

C15-2015-0167

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DEVELOPMENT SERVICES DEPARTMENT

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

BOA case number C15-2015-0167

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.

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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

From BOA C15-2012-0126, 10-29-2011

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.

APPLICANT 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 challenges two items that were administratively approved by The City of Austin staff. It is important to note that these items were previously challenged during the review process and at that time the interpretation that is being questioned was made by the COA legal department.

Item 1: Compatibility

The City of Austin Land Development code (LDC 25-2-1052 (A)) clearly states that compatibility setbacks do not apply to property within a historic landmark (H) or historic area (HD) combining district. The North University Neighborhood Association (NUNA) is a very active, educated, and experienced neighborhood group in regards to city code & development. If they did not want LDC 25-2-1052 (A) to apply to their neighborhood, they should have specifically addressed it through their Neighborhood Conservation Combining District (NCCD) overlay. An example of a neighborhood who did not agree with LDC 25-2-1052 and took proper action is Castle Hill. They explicitly addressed LDC 25-2-1052 in the Castle Hill Local Historic District Preservation Plan.

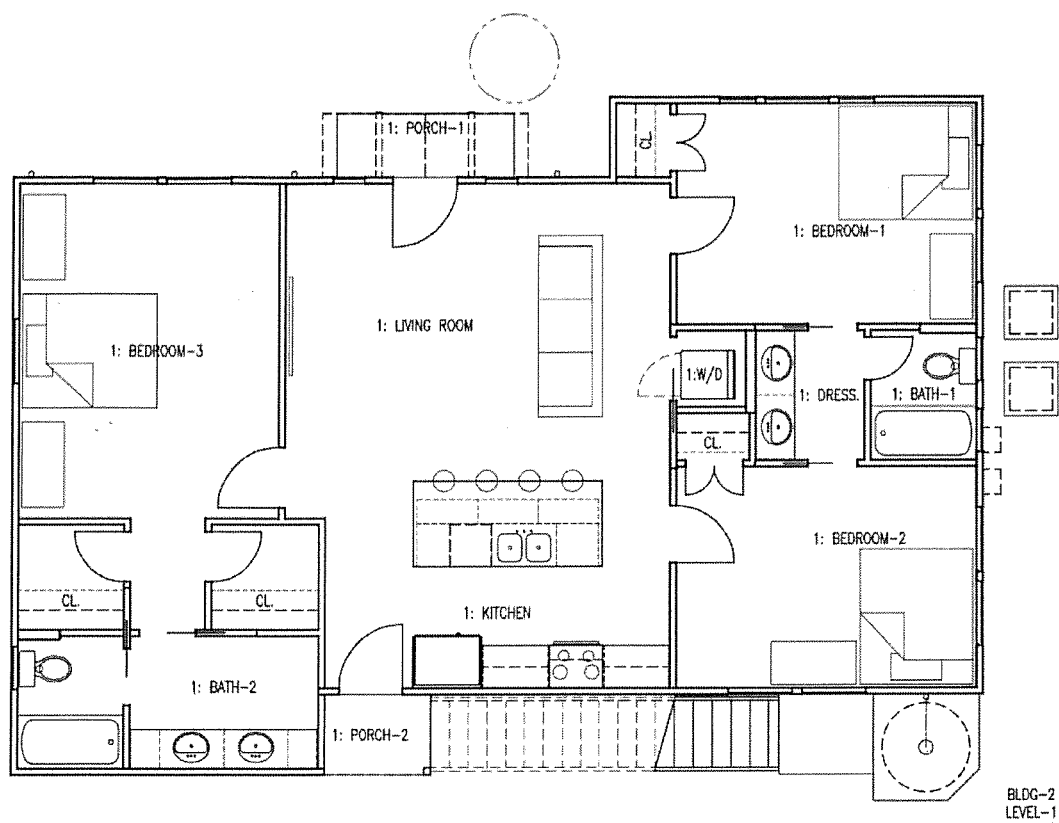
The language being questioned in the NCCD states; "Compatibility standards for height and setbacks do not apply to the rear 70 feet of the common property line between 305 East 34th Street (Tract RDE 809) and 309 E. 34th Street (Tract RDE 810-part)." Nowhere in this language does it say anything regarding overruling LDC 25-2-1052 (A) and that compatibility setbacks do in fact apply to the front 99' of 305 E. 34th Street. If NUNA wished for compatibility to not apply to the front 99', then that should have been clearly spelled out in the NCCD. As it is written, the language only provides relief of compatibility standards to the rear 70' of 309 E. 34th Street. With the absence of the proper language, it cannot be assumed that compatibility does apply to 305 E. 34th Street. If such measures were taken when making administrative approvals, the City of Austin code would be riddled with error and there would be a lack of clarity and consistency when applying the code.

Item 2: Studies

The studies do not meet the BOA interpretation of a bedroom (Case C15-2012-0126) (10/29/2011). However, as the project has evolved, we have decided to eliminate the studies from the (5) units that they were present in. The additional space has been used to create a larger living room and allow for a true master bedroom.

Attached please find the newly designed floor plan drafts. The site plan will be updated to include the revised floor plans and the building permits will be revised too.

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Building 2 / level 1 (draft floor plan)

BLDG-3
LEVEL-1 (LEVEL-2 SIMILAR)

Building 3 & 4 (draft floor plan)

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From: "Guernsey, Greg" <Greg.Guernsey@austintexas.gov>
Date: December 14, 2015 at 7:08:36 PM CST
To: "casamia25@att.net" <[REDACTED]>
Cc: "Sandoval, Marie" <[REDACTED]>, "Harden, Joi"
<Joi.Harden@austintexas.gov>, "McDonald, John" <John.McDonald@austintexas.gov>
Subject: RE: explanation needed!

Hi Mary:

Marie Sandoval asked me if I could assist you with your question regarding the 2004 NUNA neighborhood plan rezoning case (Ord. # 040826-58). It appears the original tract RDE 810 was originally comprised of two addresses: 309 E 34th and 311 E 34th. This is evident by previous Council backup earlier in the year. By the time the case came up for final (Third) ordinance reading the property was split into two tracts numbered Tract # 810 (309 E 34th) and Tract 810A (311 E 34th). The reference to 309 E 34 Street (Tract RDE-810-part) on page 27 of 46 in the final ordinance does not match ordinance versions presented to Council earlier in the year that do not reference the word "...-part." My guess is that the reference to "...-part" was to reflect that tract 810 was split into two tracts (810 and 810A) as found in the final ordinance (see Exhibit "A" on page 3 of 7) and page 3 of 46 of the approved ordinance.

I don't know the context of your question, but I hope I found the probable reason why the reference to "...part" exists.

Greg

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