

215-2013-0086
ROW-10980634
TP-0110060523

**CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS**

**PART I: APPLICANT'S STATEMENT
(Please type)**

STREET ADDRESS: 709 Meriden Lane Austin, TX 78703

LEGAL DESCRIPTION: Subdivision –

Deep Eddy Heights

Lot (s) 5 Block 2 Outlot _____ Division _____

ZONING DISTRICT: _____

I/WE Dason Whitsett, AIA on behalf of myself/ourselves as authorized

Agent for Anthony Masaryk & Ghadeer Okayli affirm that on the 3rd

Day of June, 2013, hereby apply for an interpretation hearing before the Board of
Adjustment.

Planning and Development Review Department interpretation is:

The proposed detached garage is prohibited because it would block access to the existing attached garage. The existing garage would, therefore, be converted to storage space, increasing gross floor area which is already above the allowable FAR. See the attached documentation for correspondence with Daniel Word Planner Principal in the Residential Review Division explaining his interpretation.

I feel the correct interpretation is:

That the existing garage should be counted as part of the existing gross floor area because the attached garage floor area exemption is not applicable. Therefore, the addition of the proposed garage with the 450 square foot exemption would result in no change to the existing FAR. Also see the attached letter addressed to Susan Walker for detailed documentation of this argument as well as additional reasons for an alternative interpretation.

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: _____

The language of the code clearly states that the attached garage exemption is only applicable if it is used to meet the minimum parking requirement. This house meets the minimum parking requirement with two parking spaces in the driveway, therefore the attached garage exemption should not be applicable. See the attached letter addressed to Susan Walker for detailed documentation of this argument as well as additional reasons for a different interpretation.

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: _____

not applicable

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

The Land Development Code is law and should be applied consistently and in accordance with the language and intent of that code. According to Daniel Word, the Residential Review Division has received the directive to apply the attached garage exemption more broadly than the code provision specifies, allowing attached garages to claim the exemption even if not used to meet the minimum parking requirement.

While the code language should be amended if this is truly the intent, we do not have a problem with the Division ignoring the minimum parking provision and applying the attached garage exemption more broadly for Owners whom it benefits. However, this is an unusual case where the Owner is harmed by the broad application of the exemption. It is unfair to deny this project for the sake of consistency with a tacit policy contrary to the clear language of the code as currently written.

APPLICANT/AGGRIEVED PARTY CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____

Printed

Dason Whitsett

Mailing Address 1200 East 12th Street

City, State & Zip Austin, TX 78702

Phone 512.743.6678

OWNER'S CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____

Printed

ANTHONY M MASARYK

Mailing Address 709 Meriden Lane

City, State & Zip Austin, TX 78703

Phone 512.350.6590

June 3, 2013

City of Austin
Board of Adjustment
Care of Susan Walker
Planning and Development Review
505 Barton Springs Road
Austin, TX 78704

Re: Interpretation Application for 709 Meriden Lane

Property Owners:
Anthony Masaryk & Ghadeer Okayli
709 Meriden Lane
Austin, TX 78703

Dear Ms. Walker,

This letter serves as supporting documentation to the interpretation application for 709 Meriden Lane.

Executive Summary:

The Owners of 709 Meriden Lane wish to build a detached garage off of the alley. This is a common use in the neighborhood. The existing house, built in 1946 and remodeled in 2000, has a legal non-complying status because it exceeds the floor-area ratio allowed by the current zoning code.

City staff has interpreted the code to prohibit the garage. The attached email correspondence between Daniel Word and Dason Whitsett documents the city staff interpretation.

We respectfully argue that the Owner should be eligible to claim the 450 square foot detached garage floor-area exemption allowed in the Residential Design Compatibility Standards for the reasons outlined in Section 1 below, thereby allowing construction of the garage without any change to the existing floor-area ratio.

We believe that permitting the owner to claim the detached garage exemption complies both with the letter and intent of the code by allowing a use that is common to the neighborhood while having no impact on the volume of the house visible from the street which is similar to other houses on the block.

Section 0- Zoning Calculations and Existing Conditions

Lot Area	6,522 sf
Allowable FAR	0.4 or 2300 sf min.
Max Floor Area	2,609 sf

Figure 0.1- FAR calculations.

Existing Floor Area Calculations per Subchapter F, Section 3.3

<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	885	0	885	Not including existing 1-car garage.
Subtotal- Conditioned	3,669	0	3,669	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	228	0	228	Attached garage exemption does not apply- see Argument 1.
Subtotal Garage	228	0	228	

Total Net Floor Area for Zoning **4,264 sf**

Figure 0.2- Existing GFA calculations including existing garage- see Argument 1.

Proposed Floor Area Calculations per Subchapter F, Section 3.3

<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	1,113	0	1,113	Including former 1-car garage converted to storage.
Subtotal- Conditioned	3,897	0	3,897	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	450	450	0	Detached garage exemption applies.
Subtotal Garage	450	450	0	

Total Net Floor Area for Zoning **4,264 sf**

Figure 0.3- Proposed GFA calculations including existing garage converted to storage and new garage. Note there is no change to GFA.

Footnote to preceding calculations:

1. Floor area measured to exterior face of exterior walls. Includes stair area on each floor.

Impervious Cover Calculations

Lot Area 6,522 sf

	<u>Existing*</u>	<u>Proposed</u>
House	1,741	1,741
Drive	749	50
Drive walls	90	90
Side steps	28	28
Rock work	374	374
3 A/C pads	27	27
Detached garage	0	450
Garage Walk	0	175
<u>total</u>	<u>3,009</u>	<u>2,935</u>
Impervious Cover	46.1%	45.0%

* Existing impervious calculations per survey
by All Points on 4/23/12

Figure 0.5- Existing and proposed impervious cover calculations.

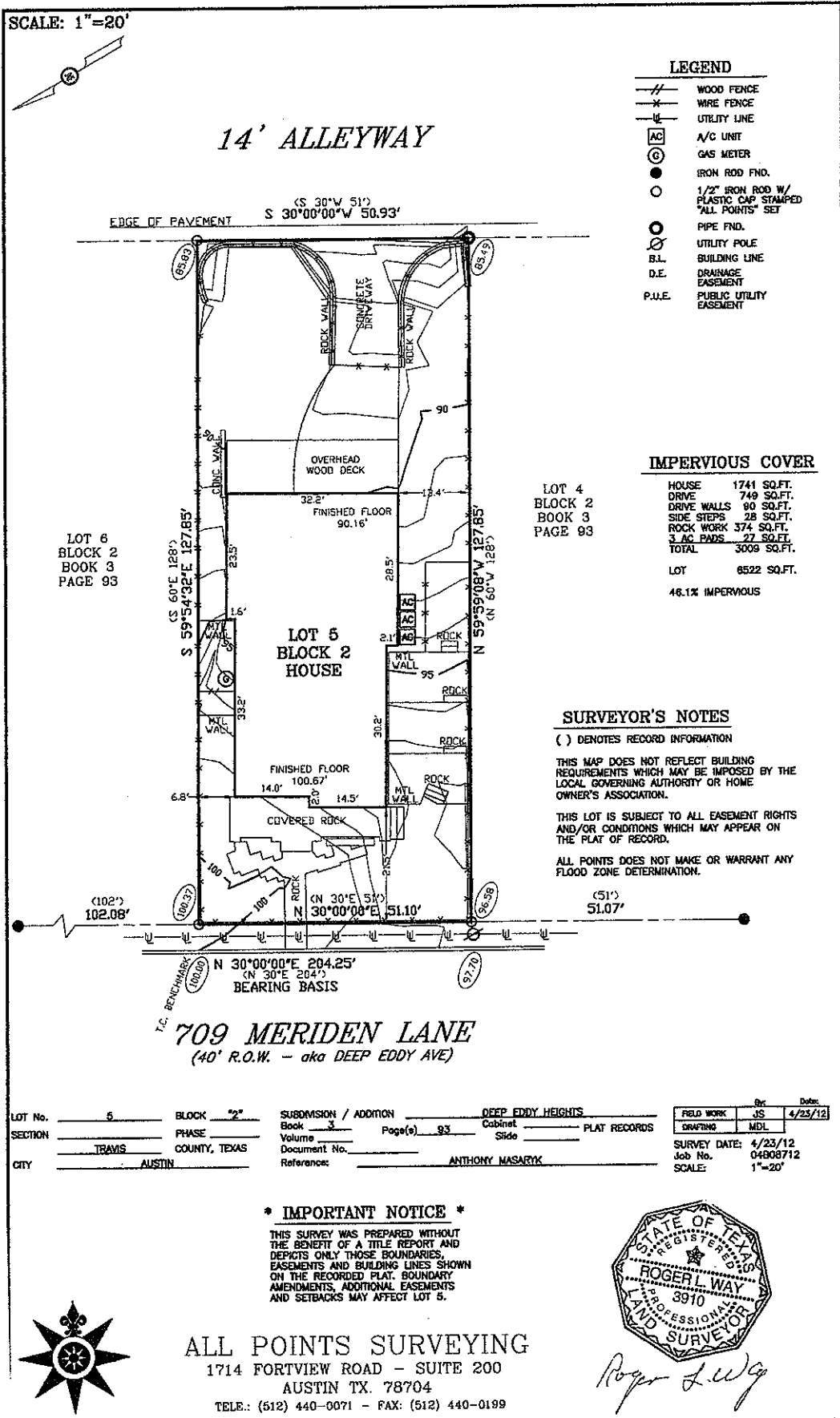


Figure 0.4- Existing conditions survey.

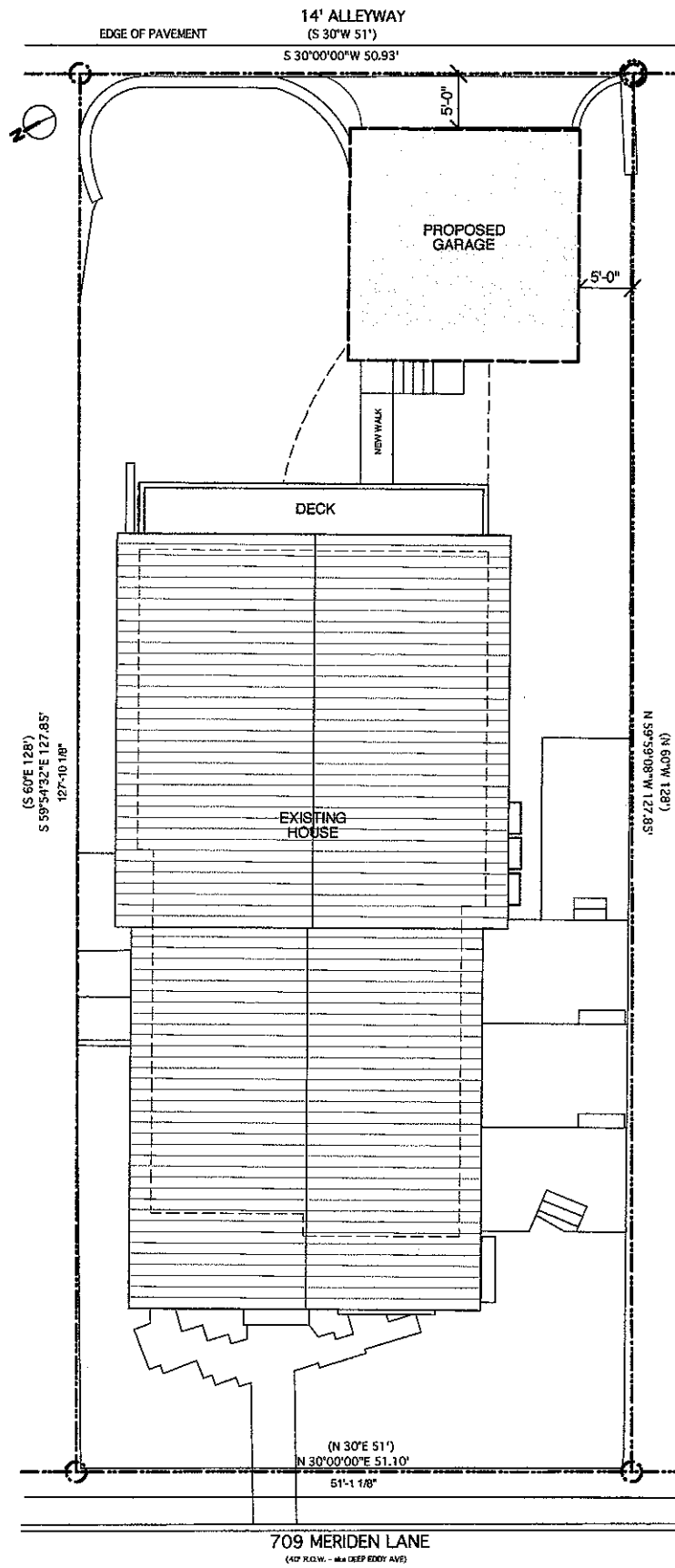


Figure 0.4- Proposed site plan. Scale: 1/6" = 1'-0

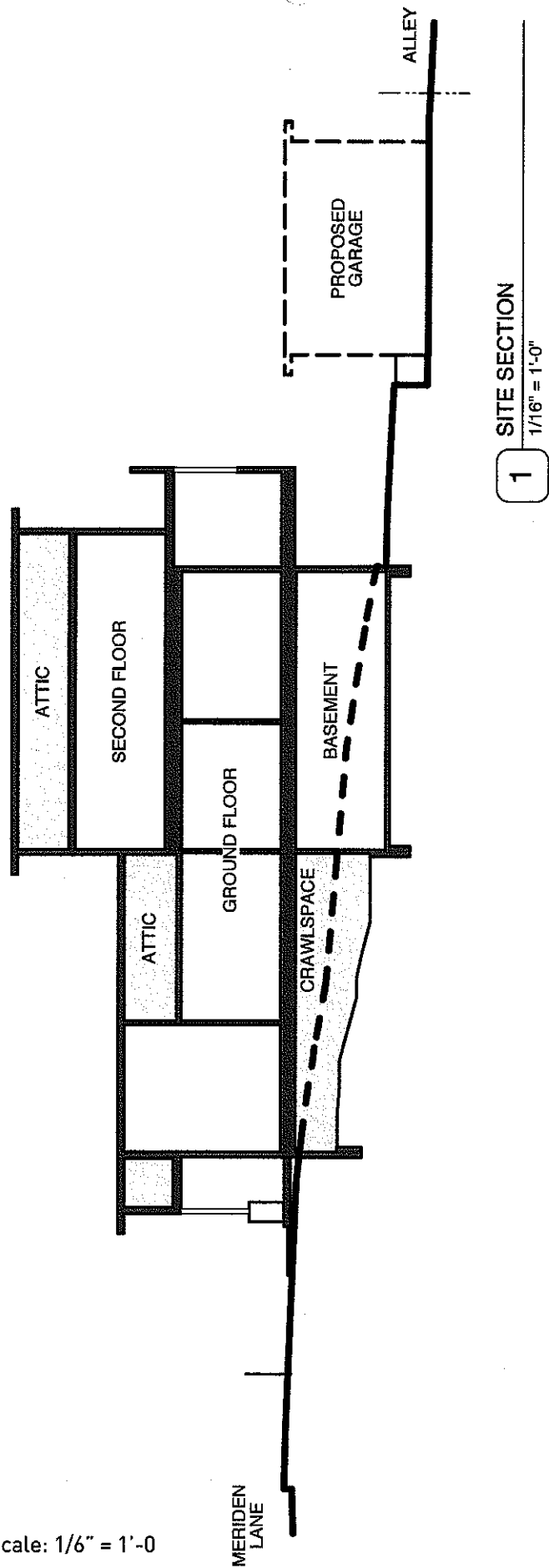


Figure 0.4- Proposed site section. Scale: $\frac{1}{16}'' = 1'-0''$

Section 1

We believe that the 450 square foot exemption from FAR for a detached rear parking area [Austin City Code Section 25-2 Subchapter F Article 3.3.2.A) should be available to this owner, allowing the proposed garage to be built. City zoning staff has interpreted the code to prohibit the proposed garage.

Background

This house sits on a site that drops nearly fifteen feet from the street to the alley. The ground floor of the house is approximately one foot above street level. The house is split level, with the second floor portion occurring on the rear 3/5 of the footprint. The character the house presents to the street is of a split-level Craftsman-style house with only one story at the street face. See Figure 1.1.



Figure 1.1. Street view of 709 Meriden Lane

The existing house, built in 1946 and remodeled in 2000, has a legal non-complying status because it exceeds the floor-area ratio allowed by the current zoning code, though it was legally compliant when constructed and remodeled. See Figure 0.2 for floor area calculations for the existing house. The largest portion of the non-complaint floor area is at the basement/garage level, which is equivalent to about 2/3 of the area of the ground floor and exists entirely within the footprint of the level above. The basement level, therefore, has no impact on the character of the neighborhood.

The proposed detached garage would face the alley, and because of the grade change, its roof would remain near or below street level. From the street, one might be able to see a

bit of the garage down the side yard and through vegetation, but it would not impact the character of the neighborhood.

Eight other properties on the block have garages or accessory buildings located immediately adjacent to the alley as shown in Figure 1.4. The City of Austin Transportation Department has approved accessing a garage off of this alley. See attached email correspondence between Samuel West and Dason Whitsett documenting this.

We believe that permitting the owner to claim the detached garage exemption complies both with the letter and intent of the code for the reasons outlined below.

Argument 1- Attached garage exemption does not apply

Zoning staff interprets the 200 square foot attached garage exemption (Section 25-2 Subchapter F Article 3.3.2.B) to apply to this property because it has an existing attached single-car garage at its lower level. Because the new garage would block access to the existing garage, the existing garage would no longer qualify as a garage thus increasing the existing gross floor area and increasing the FAR which exceeds the currently allowable maximum.

A close reading of the code, however, indicates that the 200 square foot attached garage exemption is *not* applicable. See the following excerpt referring to the conditions in which this exemption applies:

3.3.2.B.1. An attached parking area if it used [sic] to meet the minimum parking requirement.

Note that this provision is only applicable only *if it is used to meet the minimum parking requirement*. In this case, the existing attached garage is not used to meet the minimum parking requirement; it is in addition to the minimum parking requirement.

Two off-street parking spaces are required for a single-family dwelling, and this property has two available parking spaces in the driveway. The attached garage exemption would not be applicable because the property meets the minimum parking requirement without the garage. See Figure 1.2 for a diagram showing the driveway parking.

City staff has indicated the provision that attached garages are only exempted if used to meet the minimum parking requirement is generally not applied by the department because of directives received by the Residential Review Division. See the email correspondence between Daniel Word and Dason Whitsett attached to this document explaining this. The language of the code, however, is clear- an attached garage is only exempt from FAR if it is used to meet the minimum parking requirement, and this garage is not.

Because the attached garage exemption does not apply, the 450 square foot detached garage exemption should still be available, allowing the proposed garage to be built with no change to the existing FAR.

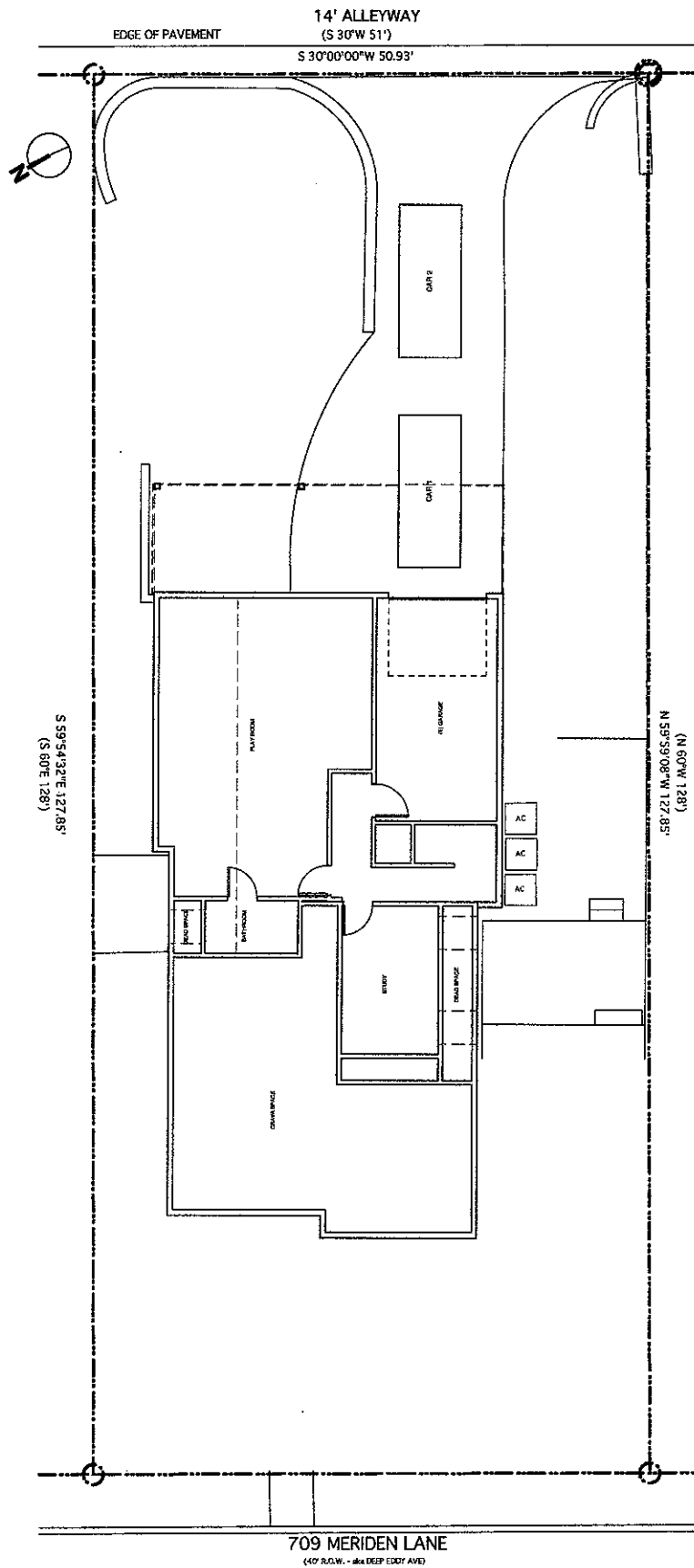


Figure 1.2. Existing basement-level plan showing driveway parking spaces.

Argument 2- Owner not required to claim exemption

The previous argument notwithstanding, an exemption is a legal right the owner may claim, but that owner should not be forced to take such an exemption if it is unwanted and unnecessary for code compliance. This house was built in 1946 with an addition built in 2000, both before the current Residential Design and Compatibility Standards took effect. It was code-compliant at the time of construction and is thus a legal non-complying use.

Daniel Word pointed out in his interpretation that Section 25-2 Subchapter F Article 3.3.2, the section of the code which outlines portions of a house that are excluded from GFA, does not use the word "exemption" in its introductory section. Section C of that same article, however, does apply the term "exemption" to both types of garage exclusions, clearly classifying those provisions as such:

C. An applicant may receive only one 450-square foot exemption per site under paragraph A. An applicant who receives a 450-square foot exemption may receive an additional 200-foot exemption for the same site under paragraph B, but only for an attached parking area used to meet minimum parking requirements.

It is improper to retroactively force the owner to claim an exemption on a property that was built legally in compliance with the code at the time of permitting. The Owner neither desires nor needs the attached garage exemption for the property to be legal. Therefore, the owner should have the right to choose to consider the existing garage as part of the existing gross floor area. As a result, adding the proposed garage using the 450 square foot exemption and converting the existing garage to storage would not increase the existing FAR. In fact, the reality is that the garage has not been used for parking in over a decade because of its unreasonably difficult access.

Argument 3- The expansion paradox

Paradoxically, by increasing the floor area of the house, the owner could reduce FAR sufficiently to be within the limits that could allow the Residential Design and Compatibility Commission to approve both the basement expansion and detached garage without a variance.

We realize that this argument may not be compelling as evidence in support of an alternative code interpretation and is perhaps more relevant to a potential variance. It is included here as information, however, because it does speak to the peculiarities of the code as it applies to this property.

This project began with the owner exploring the possibility of excavating a larger basement below the house. Currently, the lower level of the house extends below approximately two thirds of the footprint of the house above. We evaluated the possibility of expanding this lower level to encompass the entire footprint above, adding 634 square feet to the house. Section 25-2 Subchapter F Article 3.3.3 discusses floor area of porches basements and attics exempt from FAR:

3.3.3.B. A habitable portion of a building that is below grade [is exempt from FAR] if:

1. The habitable portion does not extend beyond the first-story footprint and is:
 - a. Below natural or finished grade, whichever is lower; and
 - b. Surrounded by natural grade for at least 50% of its perimeter wall area, if the habitable portion is required to be below natural grade under paragraph 1.a.
2. The finished floor of the first story is not more than three feet above the average elevation at the intersections of the minimum front yard setback line and the side property lines.

By expanding the lower level as described above, the basement would comply with all of the criteria in Article 3.3.3.B. Currently, the below-grade wall area is slightly less than 50%, but by excavating further into the hillside the ratio would increase to greater than 50%. As a result, the entire lower level (including the existing garage) could be deducted from FAR. See Figure 1.3 for floor area calculations for this hypothetical scenario.

Hypothetical Scenario Floor Area Calculations per Subchapter F, Section 3.3				
<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	1,113	1,113	0	Including former 1-car garage converted to storage.
Subtotal- Conditioned	3,897	1,113	2,784	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	450	450	0	Detached garage exemption applies.
Subtotal Garage	450	450	0	
Total Net Floor Area for Zoning			3,151	sf
Max Allowable Floor Area			2,609	sf
Percentage by which hypothetical scenario exceeds allowable floor area			21%	

Figure 1.3. Gross floor area calculations for hypothetical basement expansion scenario.

The Residential Design and Compatibility Commission is authorized to approve FAR's up to 25% over code without a variance. By expanding the basement and converting the existing garage to storage, the floor area of the house for zoning purposes would only exceed current code by 21%. We believe it is likely the RDCC would approve this modification because the basement expansion would be completely invisible to the neighborhood and have no impact to any other property whatsoever.

Under this scenario, the 450 square foot detached garage exemption would clearly be available because, with the existing garage legally converted to storage, a new garage built under the 450 square foot exemption would not affect FAR.

The owner is not pursuing this option because of its prohibitive cost. Nevertheless, it doesn't seem fair that an owner with sufficiently deep pockets could likely expand his or her living area *and* build the proposed garage, but another owner simply wishing to create a functional place to park their vehicles could not build only an identical garage.

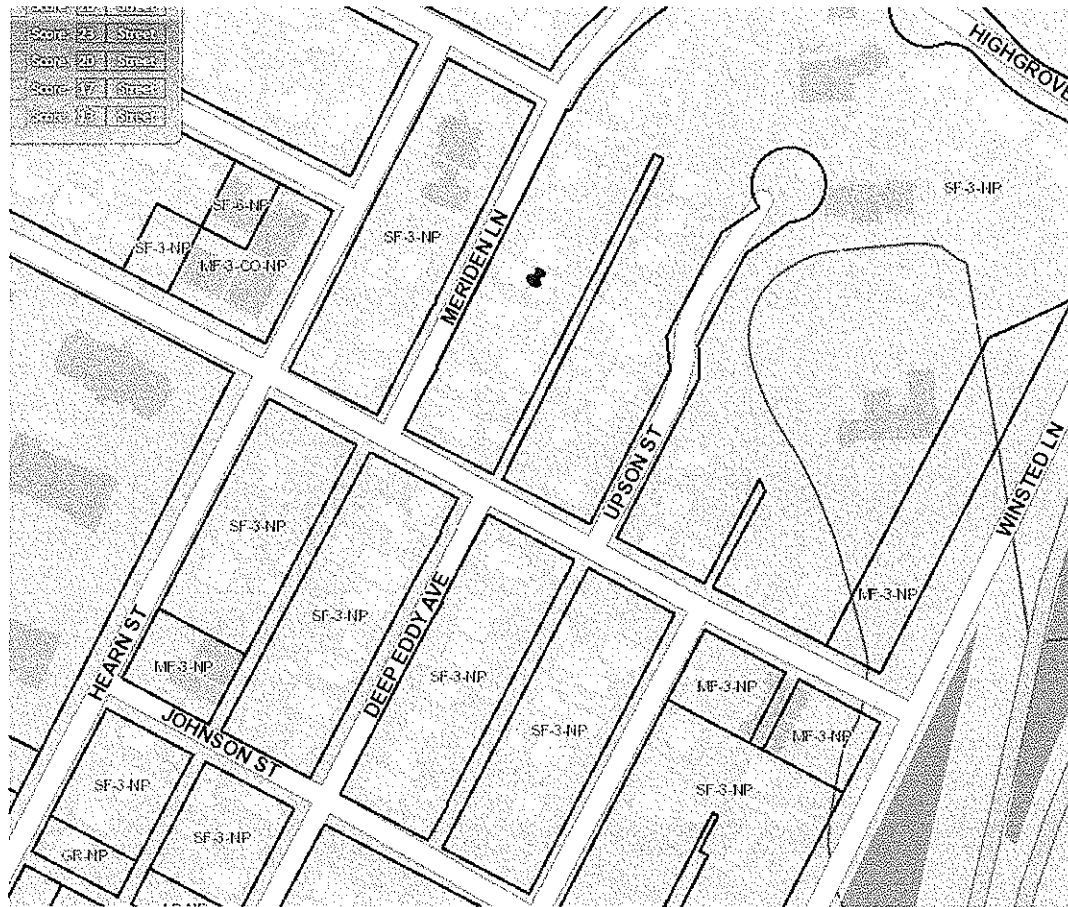


Figure 1.4- Property located at red pin. Map from City of Austin GIS Viewer.

Conclusion

In summary, we respectfully submit that the proposed garage should be permitted at 709 Meriden Lane through the use of the 450 square foot garage FAR exemption.

The first line of reasoning presented is that the reason for denial by city staff (application of the 200 square foot garage exemption to the existing house) results from a tacit policy the Division has adopted, but that is not documented in the code. The Land Development Code is law and should be applied consistently and in accordance with the language and intent of that code. According to Daniel Word, the Residential Review Division has received the directive to apply the attached garage exemption more broadly than the code provision specifies, allowing attached garages to claim the exemption even if not used to meet the minimum parking requirement.

While the code language should be amended if this is truly the intent, we do not have a problem with the Division ignoring the minimum parking provision and applying the attached garage exemption more broadly for Owners whom it benefits. However, this is an unusual case where the Owner is harmed by the broad application of the exemption. It is unfair to deny this project for the sake of consistency with a tacit policy contrary to the clear language of the code as currently written.

The previous argument notwithstanding, we also assert that the owner should not be forced to claim an unnecessary exemption on a legal property. Finally, we present evidence that a loophole in the code could potentially result in both increased floor area in the house and a permitted garage if the owner could afford the prohibitive cost of excavating into the hillside to expand the basement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dason Whitsett', with a stylized flourish at the end.

Dason Whitsett, AIA
Principal, Pollen Architecture & Design

From: "Word, Daniel" <Daniel.Word@austintexas.gov>
Subject: RE: 709 Meriden Lane
Date: May 31, 2013 8:47:26 AM CDT
To: Dason Whitsett <dw@pollenarchitecture.com>
Cc: "Benavidez, Sylvia" <Sylvia.Benavidez@austintexas.gov>, "Walker, Susan" <Susan.Walker@austintexas.gov>

I can see how one would interpret the language to mean that sufficient parking in a driveway would eliminate the ability to exclude an attached garage, but we have received feedback from the RDCC that such an interpretation is overly restrictive. I believe there is enough room in the code to interpret the section in a less restrictive manner. I do agree that if the existing garage remained a parking area there would not be an FAR increase and the new detached garage could be approved (assuming it meets all other zoning regulations).

I hope you find this helpful. The current interpretation is my final opinion on the matter. If you disagree with the interpretation, you can appeal to the Board of Adjustment.

Daniel Word
Planner Principal, Residential Review Division
Planning and Development Review, City of Austin
(512) 974-3341
505 Barton Springs Rd, 2nd floor
Austin, TX 78704

** We are currently experiencing a high volume of activity. We make every effort to respond to you by the end of the next business day. Thank you in advance for your patience. **

NEW HOURS Effective January 28th, 2013
Intake: Mon 8-11am, Wed 8-11am & 1-3pm, Fri 8-11am
Consultation: Mon/Wed/Fri 8-11am
CLOSED TUESDAY & THURSDAY (to perform reviews)

From: Dason Whitsett [mailto:dw@pollenarchitecture.com]
Sent: Thursday, May 30, 2013 8:45 AM
To: Word, Daniel
Cc: Benavidez, Sylvia; Walker, Susan
Subject: Re: 709 Meriden Lane

Dear Daniel,

Thank you very much for your detailed response. You obviously looked at this carefully. I just have a couple of follow-up questions:

When you say that "we have received feedback in public hearings before that suggest that we should interpret the wording more broadly," you seem to imply that you agree the wording of the code as written would not allow the 200 sf exemption in this case. Are you saying that, as a matter of policy, the department has chosen to allow the 200 sf exemption regardless of the minimum parking stipulation and you feel you have to be consistent in this case?

Also, can you please clarify what forums you mean by "feedback in public hearings?" I'm sure there are a lot of property owners who would have a stake in getting their 200 sf exemption on top of minimum parking requirements, but the code language is very clear about this. I assume it was written that way to discourage attached garages.

And one last question: Based on your interpretation, it seems that if we found a way to maintain access to the existing garage we would then be eligible for both exemptions and would be able to add the garage because FAR would not change. Is this correct?

Best,
Dason Whitsett

Dason Whitsett, Principal

POLLEN
Architecture & Design
1200 East 12th St

Austin, TX 78702
p. 512.499.0888
c. 512.743.6678

On May 29, 2013, at 9:36 PM, Word, Daniel wrote:

I have read through the material in the letter provided to Susan Walker dated April 29, 2013 and have carefully considered the arguments put forth. However, after due consideration, I believe a BOA variance is required to add the detached garage to the property.

Regarding argument 1, a property is not limited to only one parking exception; a site is limited to one 450 and one 200 sq ft exemption. By converting the existing garage to storage, the GFA is being increased, as the existing garage is currently not counted towards FAR. While I understand the argument that the existing driveway provides the minimum required off-street parking, we have received feedback in public hearings before that suggest that we should interpret the wording more broadly.

C. An applicant may receive only one 450-square foot exemption per site under paragraph A. An applicant who receives a 450-square foot exemption may receive an additional 200-foot exemption for the same site under paragraph B, but only for an attached parking area used to meet minimum parking requirements.

Regarding argument 2, the code does not describe the parking "exemption" as exemptions; it simply states that parking areas meeting certain defined criteria are excluded.

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:

Regarding argument 3, the existence of a loophole or paradox is not ample justification to interpret the code differently. It might make for a good argument in favor for the granting of a variance, but it is not sufficient to alter the staff interpretation.

I appreciate the thoroughness of the argument presented and am sorry that we do not agree. I wish you the best of luck in your case before the Board of Adjustment.

Daniel Word
Planner Principal, Residential Review Division
Planning and Development Review, City of Austin
(512) 974-3341
505 Barton Springs Rd, 2nd floor
Austin, TX 78704

** We are currently experiencing a high volume of activity. We make every effort to respond to you by the end of the next business day. Thank you in advance for your patience. **

NEW HOURS Effective January 28th, 2013
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Consultation: Mon/Wed/Fri 8-11am
CLOSED TUESDAY & THURSDAY (to perform reviews)

From: Benavidez, Sylvia
Sent: Wednesday, May 29, 2013 6:29 PM
To: Dason Whitsett
Cc: Word, Daniel
Subject: RE: 709 Meriden Lane

Daniel should be in the office tomorrow and will get a more definite answer from him.

From: Dason Whitsett [<mailto:dww@pollenarchitecture.com>]
Sent: Wednesday, May 29, 2013 8:36 AM
To: Benavidez, Sylvia
Cc: Word, Daniel
Subject: Re: 709 Meriden Lane

Hi Sylvia,

Just checking in- any updates?

thanks,
Dason

Dason Whitsett, Principal

PDLL & B
Architecture & Design
1200 East 12th St
Austin, TX 78702
p. 512.499.0888
c. 512.743.6678

On May 16, 2013, at 2:29 PM, Benavidez, Sylvia wrote:

The staff meeting was cancelled last week and I was not able to speak to Daniel Word, he is in the office today and I will give him your arguments that you wrote up and see if he can assist with a response.

-----Original Message-----

From: Dason Whitsett [<mailto:dasonw@gmail.com>]
Sent: Wednesday, May 15, 2013 12:47 PM
To: Benavidez, Sylvia
Subject: 709 Meriden Lane

Hi Sylvia,

You were going to discuss 709 Meriden lane where my client would like to add a garage with your staff last week, and I just wanted to check in and see what the outcome of that conversation was.

Thanks for your help,
Dason Whitsett

From: "West, Samuel" <Samuel.West@austintexas.gov>
Subject: RE: Alley Access for driveway- 709 Meriden and at 703 East 46th Street
Date: July 5, 2012 3:15:24 PM CDT
To: <dw@pollenarchitecture.com>
Cc: "Koehn, Ron" <Ron.Koehn@austintexas.gov>

Dason,
First, the public right of way used as an alley behind 703 East 46th St is maintained by the City of Austin Street & Bridge Operations. We maintain this alley with milling material currently with no plans to paved the surface. You will need to tie into the existing surface of the alley with concrete. You may need to go into the right of way of the alley with concrete to tie in the driveway. Second, the public right of way used as an alley behind 709 Meriden is maintained by the City of Austin Street & Bridge Operations. We maintain this alley with milling material currently with no plans to paved the surface. You will need to tie into the existing surface of the alley with concrete. You may need to go into the right of way of the alley with concrete to tie in the driveway. The area where you are going to tie into appears to be a mix of material from the last builders in the alley. I will get with our district crew to have them re-grade the alley. Please let me know your reviewer's name and I will sent them an e-mail.
Thank you

Sam West
Engineer Assoc. C
Public Works Operations
Phone 974-8775

From: Koehn, Ron
Sent: Monday, July 02, 2012 7:07 AM
To: West, Samuel
Subject: FW: Alley Access for driveway- 709 Meriden and at 703 East 46th Street

Sam:
Please handle

Ron Koehn P.E. 974-8777
Paving Operations Engineer
Street & Bridge Division

From: Dason Whitsett [mailto:dw@pollenarchitecture.com]
Sent: Friday, June 29, 2012 4:32 PM
To: Koehn, Ron
Cc: Anthony Masaryk
Subject: Fwd: Alley Access for driveway- 709 Meriden and at 703 East 46th Street

Ron,

When will we receive a determination about this project?

thank you,
Dason Whitsett

Dason Whitsett, Principal

POLLER
Architecture & Design
1200 East 12th St
Austin, TX 78702
p. 512.499.0868
c. 512.743.6878

Begin forwarded message:

From: Dason Whitsett <dw@pollenarchitecture.com>
Subject: Re: Alley Access for driveway- 709 Meriden and at 703 East 46th Street
Date: June 19, 2012 6:24:24 AM CDT
To: "Koehn, Ron" <Ron.Koehn@austintexas.gov>

Hi Ron, Just checking in- any idea when a determination will be made?

Thank you,
Dason Whitsett

On Jun 11, 2012, at 3:59 PM, Koehn, Ron wrote:

I got the email and will be working on a response to both.

Ron

From: Dason Whitsett [mailto:dw@pollenarchitecture.com]
Sent: Monday, June 11, 2012 2:23 PM
To: Koehn, Ron
Subject: Alley Access for driveway- 709 Meriden

Hi Ron,

I just spoke to you a minute ago about alley access to two properties. To keep things clear and organized, I'll send a separate email about the second one.

The first is at 709 Meriden Lane where we would like to do a detached garage with an entry off the alley behind the property. The property is located on the east side of Meriden Lane. Currently, the owners have a driveway to an attached garage coming off the alley, so in essence we would just be deleting most of the driveway and moving the garage closer to the alley. There are other properties which have garages off the alley as well, and there is no possibility of entry off the street because of the topography.

Thank you for your assistance.

Best,
Dason

Dason Whitsett, Principal

POLLEN
Architecture & Design
1200 East 12th St
Austin, TX 78702
p. 512.499.0888
c. 512.743.6678

POLLEN

June 3, 2013

City of Austin
Board of Adjustment
Care of Susan Walker
Planning and Development Review
505 Barton Springs Road
Austin, TX 78704

Re: Standing to Appeal Status for Interpretation Application for 709 Meriden Lane

Property Owners:
Anthony Masaryk & Ghadeer Okayli
709 Meriden Lane
Austin, TX 78703

Dear Ms. Walker,

I am the applicant representing property owners Anthony Masaryk & Ghadeer Okayli in the requested code interpretation for the proposed detached garage project at 709 Meriden Lane. I intend to appear at the public hearing on this matter. Please find my contact information below. In addition, I can be reached by cell phone at 512.743.6678. Please do not hesitate to call.

The attached letter and application documents the issues we have with the city staff interpretation of the code as it relates to this project in detail. In short, the question hinges on whether the existing attached garage on this property should be considered to contribute to the existing gross floor area. We maintain that it should. If the Board of Adjustment rules that it does, this will allow the construction of a detached garage under the 450 square foot garage exemption without any increase to FAR.

Sincerely,



Dason Whitsett, AIA
Principal, Pollen Architecture & Design

Benavidez, Sylvia

From: Benavidez, Sylvia
Sent: Thursday, May 16, 2013 2:30 PM
To: 'Dason Whitsett'
Cc: Word, Daniel
Subject: RE: 709 Meriden Lane

The staff meeting was cancelled last week and I was not able to speak to Daniel Word, he is in the office today and I will give him your arguments that you wrote up and see if he can assist with a response.

-----Original Message-----

From: Dason Whitsett [<mailto:dasonw@gmail.com>]
Sent: Wednesday, May 15, 2013 12:47 PM
To: Benavidez, Sylvia
Subject: 709 Meriden Lane

Hi Sylvia,

You were going to discuss 709 Meriden lane where my client would like to add a garage with your staff last week, and I just wanted to check in and see what the outcome of that conversation was.

Thanks for your help,
Dason Whitsett

Susan:
Not sure if you
needed this back ...
- Daniel
Word
5/30/13

5/14/13 - Dason - 512
743-6678

POLLEN

Susan Walker
BOA Request

April 29, 2013

City of Austin
Board of Adjustment
Care of Susan Walker
Planning and Development Review
505 Barton Springs Road
Austin, TX 78704

Re: Variance Application for 709 Meriden Lane

Property Owners:
Anthony Masaryk & Ghadeer Okayli
709 Meriden Lane
Austin, TX 78703

Dear Ms. Walker,

This letter serves as supporting documentation to the variance application for 709 Meriden Lane.

Executive Summary:

The Owners of 709 Meriden Lane wish to build a detached garage off of the alley. This is a common use in the neighborhood. The existing house, built in 1946 and remodeled in 2000, has a legal non-complying status because it exceeds the floor-area ratio allowed by the current zoning code.

We respectfully argue that the Owner should be eligible to claim the 450 square foot detached garage floor-area exemption allowed in the Residential Design Compatibility Standards for the reasons outlined in Section 1 below, thereby allowing construction of the garage without any change to the existing floor-area ratio.

We believe that permitting the owner to claim the detached garage exemption complies both with the letter and intent of the code by allowing a use that is common to the neighborhood while having no impact on the volume of the house visible from the street which is similar to other houses on the block.

Section 0- Zoning Calculations and Existing Conditions

Lot Area	6,522 sf
Allowable FAR	0.4 or 2300 sf min.
Max Floor Area	2,609 sf

Figure 0.1- FAR calculations.

Existing Floor Area Calculations per Subchapter F, Section 3.3

<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	885	0	885	Not including existing 1-car garage.
Subtotal- Conditioned	3,669	0	3,669	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	228	0	228	Attached garage exemption does not apply- see Argument 1.
Subtotal Garage	228	0	228	

Total Net Floor Area for Zoning **4,264 sf**

Figure 0.2- Existing floor area calculations.

Proposed Floor Area Calculations per Subchapter F, Section 3.3

<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	1,113	0	1,113	Including former 1-car garage converted to storage.
Subtotal- Conditioned	3,897	0	3,897	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	450	450	0	Detached garage exemption applies.
Subtotal Garage	450	450	0	

Total Net Floor Area for Zoning **4,264 sf**

Figure 0.3- Proposed floor area calculations. *Note there is no change to FAR.*

Footnote to preceeding calculations:

1. Floor area measured to exterior face of exterior walls. Includes stair area on each floor.

Impervious Cover Calculations

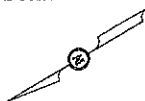
Lot Area 6,522 sf

	<u>Existing*</u>	<u>Proposed</u>
House	1,741	1,741
Drive	749	50
Drive walls	90	90
Side steps	28	28
Rock work	374	374
3 A/C pads	27	27
Detached garage	0	450
Garage Walk	0	175
total	3,009	2,935
Impervious Cover	46.1%	45.0%

* Existing impervious calculations per survey
by All Points on 4/23/12

Figure 0.5- Existing and proposed impervious cover calculations.

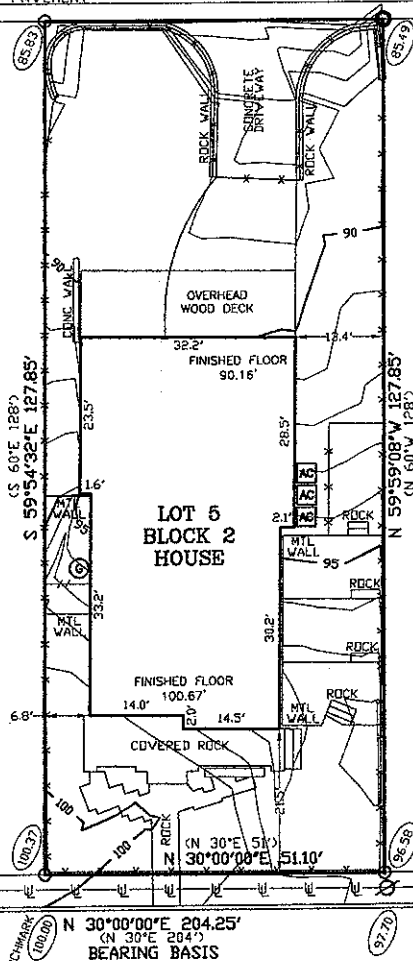
SCALE: 1"=20'



14' ALLEYWAY

EDGE OF PAVEMENT (S 30°W 51') S 30°00'00"W 50.93'

LOT 6
BLOCK 2
BOOK 3
PAGE 93



709 MERIDEN LANE
(40' R.O.W. - aka DEEP EDDY AVE)

LEGEND

- // WOOD FENCE
- X WIRE FENCE
- U UTILITY LINE
- AC A/C UNIT
- G GAS METER
- IRON ROD END.
- 1/2" IRON ROD W/ PLASTIC CAP STAMPED "ALL POINTS" SET
- PIPE END.
- UTILITY POLE
- B.L. BUILDING LINE
- D.E. DRAINAGE EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT

IMPERVIOUS COVER

LOT 4
BLOCK 2
BOOK 3
PAGE 93

HOUSE 1741 SQ.FT.
DRIVE 749 SQ.FT.
DRIVE WALLS 90 SQ.FT.
SIDE STEPS 28 SQ.FT.
ROCK WORK 374 SQ.FT.
3 AC PADS 27 SQ.FT.
TOTAL 3009 SQ.FT.
LOT 6522 SQ.FT.
46.1% IMPERVIOUS

SURVEYOR'S NOTES

() DENOTES RECORD INFORMATION

THIS MAP DOES NOT REFLECT BUILDING REQUIREMENTS WHICH MAY BE IMPOSED BY THE LOCAL GOVERNING AUTHORITY OR HOME OWNER'S ASSOCIATION.

THIS LOT IS SUBJECT TO ALL EASEMENT RIGHTS AND/OR CONDITIONS WHICH MAY APPEAR ON THE PLAT OF RECORD.

ALL POINTS DOES NOT MAKE OR WARRANT ANY FLOOD ZONE DETERMINATION.

LOT No. 5 BLOCK 2
SECTION TRAVIS PHASE
CITY AUSTIN COUNTY, TEXAS

SUBDIVISION / ADDITION DEEP EDDY HEIGHTS
Book 3 Cabinet PLAT RECORDS
Volume Page(s) 93
Document No.
Reference: ANTHONY MASARYK

FIELD WORK JS 4/23/12
DRAFTING MDL
SURVEY DATE: 4/23/12
Job No. 04908712
SCALE: 1"=20'

* IMPORTANT NOTICE *

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DEPICTS ONLY THOSE BOUNDARIES, EASEMENTS AND BUILDING LINES SHOWN ON THE RECORDED PLAT. BOUNDARY AMENDMENTS, ADDITIONAL EASEMENTS AND SETBACKS MAY AFFECT LOT 5.

ALL POINTS SURVEYING
1714 FORTVIEW ROAD - SUITE 200
AUSTIN TX. 78704
TELE.: (512) 440-0071 - FAX: (512) 440-0199



Roger L. Way

Figure 0.4- Existing conditions survey.

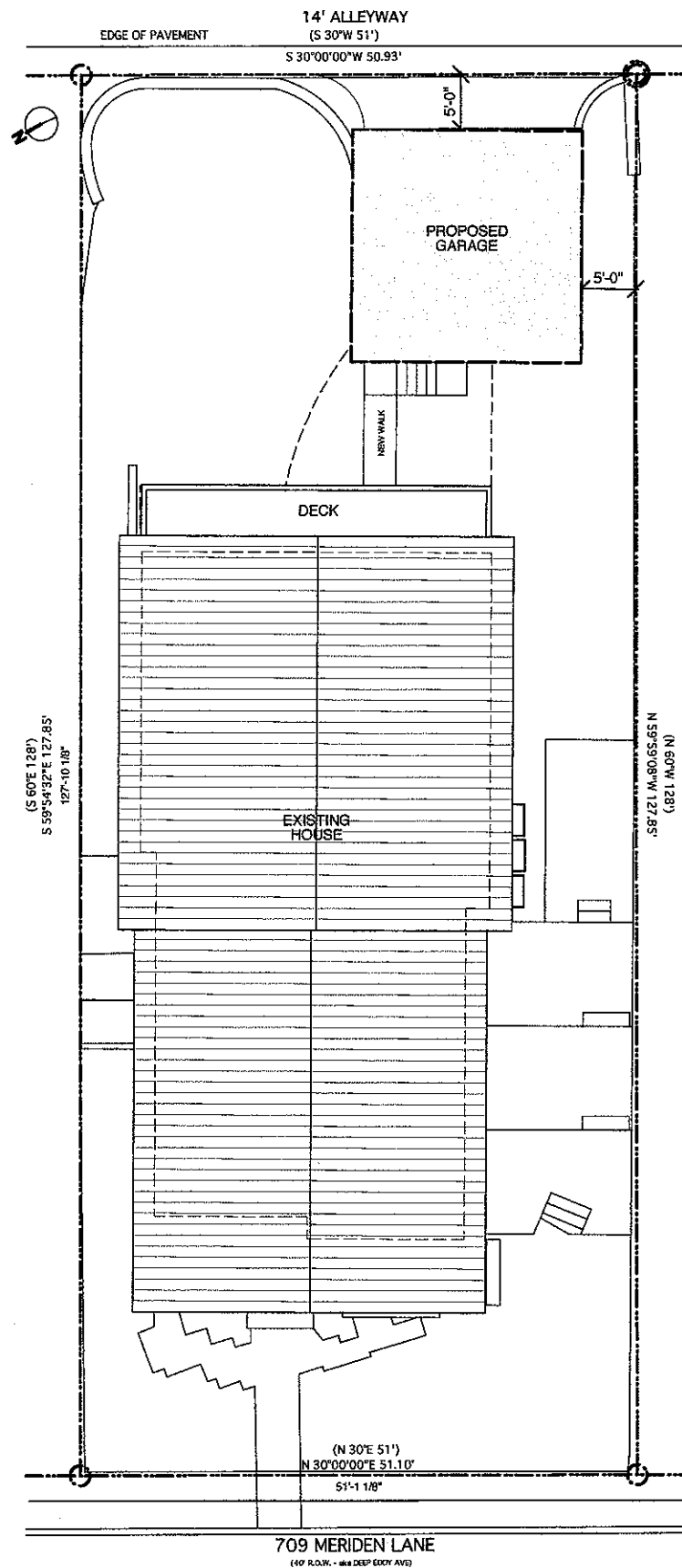


Figure 0.4- Proposed site plan. Scale: 1/6" = 1'-0"

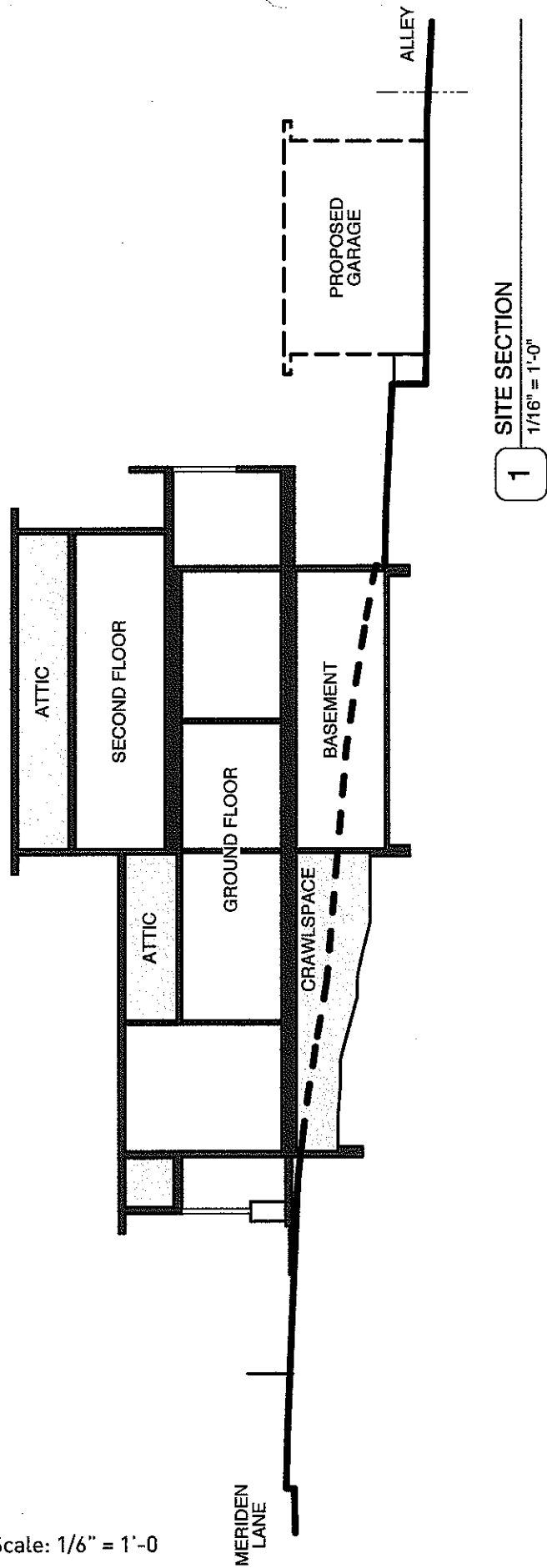


Figure 0.4- Proposed site section. Scale: 1/6" = 1'-0

Section 1

Zoning regulations do not allow for reasonable use because:

We believe that the 450 square foot exemption from FAR for a detached rear parking area (Austin City Code Section 25-2 Subchapter F Article 3.3.2.A) should be available to this owner, allowing the proposed garage to be built. City zoning staff has interpreted the code to prohibit the proposed garage.

Background

This house sits on a site that drops nearly fifteen feet from the street to the alley. The ground floor of the house is approximately one foot above street level. The house is split level, with the second floor portion occurring on the rear 3/5 of the footprint. The character the house presents to the street is of a one-story Craftsman-style house. See Figure 1.1.



Figure 1.1. Street view of 709 Meriden Lane.

The existing house, built in 1946 and remodeled in 2000, has a legal non-complying status because it exceeds the floor-area ratio allowed by the current zoning code, though it was legally compliant when constructed and remodeled. See Figure 0.2 for floor area calculations for the existing house. The largest portion of the non-complaint floor area is at the basement/garage level, which is equivalent to about 2/3 of the area of the ground floor and exists entirely within the footprint of the level above. The basement level, therefore, has no impact on the character of the neighborhood.

The proposed detached garage would face the alley, and because of the grade change, its roof would remain near or below street level. From the street, one might be able to see a bit of the garage down the side yard and through vegetation, but it would not impact the character of the neighborhood.

Eight other properties on the block have garages or accessory buildings located immediately adjacent to the alley as shown in Figure 3.1. The City of Austin Transportation Department has approved accessing a garage off of this alley.

We believe that permitting the owner to claim the detached garage exemption complies both with the letter and intent of the code for the reasons outlined below.

Argument 1- Attached garage exemption does not apply

Zoning staff interprets the 200 square foot attached garage exemption (Section 25-2 Subchapter F Article 3.3.2.B) to apply to this property because it has an existing attached single-car garage at its lower level. Because each property may receive only one garage FAR exemption, this prevents the owner from claiming the 450 square foot detached garage exemption for the purpose of building the proposed detached garage.

Built
Detached
garage
450 #

A close reading of the code, however, indicates that the 200 square foot attached garage exemption is *not* applicable. See the following excerpt referring to the conditions in which this exemption applies:

3.3.2.B.1. An attached parking area if it used [sic] to meet the minimum parking requirement.

Note that this provision is only applicable only *if it is used to meet the minimum parking requirement*. In this case, the existing attached garage is not used to meet the minimum parking requirement; it is in addition to the minimum parking requirement.

Two off-street parking spaces are required for a single-family dwelling, and this property has two available parking spaces in the driveway. The attached garage exemption would not be applicable because the property meets the minimum parking requirement without the garage. See Figure 1.2 for a diagram showing the driveway parking.

Because the attached garage exemption does not apply, the 450 square foot detached garage exemption should still be available, allowing the proposed garage to be built with no change to the existing FAR.

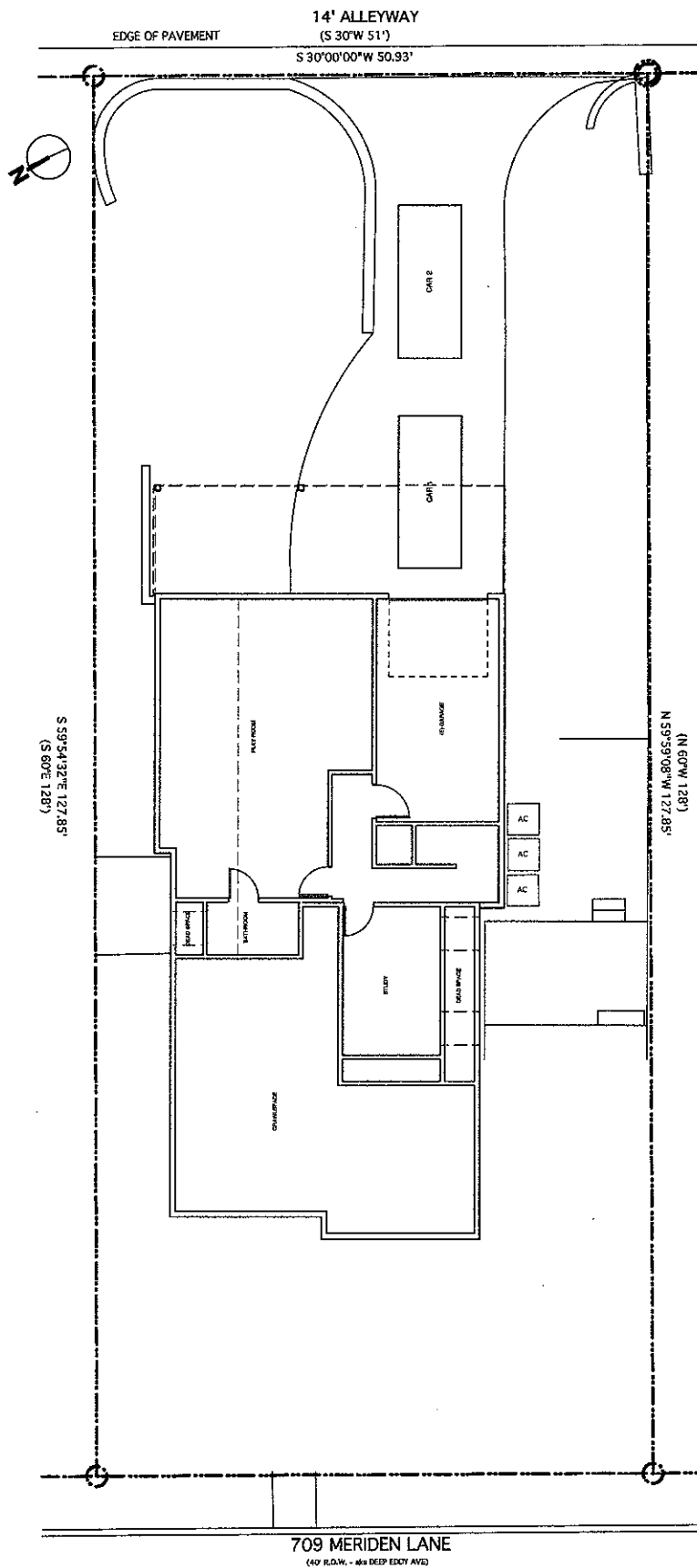


Figure 1.2. Existing basement-level plan showing driveway parking spaces.

~~Argument 2—Owner not required to claim exemption~~

The previous argument notwithstanding, an exemption is a legal right the owner may claim, but that owner should not be forced to take such an exemption if it is unwanted and unnecessary for code compliance. This house was built in 1946 with an addition built in 2000, both before the current Residential Design and Compatibility Standards took effect. It was code-compliant at the time of construction and is thus a legal non-complying use.

It is improper to retroactively force the owner to claim an exemption on a property that was built legally in compliance with the code at the time of permitting. The Owner neither desires nor needs the attached garage exemption for the property to be legal. Therefore, the 450 square foot detached garage exemption should still be available, allowing the proposed garage to be built.

~~Argument 3—The expansion paradox~~

Basement

Paradoxically, by increasing the floor area of the house, the owner could reduce FAR sufficiently to be within the limits that could allow the Residential Design and Compatibility Commission to approve both the basement expansion and detached garage without a variance.

This project began with the owner exploring the possibility of excavating a larger basement below the house. Currently, the lower level of the house extends below approximately two thirds of the footprint of the house above. We evaluated the possibility of expanding this lower level to encompass the entire footprint above, adding 634 square feet to the house. Section 25-2 Subchapter F Article 3.3.3 discusses floor area of porches basements and attics exempt from FAR:

3.3.3.B. A habitable portion of a building that is below grade [is exempt from FAR] if:

1. The habitable portion does not extend beyond the first-story footprint and is:
 - a. Below natural or finished grade, whichever is lower; and
 - b. Surrounded by natural grade for at least 50% of its perimeter wall area, if the habitable portion is required to be below natural grade under paragraph 1.a.
2. The finished floor of the first story is not more than three feet above the average elevation at the intersections of the minimum front yard setback line and the side property lines.

By expanding the lower level as described above, the basement would comply with all of the criteria in Article 3.3.3.B. Currently, the below-grade wall area is slightly less than 50%, but by excavating further into the hillside the ratio would increase to greater than 50%. As a result, the entire lower level (including the existing garage) could be deducted from FAR. See Figure 1.3 for floor area calculations for this hypothetical scenario.

Hypothetical Scenario Floor Area Calculations per Subchapter F, Section 3.3				
<u>Conditioned Space</u>	Gross Area ₁	Exempted Area	Net Area	Notes
Second Floor	1,037	0	1,037	
Ground Floor	1,747	0	1,747	
Basement	1,113	1,113	0	Including former 1-car garage converted to storage.
Subtotal- Conditioned	3,897	1,113	2,784	
<u>Covered Porches & Balconies</u>				
Second Floor Rear	198	149	49	Only 49 sf covered by eave above- remainder exempt
Ground Floor Front	184	184	0	Exempt-ground level- at grade
Ground Floor Rear	318	0	318	Not exempt- Above grade covered by balcony above
Basement Rear	126	126	0	Exempt-ground level at grade
Subtotal Porches & Balconies	826	459	367	
<u>Garage</u>				
Garage Area	450	450	0	Detached garage exemption applies.
Subtotal Garage	450	450	0	
Total Net Floor Area for Zoning			3,151	sf
Max Allowable Floor Area			2,609	sf
Percentage by which hypothetical scenario exceeds allowable floor area			21%	

Figure 1.3. Floor area calculations for hypothetical basement expansion scenario.

The Residential Design and Compatibility Commission is authorized to approve FAR's up to 25% over code without a variance. By expanding the basement and converting the existing garage to storage, the floor area of the house for zoning purposes would only exceed current code by 21%. Because the attached garage exemption would not be applicable with the former garage converted to storage, the 450 square foot detached garage exemption would also be available, allowing the proposed garage to be built.

The owner is not pursuing this option because of its prohibitive cost. Nevertheless, it doesn't seem fair that an owner with sufficiently deep pockets could likely expand his or her living area *and* build the proposed garage, but another owner simply wishing to create a functional place to park their vehicles could not build only an identical garage.

Section 2

In Argument 1, Section 1, we argue that the 450 sf detached garage exemption should be available to this property without a variance. If one interprets the code to necessitate a variance, however, the following responses apply.

a. The hardship is unique to the property in that:

The property has an extreme grade change making on-site parking difficult. The existing driveway at the back of the property is steep, narrow, and constrained by retaining walls on both sides. It is very difficult to park in, and completely impractical for actual use by more than one vehicle.

Street parking in the neighborhood is over-crowded and tight. The Owners simply wish to have a functional place to park their vehicles. The proposed garage would be at alley level, providing on-site parking that actually works.

b. The hardship is not general to the area of the property because:

The property is located on a particularly steep section of hill. It has fifteen feet of slope from street to alley. Many of the other adjacent properties, even those with lesser grade changes, have detached or attached garages similar to the one proposed which were presumably built prior to the passage of the current Residential Design and Compatibility Standards.

Section 3

The variance will not alter the character of the area adjacent to the property because:

The proposed detached garage will be nearly invisible from the street. It will be located at the rear of the property, with its roof level below street level. The only view of the garage will be down the sideyard and through vegetation.

Numerous other properties in this block and in the neighborhood have garages accessed off of the alley as shown in Figure 3.1. Eight other properties on the same block have garages or accessory buildings on the alley. It will fit seamlessly with the neighborhood context in that regard.

The only change to the character of the neighborhood will be the welcome reduction in the number of resident cars parked on the clogged and narrow street.

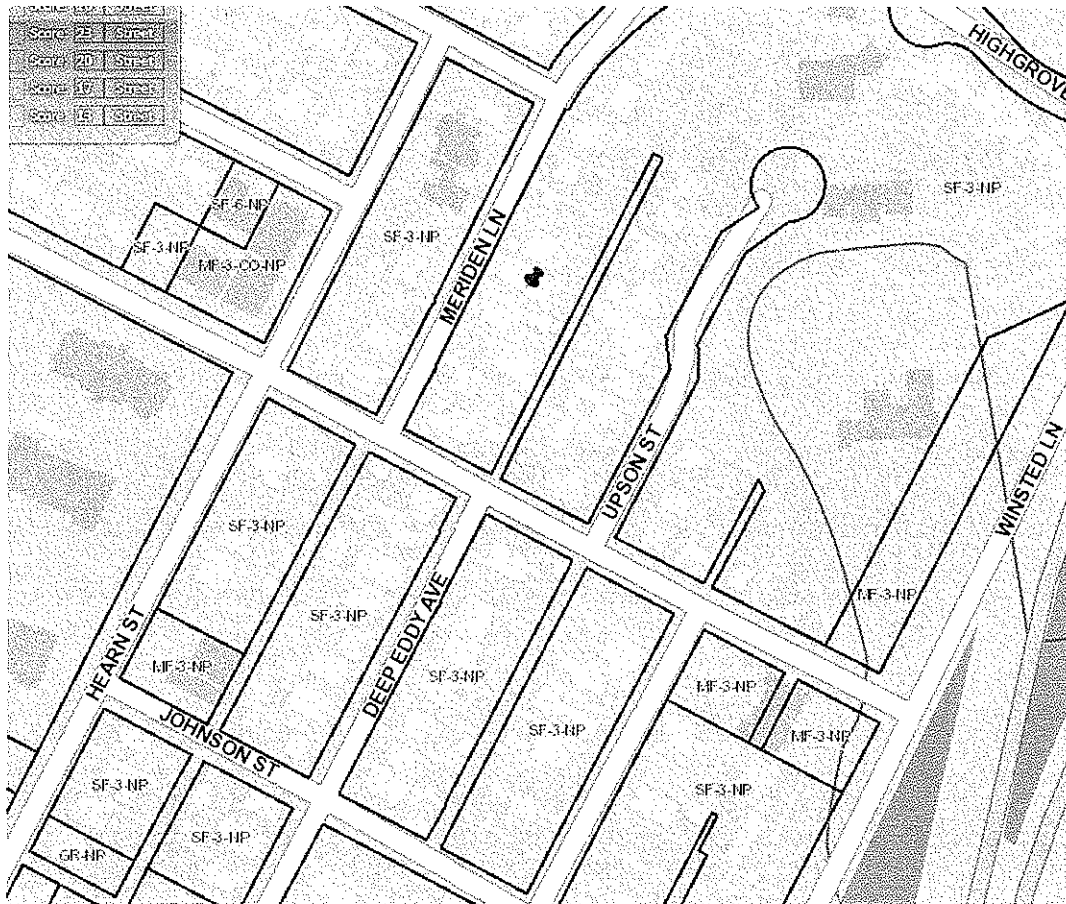


Figure 3.1- Property located at red pin. Map from City of Austin GIS Viewer.

Conclusion

In summary, we respectfully submit that the proposed garage should be permitted at 709 Meriden Lane through the use of the 450 square foot garage FAR exemption.

The first line of reasoning presented is that the reason for denial by city staff (application of the 200 square foot garage exemption to the existing house) results from a minor discrepancy in interpretation of the code. Secondly, the previous argument notwithstanding, we assert that the owner should not be forced to claim an unnecessary exemption on a legal property. Finally, we present evidence that a loophole in the code could potentially result in both increased floor area in the house and a permitted garage if the owner could afford the prohibitive cost of excavating into the hillside to expand the basement.

Sincerely,

Dason Whitsett, AIA

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.

Written comments must be submitted to 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: C15-2013-0086 - 709 Meriden Lane

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, July 31st, 2013

JAMES E. BURKIN

Your Name (please print)

2309 W. 8th Street

Your address(es) affected by this application

James E. Burkin

Signature

July 23, 2013

Date

Daytime Telephone: 512-236-8070

Comments: An Alley served detached garage would be an asset to the area. Meriden is narrow street.

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