



STAFF REPORT FOR 3100 W HIGHLAND TERRACE

APPEAL

Appellant, J. Cecil Ruby III, is appealing the decision of the Building and Fire Code Board of Appeals to uphold the issuance of a building permit for an accessory structure/garage at 3100 Highland Terrace West.

HISTORY

October 15, 2014: The Austin Code Department (ACD) received a complaint about 3100 Highland Terrace West:

- The complaint was the homeowner was constructing a garage without a permit.
- ACD confirmed work was performed without a permit and filed a case in Municipal Court.
- Pending - The homeowner paid the Municipal Court penalty fees for work without a permit. The code case is pending and requires the homeowner to obtain permits for construction and pass required City inspections.

December 9, 2014: ACD received a complaint about 3100 Highland Terrace West:

- The complaint that the homeowner was operating a Short Term Rental (STR) business without a license, and the homeowner has tenants for the short term rental.

December 12, 2014: In response to the October 15, 2014 code violation, the homeowner submitted a building permit application for construction of the new accessory structure/garage.

January 13, 2015: The application was approved by Residential Plan Review.

January 14, 2015: Mr. Thompson paid fees and obtained a building permit from the Permit Center, along with an electric permit on January 22, 2015 for the garage construction. Note: The fees for work without permit were paid at the time of the building permit issuance.

January 21, 2015: Planning and Development Review staff received an appeal from the Highland Terrace Preservation Group related to the issuance of the building permit.

January 27, 2015: The City issued a Stop Work Order on building permit number 2015-004322BP related to construction of a garage. All work was ordered to stop until the Appeal is resolved per the City of Austin's Land Development Code.

February 25, 2015: The Building and Fire Code Board of Appeals (BFC Board) conducted a Public Hearing and reviewed the neighborhood group appeal. The BFC Board denied the appeal (see attached letter from the BFC Board dated February 25, 2015).

May 7, 2015: Item was heard at the Austin City Council meeting on May 7, 2015. Council granted a postponement to May 14, 2015. Vote: 11-0.

STAFF REPORT TO THE BUILDING & FIRE CODE BOARD OF APPEALS

1. (Allegation 1) The property owner began construction of a garage, foundation and structure, without initially filing for the required COA permits.

City Response: Work without permits occurs every day throughout Austin. The City issued the permit, and the customer paid additional fees for commencing work without a permit. As per our fee schedule: An investigation fee is charged when work is commenced without a permit. The fee shall equal the cost of a permit and is collected in addition to the fee for the permit. Investigation fee of \$150.80 has been added

Staff recommendation: *The property owner has paid the required fees and pulled the required permits.*

The Adopted Residential Code (IRC) states: R108.6 Work commencing before permit issuance. Any person who commences work requiring a *permit* on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee established by the applicable governing authority that shall be in addition to the *required permit* fees.

2. (Allegation 2) Operated property as an STR and rooming house without licensing

City Response: Austin Code Department (ACD) has a process in place for illegal operation of STR. Short term rental properties must have a Certificate of Occupancy and register with ACD as a Short Term Rental property. ACD is investigating his case.

3. (Allegation 3) Permit should have been reviewed as a commercial permit and given thorough examination of the intended purpose and use of the property as a "Rooming House" and/or "Short Term Rental operated in a residential neighborhood within walking proximity of an elementary school.

City Response: The 2012 IBC would provide an exception to detached one and two family homes and their accessory structures. As per zoning requirements this lot is designated as SF-3 and only City Council can approve a zoning change. Short term rental use is a permitted use in an SF-3 family residence as per ordinance 20130926-144.

IRC states: [A] R101.2 Scope. The provisions of this code shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family *dwellings* and multiple single-family *dwellings* (*townhouses*) not more than three *stories* above *grade plane* in height with a separate *means of egress* and their accessory structures shall comply with the *International Residential Code*.

4. (Allegation 4) There are deficiencies in the submitted BP application, which clearly contains Omissions on the application, which potentially affects impervious cover as well as public utility easement provisions. [Note: that Highland Park West (HPW) has plat restrictions that restrict size, height, and materials of detached garage].

City Response: As per R104.4 2012 IRC the Building Official is authorized to require an impervious coverage survey verifying submitted drawings.

IRC states: R104.4 inspections. The building official is authorized to make all required inspections or to accept reports of inspection by approved agencies, registered design professionals or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The buildings official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional such as but not limited to: building envelope survey, impervious-coverage survey for a project within 5% of the maximum allowable impervious cover, building height survey, finish floor elevations, foundation report and flood elevation certificate. All surveys shall be performed by a Texas-registered Professional Land Surveyor.

5. **(Allegation 5)** There are also deficiencies in the submitted BP application related to Potential PUE encroachments.

City Response: As per R109.1.7 the Building Official is authorized to request a survey showing all PUEs on the property.

IRC states: R109.1.7 Layout Inspection. A layout inspection shall be made after the permanent location of the structure is established and foundation forms and or piers have been erected and are in place, but before any concrete is placed. The layout inspection must be performed by a surveyor registered in the State of Texas. The surveyor will provide an as-built survey with all new and existing improvements, legal boundaries, easements, encroachments, lot size square footage and all required dimensions.

6. **(Allegation 6)** Highland Park West plat restrictions violated which restricts size, height and material of detached garage.

The City does not enforce private deed restrictions.

Additional Information to the Staff Report

As per the conditional decision rendered by the BFC Board on February 25, 2015, the engineer of record has substantiated the load bearing capabilities of the foundation that supports the accessory structure/garage. In addition, the aesthetic and architectural changes proposed to the original metal building which serve as the garage structure have been determined to have no negative affect on its structural integrity.

Legal Counsel for the appellant submitted a letter purporting to outline errors in this staff report. The letter is included as additional backup material. The following is a summary of the staff repose to the letter.

Staff Response to Appellant's Legal Counsel

Staff disagrees with the allegations by appellant's counsel regarding procedural irregularities in staff's handling of the appeal or in the inspection process.

In particular, appellant's revised appeal dated February 23, 2015 was untimely because the building permit had been issued on January 14, 2015 and the stop work order, which simply preserved the status quo pending resolution of the appeal, was issued on January 27, 2015. Additionally, City Code provides no right of appeal with respect to the permit revision

submitted on February 9, 2015 and, in any event, no administrative decision with respect to the revision had been made as of the February 23, 2015 submittal.

Staff apologized for failing to keep appellant's counsel in the loop regarding all of the various submittals made in connection with this single-family garage. The relevant information should all be available now, and none of the staff's inadvertent errors in communication will affect the merits of the appellant's case. Staff has received and transmitted a copy of sealed letter report, from a structural engineer retained by the property owner, concerning the foundation, as well as an email explaining at least a portion of his investigation technique. Staff forwarded both to the neighborhood, but neglected to include the appellant's counsel on that communication. Copies have since been forwarded to appellant's counsel as attachments to an email.

Staff also apologized for a delay in the transmittal of one other piece of documentation to interested parties and transmitted an email received from the manufacturer's engineer approving the addition of siding.

Regarding inspections, staff's handling of this matter has at all times complied with applicable requirements and procedures. For single-family residential construction, a pre-construction meeting is not required and is not normally conducted. The code sections referenced by the appellant's counsel, Section 110.3 and its subsections from the International Building Code as adopted and amended, do not apply to construction of residential structures which are governed by the International Residential Code as adopted and amended. Additionally, while a layout inspection would have been required, the unpermitted nature of the work precluded that from occurring.

It is unfortunate that, as stated in above in this staff report, unpermitted work occurs on a regular basis and does present some challenges for inspectors when landowners subsequently seek to have the work permitted. That's why the City of Austin, and other municipalities, relies on the flexibility granted to local building officials under Sections R104.4, R104.10, and R104.11 to address these situations in pragmatic manner. Staff included copies of the text of the three referenced code sections in the emailed response to the appellant's counsel.

It should be noted that the City requires a heightened fee for permitting work begun illegally without require permits. That fee, which the applicant has paid, helps offset the additional costs of inspecting work begun without a permit and provides a disincentive for future violations.

The focus of this appeal should be on whether the garage complies with applicable construction codes. On that issue, staff is confident in the quality of the work done and the certifications of the applicant's engineer. Staff members have personally visited the site and have dug up the accessible footings to verify their approximate dimensions. Staff members have also reviewed the engineer's report concerning the construction of the foundation.

Should construction be permitted to resume following resolution of this appeal, inspectors will formally inspect the foundation and footings again as well as the garage itself. Should any additional corrective action be needed, it will be documented on the inspection report(s) and verified by reinspection(s) prior to final approval.

Staff ended the response to this letter with an additional apology regarding the mistakes in communications with appellant's counsel and requested that staff be informed if it appeared that any issues raised in the letter had been missed.