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

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

Date: October 22, 2012

Re: An Administrative Appeal Request
Case No. C15-2012-0126
Property Address: 1917 David Street

Ms. Nuria Zaragosa (the "Appellant") has filed an administrative appeal (Attachment "A"), requesting an interpretation of whether the Planning and Development Review Department Director's approval of a duplex residential use complies with the following sections of the Land Development Code (LDC):

- 1.) The appellant contends the correct interpretation of the application is ten (10) bedrooms, the project exceeds the Land Development Code (LDC) limitations placed on duplexes outlined on 25-2-555D (see Attachment "B").
- 2.) The appellant feels the correct interpretation is 10 bedrooms (not 6 bedrooms), the project is then required to provide eight (8), off street parking spaces.
- 3.) The appellant feels the correct interpretation is ten (10) bedrooms, and therefore the project must comply with landscaping requirements (see Attachment "C").
- 4.) The appellant feels the correct interpretation of the actual use is Group Residential as defined in the LDC 25-2-3(5) (see Attachment "D").

For brevity and uniformity staff will respond to each of the four above items in sequential order, then address the findings.

- 1) The proposed design labels six bedrooms within the duplex structure which meets the limitation on bedrooms under Section 25-2-555(D). Staff does not assume a room, labeled as other rooms - such as a study, library, game room, kitchen or a bathroom - is a bedroom.

The square footage of living area proposed for this duplex residential structure is 3,198 with a lot size of 7,999 square feet.

- 2) The proposed design labels six bedrooms within the duplex structure which meets the limitation on bedrooms under Section 25-2-555(D). The Department approved the plans as shown, proposing six (6) bedrooms. Parking spaces required are three (3). The approved plans propose four (4) parking spaces (see Attachment "C").
- 3) The proposed design labels six bedrooms within the duplex structure which meets the limitation on bedrooms under Section 25-2-555(D). Therefore, landscaping requirements are not required (LDC 25-2-981) (see attachment "C").
- 4) The project is designed and labeled as a duplex residential use and as designed does not exceed the limitation of six bedrooms. If the building is used as a group residential use without following the City regulations, then the Code Compliance Department may be contacted to enforce our Codes. City staff presumes that plans submitted to the City are an accurate reflection of the land use proposal, and does not assume a building will be used in an illegal manner once the building is completed and a certificate of occupancy is issued.

FINDINGS

Staff does not believe there is reasonable doubt or difference of interpretation as to the specific intent of the regulations, because the number of bedrooms and proposed living area for this application for a building permit meet the regulations of 25-2-555(D), proposed parking meets all requirements; and landscaping requirements do not apply to the proposed design/use.

Staff believes the use provisions clearly permit the proposed use because the site is being developed with a duplex residential use. All site development regulations for a duplex residential use in a SF-3-NP zoning district have been met and the site complies with the residential design and compatibility (McMansion) standards.

The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated; in that, the proposed design meets all regulations for a duplex residential use and similar designs have been approved throughout the City of Austin's permitting jurisdiction.

cc: Greg Guernsey, Director, PDRD
Brent Lloyd, Law Department
Donald Birkner, Assistant Director, PDRD
Kathy Haught, Division Manager, PDRD
John McDonald, Development Services Manager, PDRD
Daniel Word, Principal Planner, PDRD
Susan Walker, Planner Senior, PDRD

Attachment "A"
Administrative Appeal

**CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS
PART I: APPLICANT'S STATEMENT
(Please type)**

STREET ADDRESS: 1917 David Street, Austin Texas 78705
LEGAL DESCRIPTION: Subdivision -

LOT 18 BLK 2 OLT 26-28 DIV D CARRINGTON SUBD

Lot (s) 18 **Block** 2 **Outlot** 26-28 **Division** Carrington
Subdivision _____

ZONING DISTRICT: SF-3

I/WE Nuria Zaragoza on behalf of myself/ourselves as
authorized

Agent for Original West University NA affirm
that on 11th

Day of September, 2012, hereby apply for an interpretation hearing before the
Board of

Adjustment.

Watershed Protection and Development Review Department Interpretation is:

Re: 2011-106377PR

- 1) The project does not exceed the LDC limitations placed on duplexes outlined on 25-2-555 D.
- 2) The project complies with 25-6-655 Appendix A.
- 3) The project complies with 25-2-981, Subchapter C, Article 9.
- 4) The proposed project is compatible with SF-3 use.

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I feel the correct interpretation is:

- 1) **With 10 bedrooms, the project exceeds the LDC limitations placed on duplexes outlined on 25-2-555 D.**
- 2) **With 10 bedrooms, the project is required 8 parking spaces per 25-6-655 Appendix A. With 4 parking spaces, the project does not meet the requirements.**
- 3) **With the 10 bedrooms, the project needs to comply with the landscaping requirements outlined in 25-2-981. It does not.**
- 4) **The project is not compatible with SF-3 use. It is clearly designed for group residential use as defined in the LDC 25-2-3 (5)**

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

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

1) The project has 10 bedrooms, thus exceeds the number of bedrooms allowed under LDC 25-2-555 D

(D) This subsection applies to a duplex residential use.

(1) On a lot with a lot area of less than 10,000 square feet, a duplex structure may not exceed 4,000 square feet of gross floor area or contain more than six bedrooms.

The limit was placed in 2003 as a remedy for the "super duplex", and its devastating effects on neighborhoods. It was passed by Council with these words:

The Council finds that the regulations in this ordinance are necessary to ensure that a duplex residential use is not established unless it is compatible with other nearby land uses. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety

Although some of the bedrooms are not accurately labeled, this structure has a total of 10 bedrooms.

The ten bedrooms will be served by 6 full bathrooms, with a total of 12 lavatory sinks.

The vast majority of projects are unaffected by bedroom counts. There are some instances, however, when the number of bedrooms needs to be calculated. This is the case with 25-2-555. If the City is going to regulate based on bedrooms counts, it is unreasonable for reviewers to refuse the authority to make that determination. At this point, reviewers simply read what is written on a plan. The process is based on the "honor system". Real Estate professionals, appraisers, habitually determine what is a bedroom and what is not a bedroom. Any of them would report that this project exceeds six bedrooms.

A room designated on the floor plan of a residential duplex project should be considered a "bedroom" for the purposes of determining the number of bedrooms allowed under section 25-2-555(0) of the Land Development Code if:

(A) the room is a minimum of 70 square feet in area and is not a kitchen, bathroom, garage, utility room, or common circulation space (halls or stairs),

(B) the room is configured so that it is or is capable of being a private space separated from all other areas of the building by a permanent door or doors,

To reiterate, the vast majority of projects would be unaffected by a bedroom definition. For those projects where the number of bedrooms trigger a regulation, common sense design variations

would ensure reasonable use, while preventing bad actors from exploiting the land Development Code and the neighborhoods that have to live with their projects.

For example, on this project the game rooms are fully enclosed private spaces. A game room, truly intended to be a game room, would likely meet all the above mentioned criteria except that of privacy.

- 2) With 10 bedrooms, the project required 8 parking spaces per 25-6-655 Appendix A. With 4 parking spaces, the project does not meet the requirements.**

Appendix A states that a duplex with more than 6 bedrooms must provide one parking space per bedroom. As this project is in the urban core, it would be reduced by 20% to 8 parking spaces. Although it is apparent that the parking plan for this project includes the decomposed parking area surrounding the legal parking spaces, they would not be legal parking spaces as they would significantly increase impervious cover beyond the allowable 45%.

- 3) With the 10 bedrooms, the project needs to comply with the landscaping requirements outlined in 25-2-981. It does not.**

- 4) The project is not compatible with SF-3 use. It is clearly designed for group residential use as defined in the LDC 25-2-3 (5)**

Group Residential use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.

It is apparent in the plans that the intended use for this structure is group residential. It is unfathomable that there be 12 lavatory sinks for 6 residents, or almost 1300 sq. ft. of habitable storage space. This space will store humans, and many more than six.

It is not reasonable to approve a permit that will establish a structure intended for an illegal use.

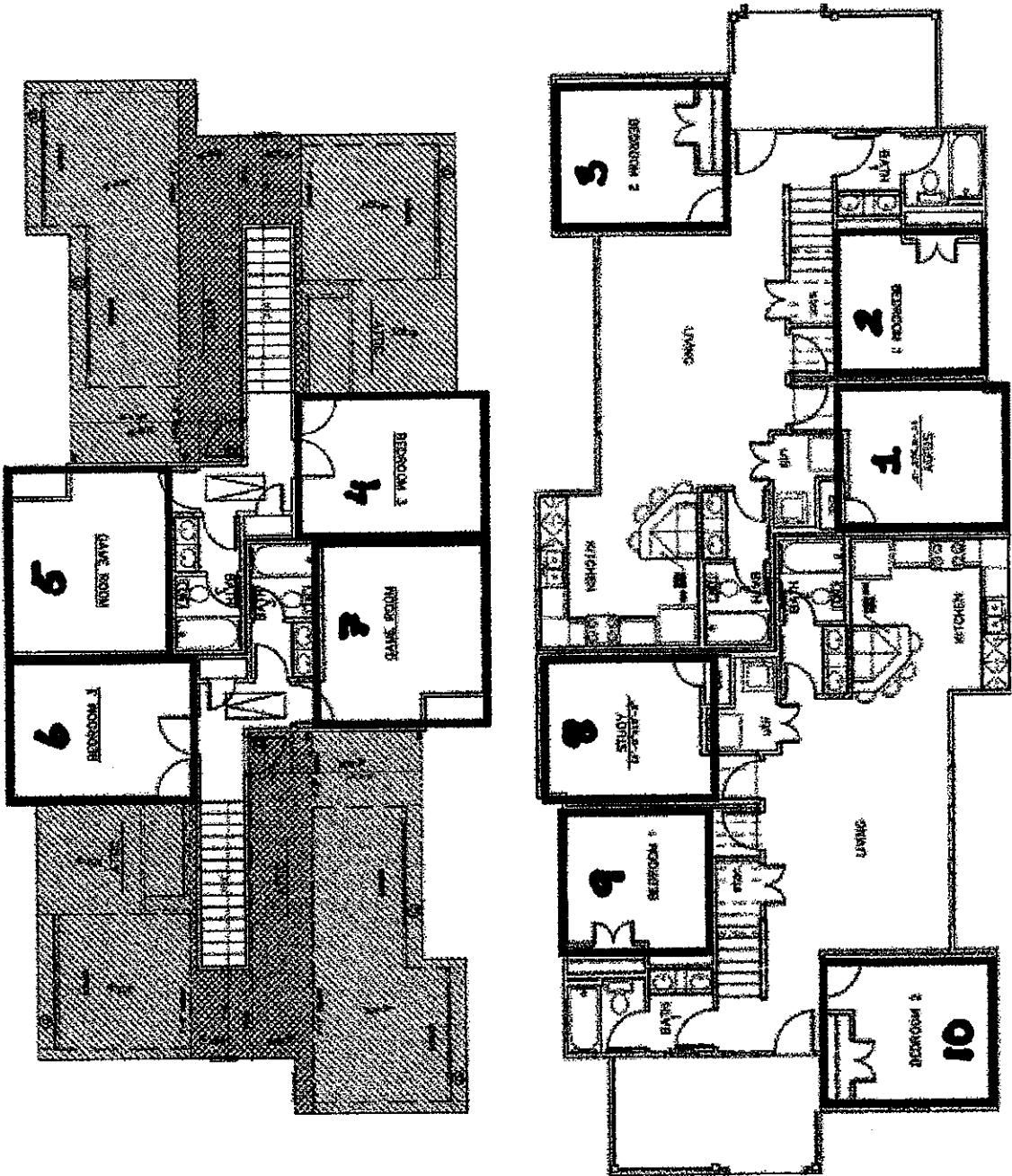
This property owner has run an illegal four-plex on the site since he purchased the property in 2006. Although it has had an open Code Compliance Case since the purchase, it has continued to be rented and inhabited.

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:

In order for this lot to be developed in the manner in which this permit seeks to develop it, it would require MF-4 zoning. If that is the intention, the property owner should seek a zoning change. Otherwise, this property should be developed with the same regulations as SF-3 properties, with a structure intended to house a MAXIMUM of 6 unrelated persons.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

Granting this permit will result in a special privilege to this property owner by permitting a structure to be built which does not meet the requirements of the Land Development Code. This interpretation seeks to ensure that this property is developed consistently with other SF-3 properties.



The Lear Company
2108 W. Ben White Boulevard
P.O. Box 163662
Austin, TX 78716
(512)329-8290

4/17/2012

Board of Adjustment
Chairman Jeff Jack

RE: 1917 David St, Austin, TX

Chairman:

I have reviewed plans submitted to me in regard to the property to be built at 1917 David St., Austin, TX, Lot 18, Block 2, Carrington Subdivision. It was requested for me to observe the plans to offer my professional opinion as a real estate appraiser in regard to objectively observed bedrooms. I would conclude that the plans clearly indicate exceeding the three (3) bedroom per unit duplex limit.

Please find attached my qualifications, as well as a copy of my state certification.

Sincerely,



Ted Lear, SRA
TX-1321124-G

A RESUME OF THE QUALIFICATIONS OF TED N. LEAR

My name is Ted Lear and I am an independent real estate appraiser and owner of The Lear Company, a real estate appraisal and consulting firm with offices at 2108 W. Ben White Boulevard, Austin, Texas. I have been actively engaged in the appraisal of real estate since 1983, after receiving my degree from the University of Texas. I have had the privilege of developing experience in the appraisal and analysis of multiple types of properties. Before opening my own office, I managed the residential appraisal department of Sayers & Associates, Inc. I have spent 100% of my career time appraising during the past 28 years.

Designations

SRA designation – Appraisal Institute (Senior Residential Appraiser)

State Certification

General Real Estate Appraiser - Certificate Number: TX-1321121-G

Employment History

Sayers & Associates	7/83 - 1/95
The Lear Company	1/95 - Present

Education and Memberships

University of Texas; BBA, Petroleum Land Management, 1983
Appraisal Institute-SRA Member

I am up to date regarding all ongoing education requirements. In addition to state licensing course requirements every two years, I am required to submit evidence of 100 hours of classwork every five years for the Appraisal Institute.

Experience, Types of Appraisal Work Performed

The bulk of my workload is appraisals performed for mortgage lending purposes (both resale and new construction). In addition to these type appraisals, I also have many years experience appraising properties for the purpose of litigation. My experience goes beyond the valuation process, but also into the process of court testimony. I also provide services to property owners, developers, and other prospective purchasers in a consultant role, as well as that of the appraiser. My experience also encompasses both proposed and developed properties.



1908 Cliff St.
Austin, Texas 78705
September 11, 2012

Mr. Greg Guernsey
Director
Planning and Development Review Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8865

Re: Standing to appeal 1917 David St. 78705 BP 2012-084972

Dear Mr. Guernsey:

Please see attached electronic mail correspondence from John McDonald, confirming status as an interested party. This development is within the boundaries of our neighborhood association, Original West University Neighborhood Association. I am an officer in the association.

As stated in the application, my address is: 1908 Cliff St. Austin Texas, 78705. My contact number is 512-791-9674.

Sincerely yours,

Nuria Zaragoza
President, OWUNA

from: john mcdonak

FW: 2012-079335 PR,1917 David

John Mcdonald

Folders

Inbox 15107

Junk

Drafts 43

Sent

Deleted

POP

canpac agenda

code compliance

contractors

ebay 8

izzy rsvp

juniper

Kathie Tovo

samamas

stealth dorms

Search Results

New folder

Quick views

Documents 153

Flagged 15

Photos 536

Shipping updates 11

New category



John Mcdonald 8/08/12

To: Darren Cain, Darren@coasmp4.ci.austin.tx.us

Cc: Nuria Zaragoza

View contact

Darren,

Make sure Nuria Zaragosa is added as an interested party on the number below at 1917 David Street.

JMM

----- Forwarded Message

From: Nuria Zaragoza <tedandnuria@hotmail.com>

Date: Wed, 8 Aug 2012 07:16:23 -0600

To: "john.mcdonald@austintexas.gov"

<john.mcdonald@austintexas.gov>, Nuria zaragoza <tedandnuria@hotmail.com>

Cc: "carol.gibbs@austintexas.gov" <carol.gibbs@austintexas.gov>

Mowat <ann_mowat@yahoo.com>

Subject: 2012-079335 PR,1917 David

Dear John,



Please list me as an interested party on the 1917 David permit : 079335 PR

<https://www.austintexas.gov/devreview/d_showpropertyfold:clicked=searchByOther>

Thank you.

Nuria

Sent from my iPhone

Content from  
Learn more | Turn off

----- End of Forwarded Message

n your POP folder! Some other program is set to download ar c Close ssa...

ATTACHMENT "B"

Applicable LDC Code Sections

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

(D) This subsection applies to a duplex residential use.

(1) On a lot with a lot area of less than 10,000 square feet, a duplex structure may not exceed 4,000 square feet of gross floor area or contain more than six bedrooms.

(2) On a lot with a lot area of 10,000 square feet or more, a duplex structure may not exceed a floor-to-area ratio of 0.57 to 1.

3.3.3 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:

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.

§ 25-2-773 DUPLEX RESIDENTIAL USE.

(D) The two dwelling units are subject to the following requirements:

(1) The two units must have a common floor and ceiling or a common wall, which may be a common garage wall, that:

(a) extends for at least 50 percent of the maximum depth of the building, as measured from the front to the rear of the lot; and

(b) maintains a straight line for a minimum of four foot intervals or segments.

(2) The two units must have a common roof.

ATTACHMENT "C"

Parking Requirements and Landscaping

APPENDIX A. TABLES OF OFF-STREET PARKING AND LOADING REQUIREMENTS.

Use Classification	Minimum Off-Street Parking Requirement	Off-Street Loading Requirement
Duplex residential Single-family attached residential Standard If larger than 4,000 sq. ft. or more than 6 bedrooms	4 spaces 4 spaces or 1 space for each bedroom, whichever is greater	None

ARTICLE 9. LANDSCAPING.

Division 1. General Provisions.

§ 25-2-981 APPLICABILITY; EXCEPTIONS.

(A) Except as provided in Subsection (B), this article applies in the city's zoning jurisdiction.

(B) Division 2 (*Requirements for a Site Plan*) and Division 3 (*Additional Site Plan Requirements in Hill Country Roadway Corridors*) do not apply to:

(3) a lot containing one duplex residence, unless the residence exceeds 4,000 square feet of gross floor area or has more than six bedrooms;

Attachment "D"

"Group Residential" Definition from Land Development Code

(5) **GROUP RESIDENTIAL** use is the use of a site for occupancy by a group of more than six persons who are not a family, on a weekly or longer basis. This use includes fraternity and sorority houses, dormitories, residence halls, and boarding houses.