

Revised

95-2015-0011

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

STREET ADDRESS: 904 Jessie Street. Austin TX 78704

LEGAL DESCRIPTION: Subdivision --

Okie Heights

Lot (s) 44 Block _____ Outlot _____ Division _____

ZONING DISTRICT: SF-3

I/WE David King on behalf of myself/ourselves as
authorized

Agent for Zilker Neighborhood Association affirm that on 19th

Day of December, 2014, hereby apply for an interpretation hearing before the Board of
Adjustment.

Planning and Development Review Department interpretation is:

- 1) The gross floor area only needs to be measured to the outside edge of the framing.
- 2) The full length of the entire carport does not need to be used in calculating the percentage of the wall opening on the north side.
- 3) The carport is allowed an exemption even though the north side is obstructed by a covered entryway.

I feel the correct interpretation is:

- 1) The gross floor area needs to be measured to the outside surface of the exterior walls.
- 2) The full length of the entire carport should be used in calculating the percentage of the wall opening on the north side.
- 3) The north wall opening of the carport is obstructed by a covered entry way and thus the carport does not qualify for an exemption.

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 Land Development Code (LDC) is explicit in that it requires that the gross floor area be measured to the outside surface of the exterior walls contrary to the interpretation by the Planning and Development Review Department:

SUBCHAPTER F: RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS

§ 3.3. GROSS FLOOR AREA.

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.

§ 25-1-21 DEFINITIONS.

(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.

The architectural plans of the first and second floor are drawn to the outer edge of the wood framing and not to the "outside surface of the exterior walls" which is demonstrated by the fact that the first floor plan dimensions match the foundation plan dimensions. Normally, the edge of the framing is aligned with the foundation edge. When sheathing and siding are added, this dimension is typically increased by more than an inch on all sides. Since the criteria for calculating the McMansion FAR is measurement to the "outside surface of the exterior walls", the McMansion FAR is not calculated correctly. If one assumes a ½" sheathing and ¾" siding, the first floor area is increased 22.9 sq ft and the basement floor area is increased by 10.3 sq ft. This is an additional 33.2 sq ft that must be added to the McMansion FAR calculation. Using AutoCAD and the applicant's dimensions, ZNA calculated an area of 1,893.0 sq ft for the first floor and 968.9 sq ft for the basement floor as measured to the edge of framing, for a total of 2,861.9 sq ft. Adding the additional 33.2 sq ft for the area from the edge of framing to the outside surface of the exterior wall makes the total FAR 2,895.1 sq ft. This is 40.17% or 12.7 sq ft over the maximum limit of 40%. The gross floor area contained in the floor plans must be reduced to comply with the LDC.

For the record, please note that the applicant's math and the total gross floor area shown on the McMansion calculation sheet on page 3 of the application are in error (1893 sq ft + 970 sq ft = 2,863 sq ft, not 2,880 sq ft).

- 2) For the record, please note that this project is claiming a "parking area" exemption even though the checkbox is not correctly checked on page 3 of the application. The Land Development Code (LDC) requires that the carport (parking area) be open 80% on at least two sides to be exempted from gross area floor calculations:

SUBCHAPTER F: RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS

§ 3.3. GROSS FLOOR AREA.

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

...

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:

...

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.*

Contrary to the interpretation of the Planning and Development Review Department, the Zilker Neighborhood Association (ZNA) believes the applicant does not meet this requirement because the applicant's calculation of the carport opening on the north side is a) not greater than 80% and b) not clear and unobstructed.

- a) The applicant is utilizing an L-shaped carport, which creates issues in calculating the percentage of the opening on the north side of the carport. ZNA believes utilizing an L-shaped carport allows one to misinterpret the intent of the ordinance and circumvent it. There is no real question as to the length of the opening. However, there is a difference of interpretation with respect to the overall length of the wall needed to calculate the percentage of the opening. There are three ways one might calculate the overall length of the north wall as shown in Exhibit A. The applicant is utilizing Method 2 although some applicants are even arguing for the use of Method 3. ZNA believes Method 1 is the correct way to calculate the opening. Using this method, the opening is only 59.3%. Using Method 2, the opening is almost exactly 80%. Please note that the applicant calculates the opening percentage using Method 2 to be 81.3% as shown on Drawing A3.1. This is because the applicant incorrectly uses an overall length of 18'-8½" instead of the actual 19' as shown on the first floor plan in Drawing A1.1.

ZNA believes it is a misinterpretation of the ordinance to not require the overall measurement along the full length of the entire carport. The problem associated with using Method 2 is illustrated more fully in Examples 1 through 6 of Exhibit B. As part of the internal carport wall shifts from Example 1 to Example 6, it becomes more and more obvious that the overall length of the wall opening should be measured using Method 1. If one were to accept the use of Method 2, then it must be decided at which point (from Example 1 to Example 6) that the measurement of the overall length should be switched to Method 1 rather than Method 2.

- b) The applicant is claiming that the north side of the carport is clear and unobstructed. ZNA believes that an assertion that a carport opening is clear and unobstructed when it is immediately adjacent to an enclosed and covered entry way is not only inconsistent with the plain wording of the ordinance, it is completely inconsistent with the intent of the ordinance. Since the ordinance grants only a 200 sq ft exemption for an enclosed parking area, we believe that the clear and unobstructed wall openings required by the ordinance were specifically intended to prevent the additional mass that would be created by constructing an enclosed parking area (i.e., a garage) to the front of a house. The idea was that an open carport could qualify for the larger 450 sq ft exemption because this type of parking area would not seem so massive. The applicant for 904 Jessie, as well as other applicants, are attempting to use the carport exemption to essentially allow construction of something that very closely resembles an enclosed garage. ZNA does not believe the carport exemption was ever intended to allow garage doors on carports. However, the ordinance does seem to permit this as the current project demonstrates. What the ordinance does not permit, and should not be interpreted to permit, is for the "carport" to become even more similar to a garage by allowing one side of it to be completely enclosed with an entry way that is itself also enclosed and covered.

Exhibit B illustrates possible examples of parking areas that are adjacent to covered and enclosed entry ways. ZNA believes that Examples 1 through 6 are instances where the carport opening is not clear and unobstructed. We believe Examples 7 and 8 are acceptable under the current wording of the ordinance.

Under what ZNA believes is the correct interpretation of the LDC, the applicant should only be entitled to a 200 sq ft exemption for the attached parking area. With only a 200 sq ft exemption, another 238 sq ft must be added to the McMansion FAR. This pushes the FAR percentage well over the 40% requirement.

- 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:**

Applicant is not appealing use provisions of the Code, but rather Subchapter F sections of the code.

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

Other properties similarly situated meet the code sections required at the time building permits were submitted for them, and therefore, the interpretation by the Zilker Neighborhood Association does not grant a special privilege. In fact, denying the appeal and sustaining the interpretation of the Planning and Review Department would grant a special privilege to this property and would change the meaning and intent of the ordinance.

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 David Kj Printed David King

Mailing Address 1808 Kerr Street

City, State & Zip Austin TX 78704 Phone 512-415-6016

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.

Owner's certificate not applicable for this appeal.

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____