



MEMORANDUM

TO: Board of Adjustment

FROM: Daniel Word, Principal Planner, Residential Review Division

DATE: December 10, 2013

SUBJECT: Appeal of Building Official's Interpretation Regarding 2100 Travis Heights

Case Summary

The appellant submitted a Residential Permit Application to Residential Review staff on or about August 7, 2013, proposing to construct a new detached dwelling unit to the rear of an existing single-family residence to create a two-family residential use. The application was reviewed and rejected on or about August 12th for multiple reasons (Attachment A), including notification to the applicant that the project as proposed did not comply with LDC 25-2-774 (C) (7), which limits the size of the second dwelling unit. The applicant is appealing this particular decision to the Board of Adjustment for an interpretation.

Arguments

The appellant makes an argument favoring the approval of the proposed design, asserting that the incorrect definition of gross floor area is being applied to the second dwelling unit.

The appellant references LDC 25-2 Subchapter F Article 3.3 for the definition of gross floor area, noting that it modifies the definition of gross floor area found in LDC 25-1-21 (44) and has applied the Article 3.3 language to the design proposed. The appellant also notes compliance with the "porch exclusion" and "basement exclusion" found in Article 3.3.3 (A) and Article 3.3.3 (B) respectively and claims that PDRD has permitted other second dwelling units using the Subchapter F standards for gross floor area, specifically citing the parking and porch exclusions.

Staff has consistently applied the LDC 25-1-21 definition of gross floor area to the limitations established in LDC 25-2-774. Porches and parking areas would not be calculated as gross floor area under the LDC 25-1-21 definition, as porches are not "enclosed" and parking facilities are specifically excluded by the code language, whereas a basement is "enclosed" and would count as gross floor area.

Staff Interpretation

Staff believes that for purposes of calculating gross floor area of a building, the LDC 25-1-21 definition should be the appropriate definition applied in relation to the 850 square foot limitation of LDC 25-2-774. Under LDC 25-2 Subchapter F Article 2.1, the maximum development permitted on a property subject to Subchapter F is limited to the greater of 0.4 to 1 FAR or 2300 square feet. Staff views this as

guidance that the Article 3.3 definition should be used when calculating the overall FAR of a site, but not necessarily for the calculation of gross floor area of a particular building.

The term "gross floor area" is used in many areas of the Austin City Code, including but not limited to the Sidewalk Ordinance (Attachment B) and the "Super Duplex" Ordinance (Attachment C). Applying the Article 3.3 definition to other areas of the Austin City Code outside of LDC 25-2 Subchapter F would create a situation where the outcome of a determination as to whether a particular development requires a landscaping plan, or the installation of a sidewalk would differ depending on whether the development is located inside or outside of the Subchapter F boundaries. Staff believes it would create an inequitable situation for similar uses with similar circumstances to have these determinations tied to a location.

Additionally, *Two-family Residential Use* has existed with the site development regulation limiting the size of the second dwelling unit since May 22, 2000, more than 6 years prior to the adoption of the "McMansion" Ordinance (aka Subchapter F). The 850 square foot limitation was later modified on November 18, 2004 to further restrict the overall size of the building to limit the 2nd story to 550 square feet (if any). Taking the interpretation of the appellant would have the effect of allowing the second dwelling unit to become as large as 1700 square feet (or more) if the Subchapter F exclusions were to be applied to individual buildings, which would seem to directly conflict with the perceived intention to limit the overall size of the second dwelling unit.

In this scenario, a permit request has been denied by the building official and the appellant retains the option of pursuing a variance. Staff respectfully requests the board uphold the decision of the building official.

For your consideration,

A handwritten signature in black ink, appearing to read 'D. Word', with a stylized, flowing script.

Daniel Word
Principal Planner, Residential Review Division
Planning and Development Review Department

Attachment A: Comment Report dated August 12, 2013

Attachment B: Ordinance #20080214-096

Attachment C: Ordinance #030605-49

Attachment D: Research Report re: prior approvals of basements/attics

Austin City Code References

25-1-21 (44)

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

25-2-774

(A) For a two-family residential use, the base zoning district regulations are superseded by the requirements of this section.

(B) For a two-family residential use the minimum lot area is 7,000 square feet.

(C) The second dwelling unit:

(1) must be contained in a structure other than the principal structure;

(2) must be located:

(a) at least 15 feet to the rear of the principal structure; or

(b) above a detached garage;

(3) may be connected to the principal structure by a covered walkway;

(4) may not have an entrance within 10 feet of a lot line;

(5) unless the second dwelling unit has vehicular access from a rear alley, it must be served by a paved driveway, and the portion of the driveway that crosses the front yard must be at least 9 feet and not more than 12 feet wide;

(6) may not exceed a height of 30 feet, and is limited to two stories; and

(7) may not exceed a gross floor area of:

(a) 850 total square feet; or

(b) 550 square feet on the second story, if any.

(D) Impervious cover for the site may not exceed 45 percent.

(E) Building cover for the site may not exceed 40 percent.

(F) Other than in a driveway, parking is prohibited in the front yard.

25-2 Subchapter F Article 2.1

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

25-2 Subchapter F Article 3.3

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

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

3.3.2. 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; or

3. A parking area that is open on two or more sides, if:

i. it does not have habitable space above it; and

ii. the open sides are clear and unobstructed for at least 80% of the area measured below the top of the wall plate to the finished floor of the carport.

B. Up to 200 square feet of:

1. An attached parking area if it used to meet the minimum parking requirement; or

2. A garage that is less than 10 feet from the rear of the principal structure, provided that the garage 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.

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.

3.3.3. Porches, basements, and attics that meet the following requirements shall be excluded from the calculation of gross floor area:

A. A ground floor porch, including a screened porch, provided that:

1. the porch is not accessible by automobile and is not connected to a driveway; and

2. the exemption may not exceed 200 square feet if a porch has habitable space or a balcony above it.

B. A habitable portion of a building that is below grade 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.

25-6-353 (A)

This section applies to:

(1) a building permit for construction of:

(a) a new building; or

(b) an addition to an existing building that increases the building's gross floor area by 50 percent or more; or (2) a relocation permit to move a building from one site to another.

Project Name: 2100 TRAVIS HEIGHTS BLVD
Legal: Lot: 5 Block: Subdivision:
File Number: 2013-082167 PR

Attachment "A"

Residential Zoning Review - Paul Yadro - 512-974-3553

I have reviewed the above noted application and have the following comments that must be addressed before a permit will be released:

1. Application for second dwelling unit will be reviewed under LDC 25-2-774. Property is zoned SF-3-NP and is 7,000sf or greater. Note: South River City NP did not adopt Secondary Apartments.
2. As submitted your proposed development does not comply with LDC 25-2-774 – You have more than 850sf of gross floor area. McMansion exemptions for basements, attics, etc. do not exempt from the 850sf maximum allowed gross floor area for a second dwelling unit. You have 807sf of gfa on the first floor, ~312sf of enclosed area labeled carport storage (which an automobile cannot park in), and 254sf of area labeled basement. The carport/parking area is not counted (as was correctly done); however, the other 312sf + 254sf count towards the total gfa of the second dwelling unit. Substantial revisions will be required.
3. Include the square footages of the porch and the carport (actual parking area) on the floor plans and include the ceiling heights of all rooms and areas on the floor plans.
4. Include a roof deck floor plan with its square footage on it. This area will require inspections and must be included on the plans and application.
5. Provide separate exhibits for the basement exemption that demonstrate compliance with 25-2-Sub-Chapter F.3.3.3.B.; specifically, 3.3.3.B.2.
6. Depict the top plate of the basement/carport on the elevations.
7. The values provided on Page 2 and Page 3 of the application does not add up. On Page 3, you have entered 1283sf of Accessory Building, while on Page 2 you only have 807sf of 1st floor area and 254sf of basement.
8. The values entered on the application should match up and be in agreement with what has been provided on the plans.
9. Driveway runners/ribbons as proposed do not comply. The min. width for the tire strips is 3 feet and 2 feet of pervious surface in between the 3 feet wide impervious tire strips.
10. Contact Samuel West at 512-974-8775 for approval of proposed alley access and driveway design from the public alley.
11. Staff suggests requesting a meeting with your Zoning Reviewer prior to any submittal of updates.
12. Plans will not be routed to Technical Review until Zoning Review comments have been addressed.
13. Staff will hold the plans and application as submitted in our office. If you have questions regarding the comments or would like to make an appointment with the Plan Reviewer, please contact Paul Yadro at Paul.Yadro@austintexas.gov or via phone at 512-974-3553.

ORDINANCE NO. 20080214-096

**AN ORDINANCE AMENDING CHAPTER 25-6 OF THE CITY CODE
RELATING TO SIDEWALKS.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 25-6-351 (*Sidewalk Installation In Subdivisions*) of the City Code is amended to amend Subsections (B) and (D) to read:

- (B) The director [~~Land Use Commission~~] may waive the requirement to install a sidewalk based on criteria in the Transportation Criteria Manual.
- (D) Except as provided in Section 25-6-354 (*Payment Instead Of Sidewalk Installation*), the [~~The~~] accountable official may not issue a certificate of occupancy or certificate of compliance until a sidewalk required under this division is installed.

PART 2. Section 25-6-352 (*Sidewalk Installation With Site Plans*) of the City Code is amended to add Subsection (C) to read:

- (C) Except as provided in Section 25-6-354 (*Payment Instead Of Sidewalk Installation*), the accountable official may not issue a certificate of occupancy or certificate of compliance until a sidewalk required under this division is installed.

PART 3. Chapter 25-6 (*Transportation*) of the City Code is amended to add Sections 25-6-353 and 25-6-354 to read:

§ 25-6-353 SIDEWALK INSTALLATION WITH BUILDING OR RELOCATION PERMIT.

(A) This section applies to:

- (1) a building permit for construction of:
 - (a) a new building; or
 - (b) an addition to an existing building that increases the building's gross floor area by 50 percent or more; or
- (2) a relocation permit to move a building from one site to another.

(B) Except as provided in Section 25-6-354 (*Payment Instead Of Sidewalk Installation*) and Subsections (C) and (D):

- (1) the building official may not approve a building or relocation permit unless sidewalks are shown on the plot plan or site plan, as applicable, if required by the Transportation Criteria Manual; and
- (2) the building official may not issue a certificate of occupancy until a sidewalk required under this division is installed.

(C) The director may waive the requirement to install a sidewalk:

- (1) based on criteria in the Transportation Criteria Manual; or
- (2) if the director determines that the development does not generate pedestrian traffic for the sidewalk.

(D) Unless otherwise required by Section 25-6-351 (*Sidewalk Installation In Subdivisions*) or Section 25-6-352 (*Sidewalk Installation With Site Plans*), a sidewalk for a corner lot is required only along the street with the shortest lot frontage.

§ 25-6-354 PAYMENT INSTEAD OF SIDEWALK INSTALLATION.

(A) An applicant may request to pay a fee instead of installing a sidewalk by filing a written request at the time the person submits a permit application in the manner prescribed by the director. An applicant who has not filed a request at the time of application, may later amend the application to request to pay fee instead of installing a sidewalk.

(B) For a sidewalk required under Section 25-6-353 (*Sidewalk Installation with Building or Relocation Permit*), the director shall approve payment of a fee instead of installation of a sidewalk if the director determines that:

- (1) the property is used only for a residential use and has not more than two dwelling units;
- (2) on the date the property was subdivided, the land development regulations did not include a sidewalk requirement; and
- (3) less than 50 percent of the block face on which the property is located has a sidewalk.

(C) For a sidewalk required under Section 25-6-351 (*Sidewalk Installation in Subdivisions*), the director shall approve payment of a fee instead of installation of a sidewalk if the subdivision:

- (1) consists of five or fewer lots;
 - (2) only includes residential lots, each of which contains no more than two dwelling units;
 - (3) is a resubdivision of land that was originally subdivided on a date when applicable regulations did not include a sidewalk requirement; and
 - (4) less than 50 percent of the block face on which the property is located has a sidewalk.
- (D) The director may approve payment of a fee instead of installation of a sidewalk if the director determines that installation is impractical because:
- (1) there are no sidewalks in the vicinity, and it is unlikely that there will be development nearby that would require the installation of sidewalks;
 - (2) installation of the sidewalk would require the removal of a protected tree or other major obstruction within the right-of-way;
 - (3) a stormwater drainage ditch or similar public utility facility prevents the installation of the sidewalk, and neither the sidewalk nor the facility can be reasonably relocated to accommodate both the sidewalk and the facility;
 - (4) the topography would require the construction of a retaining wall more than two feet high to accommodate the sidewalk; or
 - (5) other unusual circumstances make the sidewalk installation requirement unreasonable or inappropriate.
- (E) In making a determination under Subsection (D), the director shall give primary consideration to the following:
- (1) the adopted neighborhood plan;
 - (2) information provided by the neighborhood planning team;
 - (3) information provided by a registered neighborhood association; and
 - (4) the approved City sidewalk plan.
- (F) The amount of the fee is the current sidewalk installation cost, as determined in accordance with the Transportation Criteria Manual.
- (G) A fee paid under this section must be used to install a sidewalk or curb ramp in the same service area, as established by the Transportation Criteria Manual.

(H) The City may refund the fee to the applicant if it is not spent within 10 years of the date of its collection.

PART 4. This ordinance takes effect on February 25, 2008.

PASSED AND APPROVED

_____, February 14, 2008 §
§
§ _____
Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

ORDINANCE NO. 030605-49

AN ORDINANCE AMENDING SECTIONS 25-2-511, 25-2-555, AND 25-2-981 OF THE CITY CODE AND REPEALING AND REPLACING SECTION 25-2-773 OF THE CITY CODE RELATING TO DUPLEX RESIDENTIAL USE; REPEALING ORDINANCE NUMBER 030227-28 AS AMENDED BY ORDINANCE NUMBER 030522-15; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 25-2-511(A) of the City Code is amended to read as follows:

(A) Notwithstanding any other provision of this code, except [Except] as provided in Subsection (B):[5]

- (1) not more than six unrelated persons may reside in a dwelling unit; and
- (2) not more than three unrelated persons 18 years of age or older may reside in a dwelling unit of a duplex residential use, unless:

(a) before June 5, 2003:

(i) a building permit for the duplex structure was issued; or

(ii) the use was established; and

(b) after June 5, 2003 the gross floor area and the number of bedrooms in the duplex structure did not increase, except for the completion of construction authorized before that date.

PART 2. Section 25-2-555 of the City Code is amended to add a new Subsection (D) to read as follows:

(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.

PART 3. Section 25-2-773 of the City Code is repealed and replaced by a new Section 25-2-773 to read as follows:

§ 25-2-773 DUPLEX RESIDENTIAL USE.

- (A) For a duplex residential use, the base zoning district regulations are superseded by the requirements of this section.
- (B) For a duplex residential use:
 - (1) minimum lot area is 7,000 square feet;
 - (2) minimum lot width is 50 feet;
 - (3) maximum building cover is 40 percent;
 - (4) maximum impervious cover is 45 percent; and
 - (5) maximum building height is the lesser of:
 - (a) 30 feet; or
 - (b) two stories.
- (C) Except as provided in Subsection (D), four parking spaces are required for a duplex residential use.
- (D) For a duplex that exceeds 4,000 square feet of gross floor area or has more than six bedrooms, the number of parking spaces required is the greater of:
 - (1) four; or
 - (2) one space for each bedroom.
- (E) Not more than one required parking space may be located behind another required parking space.

PART 4. Section 25-2-981(B) of the City Code is amended to read as follows:

- (B) This article does not apply to:
 - (1) property zoned central business district or downtown mixed use district;
 - (2) a lot containing one single-family residence;

- (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 [with fewer than six bedrooms];
- (4) a two-family residential use;
- (5) a secondary apartment special use;
- (6) substantial restoration of a building within one year after the building is damaged;
- (7) restoration of a building with a historic designation; or
- (8) interior or facade remodeling, if the front and side exterior walls of the building remain in the same location.

PART 5. Ordinance Number 030227-28 as amended by Ordinance Number 030522-15 is repealed.

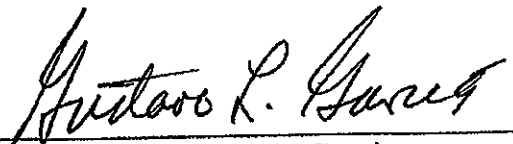
PART 6. The Council waives the requirements of Sections 2-2-3 and 2-2-7 of the City Code for this ordinance.

PART 7. 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.

PASSED AND APPROVED

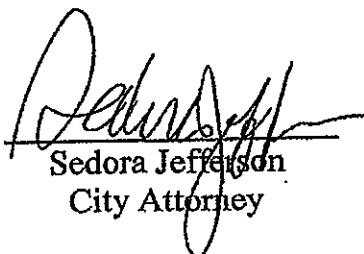
_____, June 5, 2003

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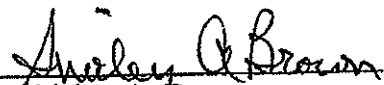


Gustavo L. Garcia
Mayor

APPROVED:


Sedora Jefferson
City Attorney

ATTEST:


Shirley A. Brown
City Clerk

Staff Report Re: Prior Approvals of Attics/Basements

Board:

At the special called meeting on December 13th, 2013, the appellant on the interpretation case at 2100 Travis Heights presented the Board with a list of projects they believe represents cases in which city staff has approved either an attic or basement on the 2nd dwelling unit of a two-family residential use that, if counted, would cause the total enclosed square footage of the structure to exceed 850 square feet. See supplied list below:

2013	Attic	1710 E 18 th St	2013-077384 PR
	Attic	1403 Walnut Ave	2013-098290 PR
2012	Attic	2208 Townes Ln	2012-067312 PR
2011	Attic	3711 Windsor Rd	2011-029218 PR
	Attic	1919 Pasadena Dr	2011-058608 PR
2010	Attic	4212 Ramsey Ave	2010-104084 PR
2009	Attic	811 W 30 th St	2009-013608 PR
2008	Basement	11909 Rotherham Dr	2008-074968 PR

Of these projects, four (4)- 11909 Rotherham, 4212 Ramsey, 1919 Pasadena, and 3711 Windsor- were attics or basements permitted to an accessory structure, not to the 2nd dwelling unit of a two-family residential use. Since accessory structures are not limited to a specific square footage by Title 25-2, whether they contain an "excepted" basement or attic is not of any relevance to the appeal case at hand.

One (1) project – 1403 Walnut- has specifically been denied the ability to create a habitable attic space above the 2nd dwelling unit. The applicant on the project has pre-maturely submitted for a permit revision that would add such a space should the Board determine that such spaces are not to be considered towards the 850 square footage limit provided in 25-2-774. Staff is holding the revision awaiting an outcome to this appeal case.

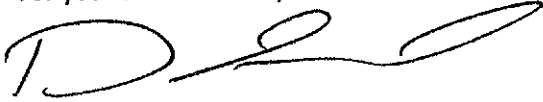
The other three (3)- 811 W 30th, 2208 Townes, and 1710 E 18th- do appear to be cases where staff has allowed habitable attic spaces in addition to the 850 square footage limit. Based on staff's prevailing interpretation, these would be considered in error.

There are a few important notes to make regarding this report. Firstly, there is no surety that this is a complete list of all cases in which an attic/basement space was allowed on the 2nd dwelling unit.

Searching for cases that do have such features is not readily done within the AMANDA system. Staff has diligently attempted to query the database for similar cases, but to no avail.

Secondly, while it is loosely possible to create a list of projects that were approved with attics or basements, it is impossible to produce a list of projects were such proposals were denied. Since no permit was given allowing the space, the plans would have been modified to remove the space and then continued to proceed through the review process.

For your consideration,

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