




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SUBJECT TRACT

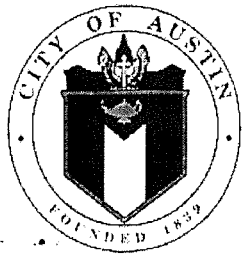


PENDING CASE



ZONING BOUNDARY

NOTIFICATIONS
CASE#: C15-2015-0167
LOCATION: 305 E 34TH ST.



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

1" = 173'

Leon J. Barish

C-2015-0167
ROW 11443967
ROLL 0217060203 61/2

310 E. 34th St.
Austin, Texas 78705
512/477-9058
Fax: 512/477-9061

October 12, 2015

Board of Adjustment
City of Austin
P.O Box 1088
Austin, Texas 78767-1088

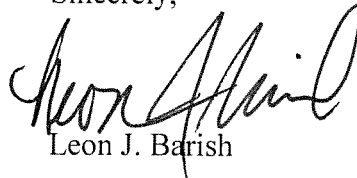
Re: Application To Appeal Department Interpretation
Street Address: 305 E. 34th St

Dear Sir/Madam:

Attached is the referenced application. All required items are attached except that the site plan may not be the most recent version. Despite my best efforts, no copy of the current site plan could be found online at the City website or from any other source.

I certainly appreciate your cooperation in this matter. Please let me know if you have any questions.

Sincerely,



Leon J. Barish

LJB:es
Enc.

ORIGINAL

(5)
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**CITY OF AUSTIN APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS**

PART I: APPLICANT'S STATEMENT (Please type)

STREET ADDRESS: 305 E. 34th St

LEGAL DESCRIPTION: Lot (s): 3 and 4 of the E. L. Steck Subdivision, Block 18 Grooms Addition, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 319, Page 384 of the Deed Records of Travis County, Texas.

ZONING DISTRICT: MF-3 NCCD NP

I, Leon J. Barish, on behalf of myself and as authorized agent for Robert Kaler, affirm that on October 13, 2015, we hereby apply for an interpretation hearing before the Board of Adjustment.

(1) Planning and Development Review Department interpretation is: The Department has determined that Compatibility Standards for height and setback do not apply along the entire north/south property line between the subject property at 305 E. 34th (also known as the Steck House) and its neighbor, 309 E. 34th, which has a single family home located on that property. This decision allows construction of new structures on the subject property within the 25 feet setback for the entire length of the property line between the subject property and 309 E. 34th. The basis for this decision is an interpretation of LDC 25-2-1052(A)(2) which says that Compatibility Standards do not apply to "(2) property in a historic landmark (H) or historic area (HD) combining district." The basis for this interpretation is Ordinance 860206-K, adopted by the City Council in 1986, which states in pertinent part: "no provision of these Compatibility Standards shall be applied to ... (ii) property which is zoned historic..." This provision of the code was restated by the City Council in Ordinance 041202-16, dealing with changes to the City's Historic Landmark program, and adopted by the City Council on December 2, 2004. This interpretation was made by the Department despite the application of the North University Neighborhood Association ("NUNA") NCCD, adopted as an ordinance by the Austin City Council in August of 2004, and which states: Compatibility Standards for height and setbacks do not apply to the **rear 70 feet** of the common property line between 305 East 34th Street (Tract RDE 809) and 309 E. 34th Street (Tract RDE 810-part).

The staff interpretation for the property at 305 E 34th St in the NUNA NCCD is a degradation our neighborhood character. This interpretation would allow more density on the property than should be allowed according to the specific language in the NUNA NCCD. Since we have other Historic zoned properties in the neighborhood, the cited language in the NCCD (p. 27, 6.: Compatibility standards for height and setbacks do not apply to the rear 70 feet of the common property line between 305 East 34th Street (Tract RDE 809) and 309 E. 34th Street (Tract RDE 810-part)), was tailored to apply specifically to the shared property line between the two properties. (This provision was added to the NCCD after the Historic zoning for 305 E. 34th St was granted in April of 2004.)

The staff interpretation would act as a precedent for other Historic zoned properties in NUNA and elsewhere in the city, and affect the adjacent properties negatively. Since both properties

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here have the same zoning (MF-3), the home (built in 1925) located in the front 100 feet at 309 E 34th St, is entitled to the same protection that other properties have within our NCCD boundaries. Compatibility Standards should apply to any new buildings added to the front 100 feet of the property at 305 E 34th St, with a 25 feet setback from the existing home at 309 E 34th St, and thus would meet the intent and the inherent protections of the NUNA NCCD Ordinance for these two specific properties.

(2) The Department has also allowed the applicant to show on the site plan for the subject property "studies" with closets. The applicant has stated publicly that these "studies" will be used as bedrooms. The applicant has publicly acknowledged that these rooms are shown as "studies" instead of bedrooms in order to avoid an increase in the number of parking spaces required on the site plan. The staff has failed to require the property number of parking spaces based on the applicant's admitted used of the "studies" as bedrooms.

We feel the correct interpretation is: (1) The Department's interpretation of LDC 25-2-1052(A)(2) and the NUNA NCCD renders the language cited above ("Compatibility Standards for height and setbacks do not apply to the rear 70 feet of the common property line between 305 East 34th Street (Tract RDE 809) and 309 E. 34th Street (Tract RDE 810-part)") meaningless. The Department's interpretation effectively means that Compatibility Standards for height and setbacks do not apply to the entire length of the 170 feet property line between the subject property and 309 E. 34th St., allowing for construction within the 25 feet setback that would apply under the Compatibility Standards. The Department's interpretation defeats the purpose of the NUNA NCCD which was to make Compatibility Standards for height and setbacks apply to the front 100 feet of the common property line between 305 East 34th Street and 309 E. 34th Street. The NUNA NCCD was adopted as an ordinance by the City Council. If the City Council wanted to deny the application of Compatibility Standards for the entire 170 feet of the common property line between the subject property and 309 E. 34th St, it could have chosen to do so. It chose not to. The Department has no authority to deny administratively the application of Compatibility Standards to the front 100 feet of the common property line between the subject property and 309 E. 34th St when the City Council has elected to do so by ordinance.

The Steck House on the subject property was zoned Historic by the City Council in April of 2004. The NUNA NCCD was adopted by the City Council in August of 2004. When Ordinance 041202-16 was adopted which restated the code provision in question (not applying Compatibility Standards to property with historic (H) zoning), the City Council also amended the city code relative to historic landmarks by adopting the following language: "The purpose of historic landmark (H) combining district is to protect, enhance, and preserve individual structures ...that are of architectural, historical, archaeological, or cultural significance" The underlined words were added by the 2004 ordinance. The ordinance also states that Historic Landmark means a "structure or site designated as historic landmark (H) combining district." The (H) zoning applicable to the subject property is to protect the Steck House and not the "site" which has no historic significance. In support of this interpretation, we attach the affidavit of Laurie Limbacher who served on the Austin Historic Landmark Commission for eighteen years and whose knowledge in these matter is unparalleled. The City Council was clearly aware of the Historic zoning of the Steck House on the subject property at the time it

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adopted the NUNA NCCD. The City Council could have elected to deny the application of Compatibility Standards for the entire 170 feet of the common property line between the subject property and 309 E. 34th St, but instead it elected to do so only with respect to the rear 70 feet of the common property line. While there is no apparent explanation for this decision, it appears it was done because the both the Steck House and the single family home located at 309 E. 34th St are located in the front 100 feet. Applying Compatibility Standards in this area would protect both the Steck House and the single family home at 309 E. 34th St from the type of incursions the Compatibility Standards are designed to protect.

The Department's interpretation that Compatibility Standards for height and setbacks do not apply to historic zoned properties predates the historic zoning of the Steck House on the subject property and the City Council's adoption of the NUNA NCCD. Ordinances adopted after 1986 by the City Council which concern the same subject matter would amend Ordinance 860206-K where applicable. Therefore, the adoption of the NUNA NCCD effectively amended the 1986 ordinance regarding applicability of Compatibility Standards as between the subject property and 309 E. 34th St. The adoption of Ordinance 041202-16 in December of 2004 following adoption of the NUNA NCCD in August of 2004 had no affect on the exception to the rule about application of Compatibility Standards because Ordinance 041202-16 did not amend the NUNA NCCD as clearly stated in its preamble. Furthermore, the purpose of the general rule of not making Compatibility Standards applicable to historic zoned properties is to protect the individual structure from onerous requirements in the event of need to make repairs or a reconstruction following a casualty. Reference is again made to the affidavit of Laurie Limbacher attached hereto. Making the rule applicable to the entire property when the purpose of the (H) zoning is to protect the individual structure makes no practical sense and furthers no stated goal regarding historic zoning or Compatibility Standards.

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.

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1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: The Department has routinely since 1986 interpreted Ordinance 860206-K in the matter stated in this appeal. It is not clear whether or not the Department has ever been faced with making this interpretation where there is an NCCD that is also applicable to the subject property. With this case, however, the application of the NUNA NCCD to the subject property puts the Department's interpretation in serious doubt. For the reasons stated above, the Department's interpretation must yield to the NUNA NCCD. Otherwise, the provision of the NUNA NCCD cited above would have no meaning. In construing an ordinance and its intent, the BOA must look to the words of the ordinance and apply their usual and ordinary meaning. The City Council is presumed to act intentionally and purposely with its chosen language. These are very basic rules of statutory construction. Therefore, when the City Council says Compatibility Standards do not apply to the rear 70 feet of the common property line between the subject property and 309 E. 34th St, by implication the City Council means that the Compatibility Standards **DO** apply to the front 100 feet. Otherwise, there would have been no reason to include the language.

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: We don't believe this is applicable since we are not appealing a use issue. We do wish to point out, however, that the single family use of the property located at 309 E. 34th St adjacent to the subject property trumps the zoning of the property and triggers application of Compatibility Standards at 305 E. 34th St.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: The challenge to the Department's interpretation relates only to its application to the subject property in context with the NUNA NCCD. The Department's interpretation does result in a special privilege to the subject property because it makes the subject property exempt from application of the NUNA NCCD which is otherwise applicable to all property located within the boundaries of the NUNA NCCD. The interpretation sought by this appeal seeks a uniform application of all provisions of the NUNA NCCD to all properties located within the boundaries of the NUNA NCCD.

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: Leon J. Barish

Mailing Address: 310 E. 34th St, Austin, Texas 78705; Phone: 512-477-9058

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 not required Printed Cater^(mark) Joseph

Mailing Address 2805 Windsor Rd.

City, State & Zip Austin, TX 78703 Phone 512-450-8091

6/1/7



City of Austin

Founded by Congress, Republic of Texas, 1839
Development Services Department
505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767

61/8

September 28, 2015

Dear Citizen:

Because of your expressed interest in the site plan **Steck House Apartments** site plan Case No. **SP-2014-0169C**, this is to advise you that the site plan was approved administratively and the site development permit was issued **September 24, 2015**. The current development process provides that projects submitted for administrative review shall be approved if all the requirements of the Land Development Code (LDC) are met. City staff determined that the site plan complies with the Land Development Code, and the applicant has paid all required fees and met all fiscal requirements.

According to the Land Development Code, Section 25-5-111 and 25-5-112, an applicant has a standing to appeal an administrative decision for denial. There is no legal standing for anyone other than the applicant to file an appeal of the grant or denial of administrative site plans.

You may also find additional information about this case on the City's web site at <https://www.ci.austin.tx.us/devreview/index.jsp>, where you may enter the case number to view information about the site plan.

If you need any additional information, please call me at (512) 974-3410.

Sincerely,


Brad Jackson,
Case Manager
Development Services Department

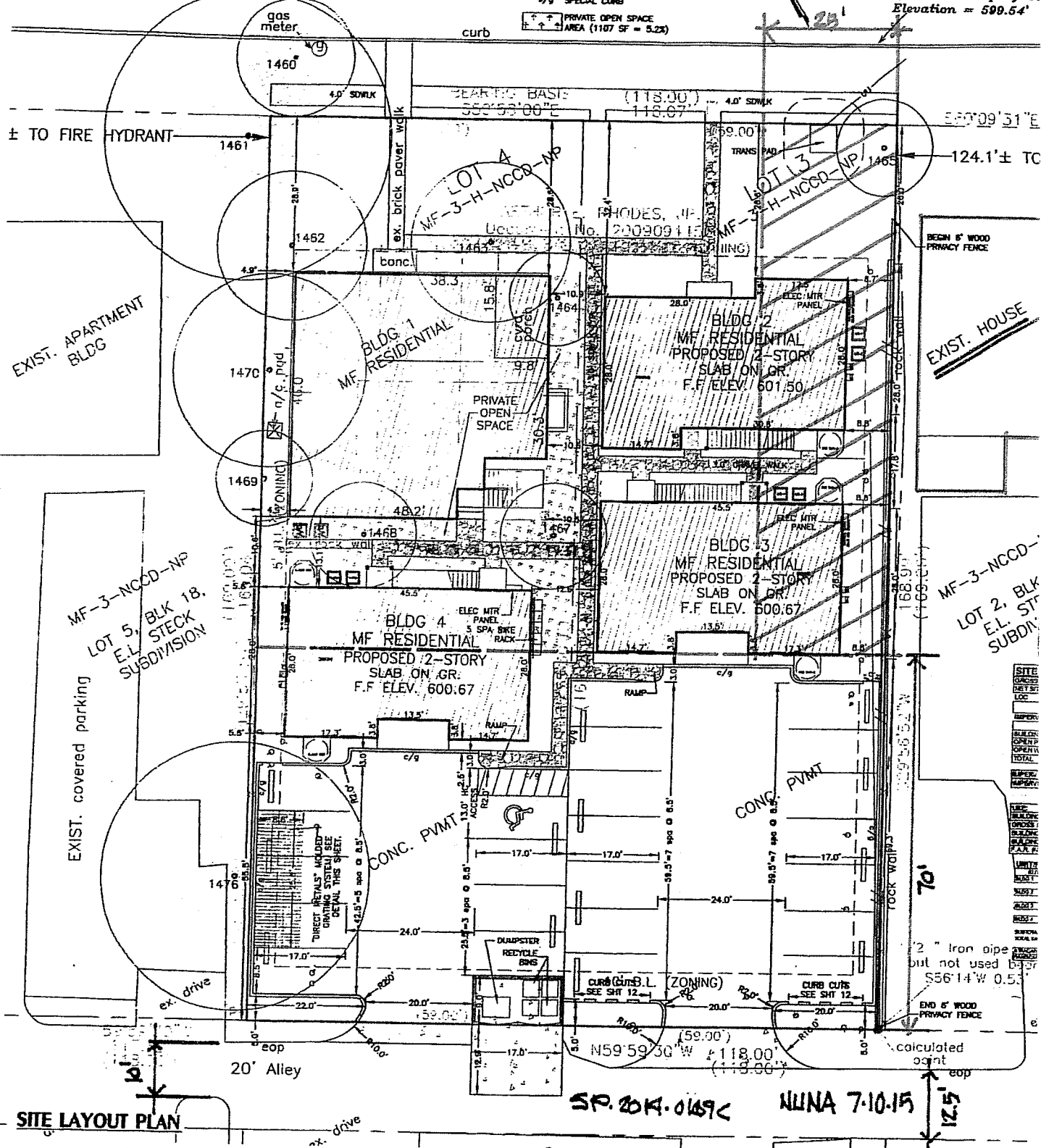
6/9

E. 34th STREET
60' R.O.W.

- LEGEND
- ACCESSIBLE ROUTE
 - AL AREA INLET
 - c/g CURB & GUTTER
 - s/g SPECIAL CURB
 - PRIVATE OPEN SPACE
 - AREA (1107 SF = 5.23)

GRAPHIC SCALE 1"=10'

BENCHMARK
Triangle cut on top of c
Elevation = 599.54'



SITE LAYOUT PLAN

SP. 20K. 0149C

NUNA 7-10-15

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10

AFFIDAVIT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Laurie Limbacher, who, being by me first duly sworn, upon her oath deposes and says:

My name is Laurie Limbacher. I am over eighteen years of age and my business address is 2124 E 6th St, Suite 102, Austin, Texas 78702. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

I am a registered architect in the State of Texas. I am a founding partner of Limbacher & Godfrey Architects, an architecture, planning and historic preservation firm created by myself and Alfred Godfrey, who together bring over 65 years of experience to our projects. I was a member of the Austin Historic Landmark Commission for eighteen years, ending my service earlier this year.

In 2004, changes were made in the City's historic landmark program. Included in the ordinance adopting these changes was a re-statement of a previously adopted provision of the land development code which states that "no provision of these Compatibility Standards shall be applied to ...(ii) property which is zoned historic..." My recollection is that the purpose of this provision of the land development code was to prevent the imposition of restrictions on a historic structure in need of restoration or rehabilitation following a loss of some kind, such as a fire or other casualty. The application of Compatibility Standards to a historic structure might make it more difficult for that structure to be rehabilitated. This provision of the land development code was never intended to my knowledge to make it easier for an owner of a historic structure to add non-historic buildings or additions to the property on which the historic building is located.

WITNESS MY HAND this the 12th day of October, 2015.

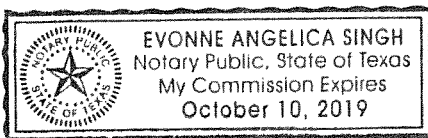
Laurie Limbacher

Laurie Limbacher

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 12th day of October, 2015, by Laurie Limbacher.

Evonne Angelica Singh
Notary Public, State of Texas



DEVELOPMENT SERVICES DEPARTMENT

STAFF RESPONSE TO APPEAL LANGUAGE FOR 305 E. 34th STREET:

Street Address: 305 E. 34th Street

Site Plan Case: SP-2014-0169C

The appeal submitted by Mr. Leon Barish challenging the compatibility interpretation of code language is regarding approval of an administratively approved site plan, SP-2014-0169C, located at 305 E. 34th Street. The site plan approved the construction of 3 multifamily buildings on a .458 acre lot, which is zoned MF3-H-NCCD-NP. The issue is the appellant's contention that compatibility did in fact apply to the project.

Staff follows the Land Development Code language as written when the language is clear and unambiguous. Compatibility standards specifically state in LDC 25-2-1052 (A) (, Exceptions, that "This article does not apply to :...(2) property in a historic landmark (H) or historic area (HD) combining district..."

This project is located in H zoning and compatibility standards do not apply to this project, by merits of its H zoning. The non-applicability of compatibility standards to this project is not an interpretation by staff and represents application of clear and unambiguous language in the LDC.

The North University Neighborhood Association NCCD recognized the Historic zoning in 2004, when the NCCD overlay was added, when the property was rezoned from MF-3-H to MF-3-H-NCCD-NP. The only addition that was made to the zoning was to ensure that compatibility standards were not to be triggered by **either** property along "the rear 70' of the common property line between 305 E. 34th Street (Tract RDE 809) and 309 E. 34th Street (Tract RDE 810- **part**)". (Ordinance # 040826-58, page 27, note 6)

The provision did not add any compatibility compliance on the part of 305 E. 34th Street, which was already not subject to compatibility, but it did serve to exempt the rear 70' of 309 E. 34th Street from any compatibility requirements, as shown by the notation "part", when calling out the tract number on the ordinance.

Staff must review and enforce the written code, which does not state that compatibility must be enforced along the remainder of the common property line. The code only states that compatibility does NOT apply to the rear 70' of the common property line. The base code requirements had already exempted the entirety of 305 E. 34th street from compatibility requirements, and no change was made to that regulation.

The number of bedrooms in a property controls the number of required parking spaces, so it is imperative for staff to correctly analyze what is and what isn't a bedroom. In this case, staff used a BOA interpretation from 10-29-2011 (Case C15-2012-0126) to define whether a study was actually a bedroom

Text of interpretation:

- (1) A room shown on the floor plan of a residential project, though not designated as a bedroom on the plan, is a "bedroom" for the purposes of determining the number of bedrooms allowed under section 25-2-555(D) of the Land Development Code if:*
 - (A) The room has a minimum of 70 square feet in area and is not a kitchen, utility room, common living area or common circulation space (halls or stairs);*
 - (B) The room has the minimum exit area for fire egress by means of windows or doors as required by the International Residential Code as adopted by the City of Austin;*
 - (C) The room is configured so that it is or capable of being a private space separated from all other areas of the building by permanent door or doors; and*
 - (D) The room has access to bathrooms only through shared common living or circulation areas also accessible from the designated bedrooms on the floor plans and no designated bedrooms shown on the plans has direct access to any of the bathrooms except through common living area or common circulation space.*
 - (E) The room has access to multiple bathrooms through common living areas or common circulation spaces and all these bathrooms contain full bath fixtures including a tub or shower, toilet and multiple lavatories.*
- (2) This interpretation supersedes any conflicting interpretation previously issued by staff for the subject permit.*

In the case at hand, the study did not have direct access to a bathroom, and an occupant of that study would have to go through one of the bedrooms in order to access a bathroom, so it was determined that is was NOT a bedroom and would not trigger a requirement of additional parking.

