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NEW BUSINESS: CODE AMENDMENT INITIATION REVIEW SHEET

Amendment: Initiate an amendment to Title 25 of the City Code to change regulations related to Subchapter F gross floor area exemptions for garages and carports.

Description: See attached memo.

Proposed Language:

Background: Initiation recommended by Codes and Ordinances Subcommittee on April 21, 2015.

Staff Recommendation:

Board and Commission Actions:

Council Action:

Ordinance Number: NA

City Staff: Greg Dutton **Phone:** 974-3509 **Email:** greg.dutton@austintexas.gov

March 12, 2015



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RE: RDCC Proposed Revisions to Subchapter F, Carports/Garage Exemptions

Mayor, Mayor Pro-Tem, and City of Austin Council Members,

The Residential Design and Compatibility Commission (RDCC) has recently been presented with numerous instances of homes designed and built to circumvent the intent of the Subchapter F (i.e. McMansion) ordinance.

Background:

The McMansion ordinance, adopted in 2006 after intensive task force work, established two new measures for compatibility between single-family homes. These are the "tent" that controls the height of walls near property lines and the "bulk" or Floor Area Ratio (FAR) limits to the overall size of the home and its accessory structures.

The RDCC was established alongside the ordinance to give relief to designers when good designs ran into compliance issues with the ordinance. Lately we have seen several cases that request extra FAR to accommodate the infill of carports originally permitted as exempted areas. We are bringing this specific issue to your attention because we have determined that a code modification is needed as soon as possible to stop a builder practice that is impacting homeowners and undermining the Land Development Code

Situation:

1. Homes are being designed, permitted and constructed with attached open carport structures that are exempt from being included in the calculation of Gross Floor Area. These plans claim the allowed 450 SF carport exemption for an open structure.
2. After the building receives its final inspection, a homeowner will decide to enclose the carport, creating a garage. This modification results in adding bulk to the building and the total Floor Area Ratio may now be exceeded in cases where the maximum allowable square footage has been consumed by the permitted design.
3. If the homeowner seeks a permit to enclose the carport it may be denied, or if work is done without a permit, code enforcement may cite the homeowner for the changes.
4. In several cases we have heard, the builder, knowing the floor area ratio has been consumed, has intentionally made circumvention of the code very convenient by sizing the front opening to exactly accommodate the installation of a double garage door. Some owners do not understand that the new home they have purchased is already maxed out per the code, and changes specifically enclosing exempted open carports, are not permitted.
5. The ordinance is designed to incentivize a 450 square foot detached garage so as not to add bulk to the home. Alternately, there is an exemption for up to 200 square feet of garage attached to the home, but since this adds bulk, it intentionally does not completely exempt a double attached garage, and the area greater than 200 square feet is counted in the total allowable FAR, again, to incentivize a detached garage.

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6. Several of these cases have been brought to the RDCC by home owners seeking to increase the allowable FAR in order to permit a garage door they may have already installed.
7. The RDCC has denied each of these cases because they violate the intent of the ordinance and do not comport with RDCC's mission.
8. One such RDCC case was appealed to the former City Council; it was denied and the RDCC ruling upheld. Some cases have also been presented to the Board of Adjustment though they fail to meet the hardship criteria. Ultimately, if these requests are supported by the RDCC, BoA or the City Council, this will result in these owners being granted greater FAR rights than their neighbors might have. Also, these actions will encourage tacit circumvention of the code.

After several months of consideration, the RDCC unanimously feels that the best and most logical remedy, to maintain the intent of the FAR limits and to ensure the code is applied equally to all property owners, is to modify the Subchapter F ordinance as follows:

Recommendation:

1. Delete section 3.3.2 A.3.(i) and (ii) in its entirety:

"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."*

2. Section 3.3.2 C should be modified as follows to eliminate confusion:

C. "An applicant may receive a maximum 450 square foot exemption per site for this section 3.3.2."

We strongly urge your immediate consideration of this revision please let us know if you have any questions.

Cordially,

William Burkhardt, AIA
Chair/Residential Design and Compatibility Commission

Karen McGraw AIA
Vice Chair/Residential Design and Compatibility Commission

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§ 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.

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:

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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.
- C. A habitable portion of an attic, if:
1. The roof above it is not a flat or mansard roof and has a slope of 3 to 12 or greater;
 2. It is fully contained within the roof structure;
 3. It has only one floor;
 4. It does not extend beyond the footprint of the floors below;
 5. It is the highest habitable portion of the building, or a section of the building, and adds no additional mass to the structure; and
 6. Fifty percent or more of the area has a ceiling height of seven feet or less.

3.3.4.

An enclosed area shall be excluded from the calculation of gross floor area if it is five feet or less in height. For purposes of this subsection:

- A. Area is measured on the outside surface of the exterior walls; and
- B. Height is measured from the finished floor elevation, up to either:
 1. the underside of the roof rafters; or
 2. the bottom of the top chord of the roof truss, but not to collar ties, ceiling joists, or any type of furred-down ceiling.

3.3.5.

An area with a ceiling height greater than 15 feet is counted twice.

Source: Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022; Ord. 20080618-093; Ord. 20130425-105.

Dutton, Greg

From: Dutton, Greg
Sent: Tuesday, April 21, 2015 3:31 PM
To: Dutton, Greg
Subject: FW: Carport/Garages

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Good morning Greg:

I wanted to follow up with the carport/garage issue we started discussing. Could we please place this item for discussion and possible code initiation on the April C&O agenda?

I had a few questions for Staff (if there is enough time):

- 1) Is the carport issue unique to Zilker, a single developer, or is this a city-wide issue?
 - a. **City-wide issue, not unique to a single developer.**
- 2) I know that in the past the City has issued "temporary use permits" when a use is nonconforming while an ordinance was pending. Is there similar relief for property owners who purchased a carport after the McMansion ordinance and then converted their carport into a garage? Is a "temporary structure permit" available?
 - a. **Temporary use permits are not issued for non-compliant structures or non-conforming uses, except as described in 25-2-921: eg pumpkin sales, temporary gatherings, pop-up retail. A temporary structure permit does not exist that would give a homeowner relief in this situation.**
- 3) If the Planning Commission initiates a code amendment, would it be possible to incorporate language that: 1) requires a developer of a carport/property owner of a carport to give notice to a subsequent purchaser of the square footage maximum such that a garage could not be added; and 2) closes the loophole that allows developers to maximize square footage with carport? I imagine this would either mean counting the square footage of carport as a part of the maximum or increasing the maximum square footage allowed.
 - a. **1) Probably not – the real estate transaction process is currently a private matter; inserting the City into it would be tricky.**
 - 2) The loophole should be closed if the code is amended as is proposed.**

Thanks Greg.

James Nortey

James Nortey
Planning Commission