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CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, February 8, 2016

CASE NUMBER: C15-2015-0167

☒ Y ☐ Brooke Bailey 2nd the motion
☒ Y ☐ Michael Benaglio
☒ Y ☐ William Burkhardt
☒ N ☐ Eric Goff
☒ N ☐ Melissa Hawthorne
☒ Y ☐ Don Leighton-Burwell **Motion to Grant appeal**
☒ N ☐ Rahm McDaniel
☒ N ☐ Melissa Neslund
☒ N ☐ James Valadez
☒ Y ☐ Michael Von Ohlen
☒ - ☐ Kelly Blume (Alternate)

APPELLANT: Leon Barish

ADDRESS: 305 34TH ST

VARIANCE REQUESTED: The appellant has requested the Board of Adjustment to interpret whether staff erred in approving a site plan (SP 2014-0169C) for The Steck House Apartments, 305 E. 34th Street because:

A. per Section 25-2-1052 (A)(2) and Ordinance 040826-58 (North University Neighborhood Conservation Combining District –Neighborhood Plan) Part 7, (6) the compatibility setback was not applied correctly; and because

B. per Section 25-6, Appendix A, the approved parking spaces were not calculated correctly

for proposed new multi-family structures in a “MF-3- H- NCCD-NP” Multi-Family Residence Medium Density – Historic – Neighborhood Conservation Combining District – Neighborhood Plan zoning district

BOARD’S DECISION: POSTPONED TO JANUARY 11, 2016 BY APPLICANT; Jan 11, 2016 Board Member Melissa Neslund motion to Deny appeal and uphold staff’s decision on Item A, no action on Item B as it was withdrawn by the applicant, Board Member Eric Goff second – Motion Failed on a 6-3 vote (Board Members William Burkhardt, Melissa Hawthorne and Don Leighton-Burwell nay); the public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to February 8, 2016, Board Member Brooke Bailey second on a 8-1 vote (Board member Eric Goff nay); POSTPONED TO FEBRUARY 8, 2016; Feb 8, 2016 The public hearing was closed on Board Member Don Leighton-Burwell motion to Grant appeal, Board Member Brooke Bailey second on a 5-5 vote (Board members Eric Goff, Melissa Hawthorne, Melissa Neslund, James Valadez, Rahm McDaniel nay); vote failed, **DENIED.**

FINDING:

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- I. "There is reasonable doubt or difference of interpretation as to the specific intent of the regulations."
 - A. Staff has erred in understanding and implementing the intended protections afforded properties by the Compatibility Standards.
 - B. Compatibility Standards (originally adopted in early 1980's) are intended to preserve and protect single-family residential neighborhoods thru the following:
 - Height Limitations and Setbacks
 - Scale and Clustering
 - Screening
 - Design Regulations (lighting, noise, waste receptacle placement and access, roof materials, limits of intensive recreational uses, parking and driveway placement.
 - C. The adjacent single family residence at 309 E. 34th has not been afforded the protections intended by the Compatibility Standards.
 - D. City Code (25-2-1052 Exceptions (A) (2)) reads the Compatibility Standards do not apply to: "property in a historic landmark (H) or historic area (HD) combining district". However, as stated in the sworn affidavit by architect and long-time member of the COA's Historic Landmark Commission, Laurie Limbacher advises that the inclusion of this exception was "to prevent the imposition of restrictions on a historic structure in need of restoration or rehabilitation." She further states, "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."
 - E. As noted by the appellant, in 2004 the City Council adopted NUNA's NCCD (Ord. 040826-58) modifying specifically the application of Compatibility Standards height and setback limitations to this property. That ordinance states that those restrictions would not be applied to the rear 70 feet of the property, thus implying that height and setback limits WOULD be required for the remainder (front 100 feet) of the property (in particular the portion shared with 309 E. 34th St.)
 - F. The NCCDs are expressly created by City Code to "preserve and protect" older neighborhoods by allowing modifications to applicable development regulations. In 12-10-2015 email from COA Staff (Greg Dutton), he states "NCCDs have always been interpreted and understood to supersede the LDC where conflicts occur".

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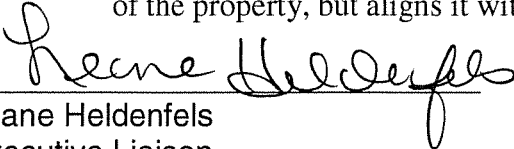
G. In BOA hearing in January 2016, City Staff indicated that the single family residence at 309 E. 34th St. would not be subject to the protections of the Compatibility Standards due to its proximity to a historic zoned property. If the property in question at 305 E. 34th St. was not zoned "historic", the proposed development would not be allowed. This perceived "loophole" flies in the face of the intent of the ordinance and does not take into account the efforts by the NCCD to correct this miss-application of City Code.

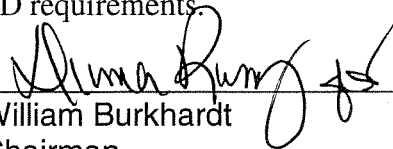
2. "The resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated."

Single family uses adjacent to multi-family sites (and redevelopments) trigger the Compatibility Standards throughout the City. This property can have new structures added along the rear 70 feet of the property that would encroach into the typical setbacks as granted by the NCCD.

3. "When use provisions are being appealed, granting the appeal would clearly permit a use in character with the uses enumerated for the various districts and with the objective of the district in question."

The challenge to Staff's interpretation applies to their dismissal of the amendments included in the NCCD and how those affect the property in question. This reversal of City Staff's decision does not disallow the redevelopment of the non-historic portions of the property, but aligns it with the NCCD requirements.


Leane Heldenfels
Executive Liaison


William Burkhardt
Chairman

Leon J. Barish

ELJ

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

February 18, 2016

Board of Adjustment
City of Austin
1st Floor, Development Assistance Center
505 Barton Springs Road
Austin, TX 78704

Re: Case No. C15-2015-0167
Request for Reconsideration

Dear Chair and Members of the Board:

I am requesting a reconsideration of the action of the Board taken in the referenced case at its meeting on February 8, 2016.

We have conducted further research into previous cases involving properties zoned historic. We found a Planning Commission case from 2007 (Case No. C14-2007-0210) which supports our position that the staff acted in an arbitrary and capricious manner concerning the interpretation at issue in our appeal. Case No. C14-2007-0210 was a rezoning case for the property located at 511 W. 41st St from SF-3-NCCD (the Hyde Park NCCD) to NO-H-NCCD. The staff recommended approval of the zoning change. In its case summary presented to the Planning Commission, staff noted that Compatibility Standards would continue to apply to the property even though it was being rezoned historic (See page 7 in the attached staff Zoning Review Sheet). I should note that the Hyde Park NCCD is otherwise silent on the issue of Compatibility Standards. Therefore, staff's statement concerning the continued application of Compatibility Standards is not based on any language in the Hyde Park NCCD.

LDC 25-2-1052(A)(2), which states that Compatibility Standards do not apply to "property in a historic landmark (H) or historic area (HD) combining district" and is the basis for the staff interpretation challenged here, was in effect in 2007 when staff made its case summary in this Planning Commission case. Yet, staff did not apply LDC 25-2-1052(A)(2) in Case No. C14-2007-0210. As you know, staff has applied LDC 25-2-1052(A)(2) to the proposed development on the Steck House property. Given staff's failure to apply LDC 25-2-1052(A)(2) to a historic zoned property in the 2007 Planning Commission case, we suggest that staff has acted in an arbitrary and capricious manner in applying LDC 25-2-1052(A)(2) to the case at hand. When a government agency acts in an arbitrary and capricious manner in applying its rules or ordinances, the decision should not stand. This is the basic standard of review in administrative law decision making. The Board of Adjustment, as the appellate entity for review of staff interpretations, should apply the arbitrary and capricious standard of review. Staff has argued that it has consistently applied LDC 25-2-1052(A)(2), which is clearly not the case given the staff position taken in the referenced Planning Commission

Leon J. Barish

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case. Given the precedent of not applying LDC 25-2-1052(A)(2) in a consistent manner, the deference given staff in its interpretation here by the Board is no longer required.

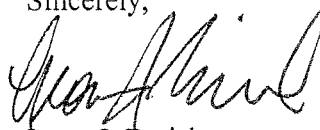
The NUNA NCCD states "Compatibility Standards for height and setbacks do not apply to the **rear 70 feet** of the common property line between 305 E. 34th Street and 309 E. 34th Street." I remind you that if LDC 25-2-1052(A)(2) means that Compatibility Standards do not apply to the Steck House property, then there would have been no reason for the NUNA NCCD to state that Compatibility Standards do not apply to **both** properties as it does. If staff's interpretation of LDC 25-2-1052(A)(2) as applied in context with the NUNA NCCD were correct, the NUNA NCCD would say: "Compatibility Standards for height and setbacks do not apply to the rear 70 feet of the west property line of 309 E. 34th St." But this provision of the NCCD was not written this way because NUNA wanted to make it clear that Compatibility Standards do apply to the front 100 feet of **both** properties.

Concern was expressed by several members of the Board at the hearing about the intent of LDC 25-2-1052(A)(2). Unfortunately, a search of the minutes of the City Council meeting where this provision was adopted indicates that the minutes have been lost. The next best evidence of the City Council's intent is from actual members of the City Council at the time of adoption. Smoot Carl-Mitchell was a member of the City Council from 1985-1991 when LDC 25-2-1052(A)(2) was adopted. Please see the attached email from former Council Member Carl-Mitchell. He makes it abundantly clear that it was not the intent of the City Council to allow new construction on a lot zoned historic without compliance with Compatibility Standards. Rather, the exemption from Compatibility Standards was intended only for the existing historic structure itself. This position is consistent with the affidavit previously provided by Laurie Limbacher.

We believe staff has acted in an arbitrary and capricious manner in applying LDC 25-2-1052(A)(2) in such a way to support the proposed development on the Steck House property while not making a similar interpretation to another historic zoned property just blocks away from the Steck House. Furthermore, the intent of the Historic Landmark Commission and the City Council regarding the proper application of LDC 25-2-1052(A)(2) is quite clear given the information provided by Laurie Limbacher and former Council Member Smoot Carl-Mitchell. Under the circumstances, the staff interpretation should not be upheld.

Your consideration in this matter is certainly appreciated.

Sincerely,



Leon J. Barish

Enc.

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✓**ZONING REVIEW SHEET****CASE:** C14-2007-0210**P.C. DATE:** February 12, 2008**ADDRESS:** 511 West 41st Street**OWNER/APPLICANT:** Michael Rhodes**REZONING FROM:**

SF-3 -NCCD (Family residence - Neighborhood Conservation Combining District) combining district

TO: NO-H-NCCD (Neighborhood office – Historic – Neighborhood Conservation Combining District)**AREA:** 0.137 Acres (5,967.72 square feet)**SUMMARY PLANNING COMMISSION RECOMMENDATION:***February 12, 2008****APPROVED STAFF'S RECOMMENDATION OF NO-H-NCCD DISTRICT ZONING; BY CONSENT.******[J.REDDY, M.DEALEY 2ND] (8-0)*****SUMMARY STAFF RECOMMENDATION:**

The Staff recommends approval of the rezoning from SF-3-NCCD to NO-H-NCCD. All provisions Ordinance No. 020131-20 shall remain in place with the exception of the following modifications:

The following uses shall be prohibited on the site:

- Day care services (limited);
- Day care services (general); and
- Day care services (commercial).
- The site shall be limited to less than 2,000 vehicle trips per day.

The recommendation is based on the following considerations:

- 1.) The requested zoning classification is compatible with existing commercial and residential land uses in the area;
- 2.) The recommended prohibited uses will encourage the compatibility of land uses within the Residential District of the NCCD; and
- 3.) All other conditions of Ordinance No. 020131-20 shall remain applicable to the site.

DEPARTMENT COMMENTS:

The subject rezoning area consists of a 0.137 acre (5,967.72 square feet) property zoned SF-3 – NCCD developed with a duplex structure. On January 31, 2002, the property was rezoned from SF-3 to SF-3-NCCD by Ordinance No. 020131-20 (Please see Attachment "A"). The site lies within the Residential District of the Hyde Park NCCD. Access to the property is via West 51st Street. A concurrent historic overlay case is in effect under case C14H-2007-0011.

On May 21, 2007, the Historic Landmark Commission (HLC) initiated a rezoning case on the property requesting to implement an historic overlay on the property and on January 28, 2008, the HLC unanimously recommended historic zoning on the property. The site lies within the Hyde Park National Register Historic District.

The applicant seeks to rezone the property from SF-3NCD to NO-H-NCCD to facilitate office uses on the site. Both the applicant and the Hyde Park Neighborhood Association will enter into a private restrictive covenant to facilitate site development regulations on the site.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	SF-3-NCCD	Duplex
<i>North</i>	MF-3-NCCD	Apartments
<i>South</i>	SF-3-NCCD	Single-family residence
<i>East</i>	SF-3-NCCD	Single-family residence
<i>West</i>	CS-NCCD	Retail

NCCD: Hyde Park

TIA: Waived; See Transportation comments

WATERSHED: Waller Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: N/A

NEIGHBORHOOD ORGANIZATIONS:

283--North Austin Neighborhood Alliance
 34--Hyde Park Neighborhood Assn.
 511--Austin Neighborhoods Council
 603--Mueller Neighborhoods Coalition
 742--Austin Independent School District
 754--Central Austin Neighborhoods Planning Area Committee
 937--Taking Action Inc.
 786--Home Builders Association of Greater Austin
 631--Alliance to Save Hyde Park
 1037--Homeless Neighborhood Organization
 1075--League of Bicycling Voters

SCHOOLS:

Austin Independent School District

- Ridgetop Elementary School
- Lamar Middle School
- McCallum High School

RELATED CASES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-01-0046	Hyde Park NCCD	05/22/01: APVD STAFF REC W/CONDS (8-0); APVD MF-1/MF-2/SF-3/SF-3-H/LO/LO-H/LR/GR/MF-3/MF-4/CS + NCCD ON ALL	08/23/01: APVD STAFF REC OF MF-1-NCCD, MF-2-NCCD, MF-3-NCCD, MF-4-NCCD, SF-3-NCCD, SF-3-H-NCCD, LO-NCCD, LO-H-NCCD, LR-NCCD, GR-NCCD, & CS-NCCD (5-2, KW/DT-NO); 1ST RDG

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			<p>10/25/01: APVD MF-1-NCCD, MF-2-NCCD, SF-3-NCCD, SF-3-H-NCCD, LO-NCCD, LO-H-NCCD, LR-NCCD, GR-NCCD, MF-3-NCCD, MF-4-NCCD, & CS-NCCD (4-2, KW/DT-NO) 2ND RDG ONLY</p> <p>01/31/02: APVD NCCD PER PLAN DESCRIBED IN MEMO TO CC D'D 11-28-01 (6-1, DT-NO)</p>
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ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Bus Routes
W 41 st St	63'	33'	Collector	No	Rte 22	101 N Lamar 1 N Lamar 481 Night Owl North

CITY COUNCIL DATE:

March 27, 2008

ACTION:

The first reading of the ordinance for neighborhood office-historic landmark-neighborhood conservation combining district (NO-H-NCCD) zoning was approved. The conditions were as follows:

- Minimum lot area shall be 5,900 square feet;
- 2-family use shall be allowed on a lot not less than 5,900 square feet;
- Building coverage – allowable to be 55%;
- Impervious coverage – allowable to be 91%;
- Maximum FAR – 0.5:1;
- Minimum setbacks shall be front setback – 0,
- Rear setback – 5 feet,
- Interior side yard setback – 10 feet,
- Alley setback – 0 feet
- The secondary dwelling on the eastern portion of the property shall be limited to a maximum of 750 square feet and two bedrooms;
- Maximum number of parking spaces shall be five;
- McMansion articulation and tent shall not apply along the western property line abutting the existing alley;
- The driveway width must be greater than 10' in width, but less than 15'; and

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- The occupancy should be limited to two unrelated adults in the east building and three in the west building (consent). 6-0 (Cole off the dais)

April 10, 2008

This item was postponed to April 24, 2008 at the applicant's request (consent). 7-0

April 24, 2008

The second reading of the ordinance for neighborhood office-historic landmark-neighborhood conservation combining district (NO-H-NCCD) combining district zoning was approved with amendments. Part 4 of the ordinance should read:

"18d. For a two-family residential use the maximum floor-to-area ratio (FAR) is 0.5 to 1.0.

18 f iii) the east interior side yard setback is 10 feet; and

18f iv) the west alley setback is 0 feet.

18h. Part 8 10.(b) does not apply to the accessory building. Its front setback from 41st Street may equal that of the principal building.

18i. The maximum number of parking spaces is five. For a residential use, two parking spaces per dwelling unit is allowed; for a commercial use, one space per 1200 sq. ft. is allowed.

18l. Part 7 2.a and Part 7 17.b do not apply to the property at 511 West 41st Street." (consent). 7-0

May 8, 2008

This item was postponed to May 22, 2008 at the staff's request (consent). 7-0

May 22, 2008

ORDINANCE READINGS: 1st

2nd

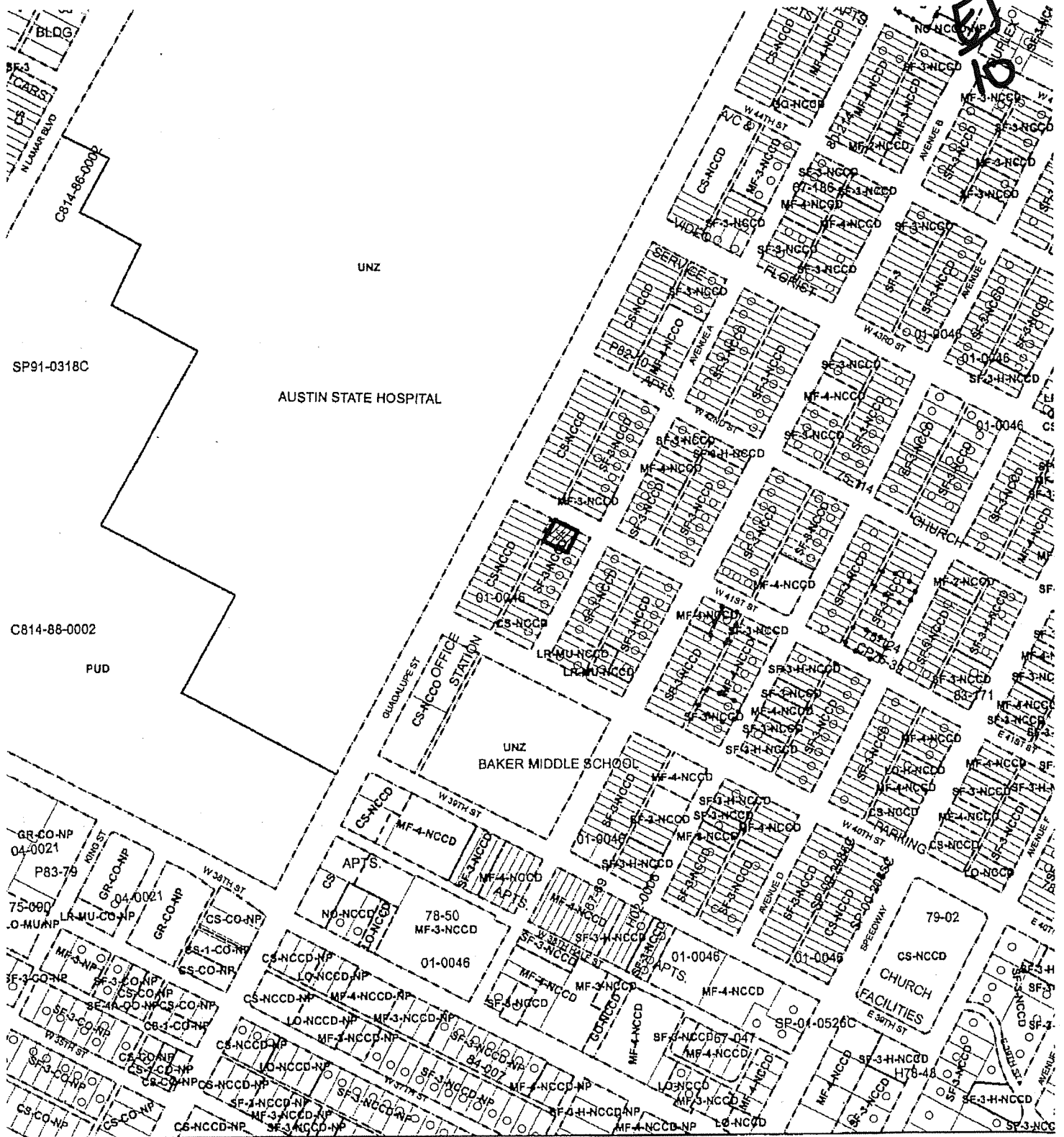
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ORDINANCE NUMBER:

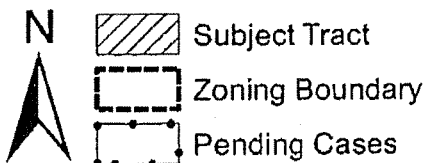
CASE MANAGER: Jorge E. Rousselin, NPZD

PHONE: 974-2975

E-MAIL: jorge.rousselin@ci.austin.tx.us



ZONING



ZONING CASE#: C14-2007-0210
 ADDRESS: 511 W 41ST ST
 SUBJECT AREA: 0.137 ACRES
 GRID: J25
 MANAGER: J. ROUSSELIN



1" = 400' OPERATOR: S MEEKS

This map has been produced by G.I.S. Services for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



511 W. 41st St.
C14-2007-0210

AUSTIN STATE HOSPITAL

GUADALUPE

MENUE

SPORTING
GOODS
STATION

Legend

- Zoning
- Base
- Center Line

0 50 100 Feet

C14-2007-0210

12/15

STAFF RECOMMENDATION

The Staff recommends approval of the rezoning from SF-3-NCCD to NO-H-NCCD. All provisions Ordinance No. 020131-20 shall remain in place with the exception of the following modification:

The following uses shall be prohibited on the site:

- Day care services (limited);
- Day care services (general); and
- Day care services (commercial).
- The site shall be limited to less than 2,000 vehicle trips per day.

The recommendation is based on the following considerations:

- 1.) The requested zoning classification is compatible with existing commercial and residential land uses in the area;
- 2.) The recommended prohibited uses will encourage the compatibility of land uses within the Residential District of the NCCD; and
- 3.) All other conditions of Ordinance No. 020131-20 shall remain applicable to the site.

BASIS FOR RECOMMENDATION

- 1. Zoning changes should promote compatibility with adjacent and nearby uses and should not result in detrimental impacts to the neighborhood character.*

The proposed rezoning will promote a compatible mix of land uses within the designated residential district of the NCCD and will preserve the residential character of the established residential district.

- 2. The proposed zoning should promote consistency and orderly planning.*

The proposed rezoning will be consistent with the permitted, conditional and prohibited land uses as listed in the NCCD ordinance.

EXISTING CONDITIONS

Site Characteristics

The subject rezoning area consists of a 0.137 acre (5,967.72 square feet) property zoned SF-3 – NCCD developed with a duplex structure. On January 31, 2002, the property was rezoned from SF-3 to SF-3-NCCD by Ordinance No. 020131-20 (Please see Attachment “A”). The site lies within the Residential District of the Hyde Park NCCD. Access to the property is via West 51st Street. A concurrent historic overlay case is in effect under case C14H-2007-0011.

On May 21, 2007, the Historic Landmark Commisison (HLC) initiated a rezoning case on the property requesting to implement an historic overlay on the property and on January 28, 2008, the HLC unanimously recommended historic zoning on the property. The site lies within the Hyde Park National Register Historic District.

Transportation

1. No additional right-of-way is needed at this time.

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2. A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

Environmental

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Waller Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.
2. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.
3. This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.
4. According to flood plain maps, there is no flood plain within the project area.
5. At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features.
6. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Water and Wastewater

1. The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocation, an abandonment. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Site Plan and Compatibility Standards:

1. Site plans will be required for any new development other than single-family or duplex residential.
2. This site is in a National Register Historic District, and review by the Historic landmark commission is required.

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3. Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

Compatibility Standards

- a. The site is subject to compatibility standards. Along the South, East, and North property lines, the following standards apply:
- b. No structure may be built within 25 feet of the property line.
- c. No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- d. No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- e. For a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- f. An intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property.
- g. No parking or driveways are allowed within 25 feet of the property line.
- h. A landscape area at least 15 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

Leon Barish [REDACTED] **EL 15****Re: sight plan and 1986 compatibility ordinance/Landmark Steck House****Smoot Carl-Mitchell** [REDACTED]

Thu, Feb 18, 2016 at 1:13 PM

To: Robert Kaler [REDACTED]

Cc: Leon Barish [REDACTED], mary inge [REDACTED]

2016-02-18

To the Austin City Board of Adjustment:

I was a member of the Austin City Council in 1986 when an amendment was made to the Austin Zoning Ordinance which appears to exempt Historically zoned properties from all Neighborhood Compatibility requirements. I believe the intent of the change was to exempt existing historical structures from the Compatibility requirements and not substantial new construction on an Historically zoned lot.

As I understand the minutes of the meeting where the ordinance was approved have been lost. A reading of the minutes would certainly be helpful as to what the legislative intent was at the time. Given the makeup of the Council majority (of which I was a part) which had strong neighborhood preservation support, I find it hard to believe that substantial new construction would be exempted from the Neighborhood Compatibility requirements by a majority of the Council.

I hope this information is helpful to you as you deliberate on this specific case.

Thank you

Smoot Carl-Mitchell
Austin City Councilmember 1985 - 1991
smoot@tic.com
480 922-7313

C15-2015-0167

Karen McGraw Architect PLLC

4315 Avenue C
Austin, Texas 78751
512-459-2261 cell 512-917-1761
mcgrawka@earthlink.net

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February 8, 2016

Chairman and Members of the City of Austin Board of Adjustment,

In 2002, the North University Neighborhood Association retained my services to assist them in producing a neighborhood plan and rezoning via a Neighborhood Conservation Combining District. The neighborhood had developed over 100 years with many changes and many small tracts with a mix of different zoning and uses. After a full survey of the neighborhood character and land uses and a draft of zoning prepared by a committee of neighbors, neighborhood leaders and I met with many different property owners to apply appropriate zoning and gain their agreement with the new district.

At one point we met with the (now former) owners of the Steck House, and agreed to some zoning specifics including the relief from compatibility on the rear 70' of the mutual lot line with the adjacent neighbor to facilitate the addition of multi-family units on both properties.

Clearly, at that time compatibility would have applied to the entire east side of the Steck House property if the land use changed from Single-family to Multi-family. The relief from compatibility in the back was to facilitate additional development and not infringe on the character of the Steck House by retaining compatibility in the front to discourage development in that area. Otherwise, why in the world would we exempt it from part of the lot?

The NCCD application was filed in February, 2004, long before the Steck House "H" application was filed in April, 2004. The first NCCD hearing at the City Council was May 6, and it was postponed several times after that finally being fully adopted on August 25. The Steck House "H" case was heard by the HLC and PC and finally adopted by the City Council on June 24, a date when the NCCD also appeared on the agenda and was again postponed. The compatibility provision, agreed to long before either filing, was not revisited by either myself, the neighborhood or staff. I cannot recall whether the neighbors, myself or city staff were aware of the ordinance that exempted "H" from compatibility.

In any case, we would not have exempted part of the lot from compatibility if we thought it did not apply. We certainly believed the single family house would trigger it. I think this is the proof or our intent.

Thanks,



Karen McGraw AIA

TO: Members of the Board of Adjustment

From: Richard Gambrell and John Gambrell

Date: February 2, 2016

RE: Case No. C15-2015-0167, 305 E 34th St. (Steck House)

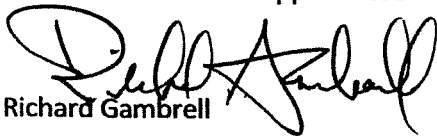
My family has owned the real property located at 309 E 34th St. since 1987. Our property is located immediately East of the Steck House at 305 E 34th St. We have a single family home located at the property which we currently use as rental property.

Our understanding is that the North University Neighborhood Association NCCD was adopted by the City Council in 2004. It contains the following provision "compatibility standards for height and setbacks do not apply to the rear 70 feet of the common property line between 305 E 34th and 309 E 34th St." My recollection as to the purpose of the addition of this provision relates to the multi- family zoning on both 305 E 34th St. and 309 E 34th St.

We further understand that NUNA was seeking a rollback on multi- family zoning of lots where the use was single family such as my family's property and the Steck House. As a compromise of this issue and without agreeing to the rollback, the rear 70 feet of both properties were exempted from compatibility standards while the front 100 feet remained subject to compatibility standards since that's where the single family home on each lot was located. This compromise allows multi- family development in the rear of the property without imposition of the 25 feet setback required by the compatibility standards. I believe that this compromise is applicable to 305 E 34th St. and to our property at 309 E 34th St.

My current understanding is that the proposed development of the Steck House property would further exempt from the compatibility standards the front 100 feet. Although the proposed development at 305 E 34th St. would be overbearing to my tenants, we appreciate the need for properties in this location to be afforded their highest and best use. At some point in the future, either our family or a subsequent owner would most probably want the same treatment for 309 E 34th St. as is being requested by Cater Joseph. Therefore, with the understanding that at some future point the proposed Cater Joseph rules would also be available to our 309 E 34th St. property, we do not object to the application filed by Cater Joseph in this matter.

Your consideration is appreciated.


Richard Gambrell

John Gambrell

EJL

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, January 11, 2016

CASE NUMBER: C15-2015-0167

___Y___ Brooke Bailey 2nd the Motion
___Y___ Michael Benaglio
___Y___ William Burkhardt
___N___ Eric Goff
___Y___ Melissa Hawthorne Motion to PP to Feb 8, 2016
___Y___ Don Leighton-Burwell
___Y___ Melissa Neslund
___Y___ James Valadez
___-___ Michael Von Ohlen
___-___ Kelly Blume (Alternate)
___Y___ Rahm McDaniel (Alternate)

APPELLANT: Leon Barish

ADDRESS: 305 34TH ST

VARIANCE REQUESTED: The appellant has requested the Board of Adjustment to interpret whether staff erred in approving a site plan (SP 2014-0169C) for The Steck House Apartments, 305 E. 34th Street because:

A. per Section 25-2-1052 (A)(2) and Ordinance 040826-58 (North University Neighborhood Conservation Combining District –Neighborhood Plan) Part 7, (6) the compatibility setback was not applied correctly; and because

B. per Section 25-6, Appendix A, the approved parking spaces were not calculated correctly

for proposed new multi-family structures in a “MF-3- H- NCCD-NP” Multi-Family Residence Medium Density – Historic – Neighborhood Conservation Combining District – Neighborhood Plan zoning district

BOARD’S DECISION: POSTPONED TO JANUARY 11, 2016 BY APPLICANT; Jan 11, 2016 Board Member Melissa Neslund motion to Deny appeal and uphold staff’s decision on Item A, no action on Item B as it was withdrawn by the applicant, Board Member Eric Goff second – Motion Failed on a 6-3 vote (Board Members William Burkhardt, Melissa Hawthorne and Don Leighton-Burwell nay); the public hearing was closed on Board Member Melissa Hawthorne motion to Postpone to February 8, 2016, Board Member Brooke Bailey second on a 8-1 vote (Board member Eric Goff nay); POSTPONED TO FEBRAURY 8, 2016.

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

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.

12/19

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.

EJ
20APPLICANT 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.

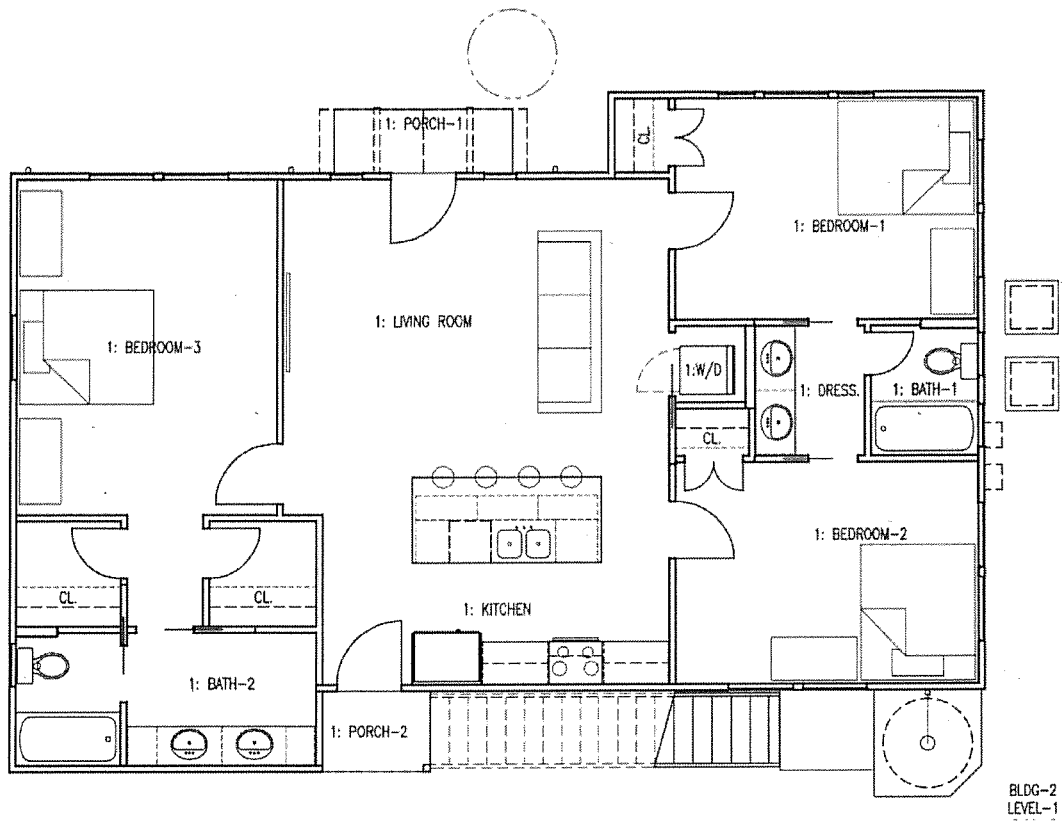
The language being questioned in the NCCD states; "Compatibility standards for height and setbacks do not apply to the rear 70 feet of the common property line between 305 East 34th Street (Trace RDE 809) and 309 E. 34th Street (Tract RDE 810-part)." Nowhere in this language does it say anything regarding 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.

1/2



Building 2 / level 1 (draft floor plan)

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

Building 3 & 4 (draft floor plan)

C15-2015-0167

23/E

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

C15-2015-0167

~~24~~ 24

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

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:*
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 - (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*
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- (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 it was NOT a bedroom and would not trigger a requirement of additional parking.

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CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, December 14, 2015

CASE NUMBER: C15-2015-0167

____ Brooke Bailey
____ Michael Benaglio
____ William Burkhardt
____ Eric Goff
____ Melissa Hawthorne
____ Don Leighton-Burwell
____ Melissa Neslund
____ James Valadez
____ Michael Von Ohlen
____ Kelly Blume (Alternate)
____ Rahm McDaniel (Alternate)

APPELLANT: Leon Barish

ADDRESS: 305 34TH ST

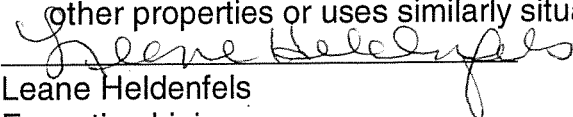
VARIANCE REQUESTED: The appellant has requested the Board of Adjustment to interpret whether staff erred in approving a site plan (SP 2014-0169C) for The Steck House Apartments, 305 E. 34th Street because:

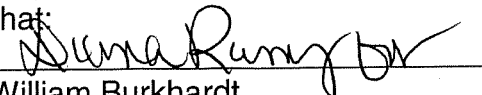
- A. per Section 25-2-1052 (A)(2) and Ordinance 040826-58 (North University Neighborhood Conservation Combining District – Neighborhood Plan) Part 7, (6) the compatibility setback was not applied correctly; and because
- B. per Section 25-6, Appendix A, the approved parking spaces were not calculated correctly
- for proposed new multi-family structures in a “MF-3- H- NCCD-NP” Multi-Family Residence Medium Density – Historic – Neighborhood Conservation Combining District – Neighborhood Plan zoning district

BOARD’S DECISION: POSTPONED TO JANUARY 11, 2016 BY APPLICANT

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
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:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:


Leane Heldenfels
Executive Liaison


William Burkhardt
Chairman



CITY OF AUSTIN

Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

C15-2015-0167

11/11/14
27

Board of Adjustment Interpretations Application Appeal of an Administrative Decision

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

For Office Use Only

Case # _____ ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: 305 E. 34th St

Subdivision Legal Description:

E. L. Steck Subdivision, Grooms Add., a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Vol 319, P 384 of the Deed Records of Travis County, Texas.

Lot(s): Lot (s): 3 and 4 Block(s): 18

Outlot: _____ Division: _____

Zoning District: MF-3 NCCD NP

I/We Leon J. Barish, on behalf of myself/ourselves as
authorized agent for Robert Kaler affirm that on
Month October, Day 13, Year 2015, hereby apply for
hearing before the Board of Adjustment.

11/11/14
Robert Kaler

11/28

Development Services Department interpretation is:

see original application filed October 13, 2015.

I feel the correct interpretation is:

see original application filed October 13, 2015.

Section 2: Findings

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 supporting documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

see original application filed October 13, 2015.

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:

see original application filed October 13, 2015.

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

see original application filed October 13, 2015.

12/1/15

Section 3: 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.

Applicant Signature: Leon J. Barish Date: 10/13/2015

Applicant Name (typed or printed): Leon J. Barish

Applicant Mailing Address: 310 E. 34th St

City: Austin State: TX Zip: 78705

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 4: Owner Information

Owner Name: _____

Owner Mailing Address: _____

City: _____ State: _____ Zip: _____

Section 5: Agent Information

Agent Name: _____

Agent Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

[Explore your city...](#)

austintexas.gov
the official website of the City of Austin

[Department » Planning And Zoning » Programs » Zoning » Zoning Districts](#)


ZONING DISTRICTS

The City of Austin has 16 residential zoning districts and 13 commercial zoning districts, 4 industrial, and 5 special purpose base districts. In addition, up to 13 combining districts may also relate to a particular zoning case; these combining districts act as overlays to provide site or use specific conditions for an identified area or project. The zoning section also reviews demolition/relocation permits for historic buildings and districts for consideration by the Historic Landmark Commission, sign permits and alcoholic and beverage permits.

Cases involving historic structures or National Register Districts have specific requirements in addition to the zoning process.

Base Zoning Districts

A listing of Austin's base zoning districts can be found in Chapter 25-2 of the City's Land Development Code. To see the descriptions of each of each zoning district, please view the definitions of the below acronyms at this link. To find out what uses are allowed in a given base zoning district, please see the Permitted Use Chart.

LA Lake Austin Residence

RR Rural Residence

SF-1 Single Family Residence - Large Lot

SF-2 Single Family Residence - Standard Lot

SF-3 Family Residence

SF-4A Single Family Residence - Small Lot

SF-4B Single Family Residence - Condominium

SF-5 Urban Family Residence

SF-6 Townhouse & Condominium Residence

MF-1 Multi-Family Residence - Limited Density

MF-2 Multi-Family Residence - Low Density

MF-3 Multi-Family Residence - Medium Density

MF-4 Multi-Family Residence - Moderate-High Density

MF-5 Multi-Family Residence - High Density

MF-6 Multi-Family Residence - Highest Density

MH Mobile Home Residence

NO Neighborhood Office

LO Limited Office

GO General Office	CR Commercial Recreation	LR Neighborhood Commercial
GR Community Commercial	L Lake Commercial	CBD Central Business District
DMU Downtown Mixed Use	W/LO Warehouse Limited Office	CS General Commercial Services
CS-1 Commercial-Liquor Sales	CH Commercial Highway	IP Industrial Park
MI Major Industry	LI Limited Industrial Services	R&D Research and Development
DR Development Reserve	AV Aviation Services	AG Agricultural
PUD Planned Unit Development	P Public	TOD Transit-Oriented Development
NBG North Burnet/Gateway District	ERC East Riverside Corridor	TND Traditional Neighborhood District

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Combining Zoning Districts

The following are special districts that, when combined with a base zoning district, may alter permitted site development characteristics and uses permitted on a site. Combining and overlay districts are designed to achieve special goals such as downtown design, economic redevelopment and parkland protection.

Conditional Overlay (CO) - Modifies and restricts the use and site development regulations authorized in the base districts. All requirements are in addition to and supplement land development code requirements. Examples include prohibiting permitted uses authorized in a base district, increasing minimum lot sizes, decreasing FAR etc.

Neighborhood Conservation Combining District (NCCD) - Preserves and protects older neighborhoods by allowing modifications to applicable development regulations in accordance with a neighborhood plan, which for NCCDs is intended to protect neighborhoods that were substantially built out over 30 years ago.

Capitol View Corridor Combining District (CVC) - Are applied in combination with the various base districts to limit the height of structures within selected corridors which represent the remaining significant, publicly accessible views of the State Capitol Building of Texas, so that those views may be preserved and protected.

Planned Development Area Combining District (PDA) - Is intended for combination with selected commercial and industrial base districts, in order to modify base district provisions as necessary to allow for appropriate industrial and commercial uses or to reflect the terms of the PDA agreement following annexation of properties subject to the agreement.

Waterfront Overlay Combining District (WO) - Reflects the goals and policies set forth in the Town Lake Corridor Study adopted by the City Council on October 24, 1985. The District is designed and intended to provide a more harmonious interaction and transition between urban development and the park land and shoreline of Town Lake and the Colorado River. There are 15 different subdistricts within the Waterfront.

Mixed Use Combining District (MU) - Is intended to combine with selected base districts, to permit any combination of office, retail, commercial, and residential uses within a single development. The MU combining district is intended for use in combination with the NO base district only when its use will further the purposes and intent of the NO base district. Other acceptable districts are Limited Office (LO), General Office (GO), Limited Retail (LR), Community Commercial (GR), General Commercial Services (CS), Commercial Liquor Sales (CS-1).

Central Urban Redevelopment (CURE) - Is a zoning district for the downtown area and several commercial corridors east of IH 35. The purpose of this recently added zoning district is to provide flexibility and incentives for development within the designated boundaries, including changes to site development standards and waivers from development fees with one application.

Downtown Overlay Combining District - Is intended for combination with the CBD and DMU base districts in order to protect and enhance identified unique features of downtown Austin and peripheral areas.

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Capitol Dominance Combining District (CDZ) - Is intended for combination with selected base districts in order to protect the visual and symbolic significance of the State Capitol by keeping buildings in close proximity of the Capitol from dominating the structure. This district includes all land within a one-fourth mile radius of the State Capitol dome.





Congress Avenue Combining District (CAZ) - Is intended for combination with the CBD and DMU base districts in order to protect the historic character and symbolic significance of Congress Avenue and to enhance the pedestrian environment along this unique downtown corridor.

Sixth/Pecan Street Combining District (PSZ) - Is intended for combination with the CBD and DMU base districts in order to protect the historic character of East Sixth/Pecan Street and to enhance the pedestrian orientation of this unique urban area.

Downtown Parks Combining District (DPZ) - Is intended for combination with the CBD and DMU base districts, in order to enhance the pedestrian use and vitality of downtown parks and to establish a unique urban design identity associated with these public open spaces. The DP combining district includes all land within 60 feet of the public right-of-way surrounding Brush Square.

Downtown Creeks Combining District (DCZ) - Is intended for combination with the CBD and DMU base districts in order to promote public accessibility and pedestrian use along downtown creeks, and to protect and enhance the scenic character of these creek corridors.

Convention Center Combining District - Is intended to protect and enhance the health, safety, and welfare of the public, to promote pedestrian activity and vitality in the Convention Center area, and to protect the existing character of the area.

Share    

12/10/2015

Fwd: NCCDs - leonbarishlaw@gmail.com - Gmail

From: "Dutton, Greg" <Greg.Dutton@austintexas.gov>

Date: December 10, 2015 11:18:45 AM CST

To: "mary inge (~~mary.inge@cityofaustin.org~~)" <~~mary.inge@cityofaustin.org~~>

Subject: NCCDs

El
33

Hi Mary,

After looking at the land development code and talking to other planners, we weren't able to find any specific code language regarding NCCDs superseding the LDC. However, NCCDs have always been interpreted and understood to supersede the LDC where any conflicts occur.

Cheers,

Greg

Greg Dutton

Planner, City of Austin

Planning and Zoning Department

505 Barton Springs Road, Austin, TX 78704

(512) 974-3509

Greg.Dutton@austintexas.gov



Please consider the environment before printing this email.

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

E/34

Hi Mary:

Marie Sandoval asked me if I could assist you with your question regarding the 2004 NUNA neighborhood plan rezoning case (040826-58). It appears the original tract RDE 810 was original 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 a probable reason why the reference to "...part" exists.

Greg

C15-2015-0167

Heldenfels, Leane

From: Leon Barish [REDACTED]
Sent: Monday, December 14, 2015 10:07 AM.
To: Heldenfels, Leane
Subject: Re: Tonight's Board of Adjustment Meeting - numbered backup and late back up

E/35

please note that I am withdrawing my request for postponement. Thanks

Leon J. Barish
Attorney at Law-Mediator
Fee Attorney for Chicago Title of Texas, LLC
1409 W. 6th St.
Austin, Texas 78703
(512) 477-9058
(512) 477-9061 (fax)
Email: [REDACTED]

On Mon, Dec 14, 2015 at 10:03 AM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

Greetings applicants:

See below link to numbered back up documents - you might want to print out or take note of these page numbers we've assigned to your evidence in case the Board refers to the page numbers at tonight's hearing.

Also, after 4pm today we'll have late back up posted here - it consists of everything we've received on your case since Mon 11/30 (mostly comments from the public notice mailing). We won't have a paper copy of them at the hearing tonight, so please take a look before heading to the hearing:

http://www.austintexas.gov/cityclerk/boards_commissions/meetings/15_1.htm

See you tonight -

Leane Heldenfels

Board of Adjustment Liaison

City of Austin

C15-2015-0167

Heldenfels, Leane

From: Leon Barish [REDACTED]
Sent: Thursday, December 10, 2015 8:50 AM
To: Heldenfels, Leane
Subject: Re: Monday 12/14 Board of Adjustment Meeting agenda, backup

E1
34

I believe I would like to request a postponement then. Given the supermajority required to prevail, having a full board would be important. If anything else is required to request the postponement, please let me know.

Leon J. Barish
Attorney at Law-Mediator
Fee Attorney for Chicago Title of Texas, LLC
1409 W. 6th St.
Austin, Texas 78703
(512) 477-9058
(512) 477-9061 (fax)
Email: ~~leon@barishlaw.com~~

On Wed, Dec 9, 2015 at 5:00 PM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

We have 2 alternate members appointed that can serve in the place of an absent member if we know in advance that someone will be missing.

But, right now we only have 9 of 11 potential members appointed, so some applicants have requested postponement to see if/when the Council appoints the full 11 for their case to be heard.

We also permit for a postponement if for some reason we have only 7 members present, which is the minimum number needed to take action, but because it requires unanimous agreement the rules allow for a postponement until a full board (currently 9 for us) is present.

So, in a way 3 options –

Leane

From: Leon Barish [mailto:~~leon@barishlaw.com~~]
Sent: Wednesday, December 09, 2015 4:21 PM
To: Heldenfels, Leane
Subject: Re: Monday 12/14 Board of Adjustment Meeting agenda, backup

Thanks for sending this. I have a question: In the event any members are missing the night of the hearing, will there be an opportunity to request a postponement at that time given the supermajority required to prevail on our application? Thanks

155

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

Case Number: C15-2015-0167, 305 E. 34th Street

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 14th, 2015

Geoffrey Journey-Kaler
Your Name (please print)

☐ I am in favor
☒ I object

207 East 34th St.
Your address(es) affected by this application

BAOW

Signature

12/10/15
Date

Daytime Telephone: 512-658-7653

Comments: This project does not fit the
character of the neighborhood nor
NUAA's guidelines for new development

Note: all comments received will become part of the public record of this case

If you use this form to comment, it may be returned up until noon the day of the hearing to (comments received after noon may not be seen by the Board at this hearing):

E/38

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

Case Number: C15-2015-0167, 305 E. 34th Street

Contact: Leanne Heldestad, 512-974-2702, leanne.heldestad@cityofaustin.gov

Public Hearing: Board of Adjustment, December 14th, 2015

ROBERT KALER

Your Name (please print)

☐ I am in favor
☒ I object

207 E 34th ST AUSTIN, TX

Your address(es) affected by this application

Robert Kaler

Signature

12.9.15

Date

Daytime Telephone: 512-779-8014

Comments: ① THE MULTI-FAMILY STRUCTURES VIOLATE THE NCCD NEIGHBORHOOD PLAN COMPATIBILITY SETBACK IS IGNORED ② BUSZ ROADS ARE CALLED ③ STUDIES TO AVOID REQUIRED PARKING ④ THE LANDMARK COM. APPROVED 305 E 34th DUE TO FAULTS, NOT ON ITS MERITS, IF CONSTRUCTED IT WILL DESTROY THE HISTORIC VALUE OF THE STREET, NOMB.

Note: all comments received will become part of the public record of this case

If you use this form to comment, it may be returned up until noon the day of the hearing to (comments received after noon may not be seen by the Board at this hearing);

City of Austin Development Services Department/ 1st Floor

Leanne Heldestad

P. O. Box 10000

E/39

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

Case Number: C15-2015-0167, 305 E. 34th Street

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 14th, 2015

Carol Journeyay

Your Name (please print)

☐ I am in favor
☒ I object

207 E 34th St Austin TX

Your address(es) affected by this application

Carol Journeyay
Signature

12/9/15
Date

Daytime Telephone: 512 478 8614

Comments: New additions to this property do not follow NUNA'S NCCD regarding compatibility. The unique character and environment of this property is being destroyed. Additions to the property are not appropriate. The historic environment of the property will be destroyed.
~~Planned additions are not at~~

all compatible with the size, scale and character of the neighborhood, including the house at 305 E 34th.

Note: all comments received will become part of the public record of this case

If you use this form to comment, it may be returned up until noon the day of the hearing to (comments received after noon may not be seen by the Board at this hearing):

City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Fax: (512) 974-6305

Scan & Email to: leane.heldenfels@austintexas.gov

Overwhelmed.

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. All comments received will become part of the public record of this case.

Case Number: C15-2015-0167, 305 E. 34th Street

Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov

Public Hearing: Board of Adjustment, December 14th, 2015

Cindy Wilkinson
Your Name (please print)

☐ I am in favor
☒ I object

200 EAST 34TH Street
Your address(es) affected by this application

Cindy Wilkinson
Signature

12/08/15
Date

Daytime Telephone: (512) 482-8026

Comments: THE CITY IS NOT FOLLOWING NCCD ORDINANCE
AS PER COMPATIBILITY WITH HOUSE TO THE EAST OF THE
STOCK PROPERTY - NO DEVELOPMENT ALLOWED LESS THAN
TWENTY FEET FROM PROPERTY LINE. CHARACTER AND EN-
VIROMENT OF A LANDMARKED PROPERTY WILL BE DESTROYED
AND HAS ALREADY BEEN CHANGED. ADDITIONS TO PROPERTY
WILL DESTROY SIGNIFICANT HISTORIC, ARCHITECTURAL AND
CULTURAL MATERIAL AND IS NOT COMPATIBLE WITH SIZE,
SCALE, CHARACTER, NEIGHBORHOOD OR ENVIRONMENT.

Note: all comments received will become part of the public record of this case

WHAT IS THE PURPOSE OF THE LANDMARK COMMISSION?

If you use this form to comment, it may be returned up until noon the day of the hearing to (comments received after noon may not be seen by the Board at this hearing):

City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Fax: (512) 974-6305

Scan & Email to: leane.heldenfels@austintexas.gov

C15-2015-0167

12/11

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.

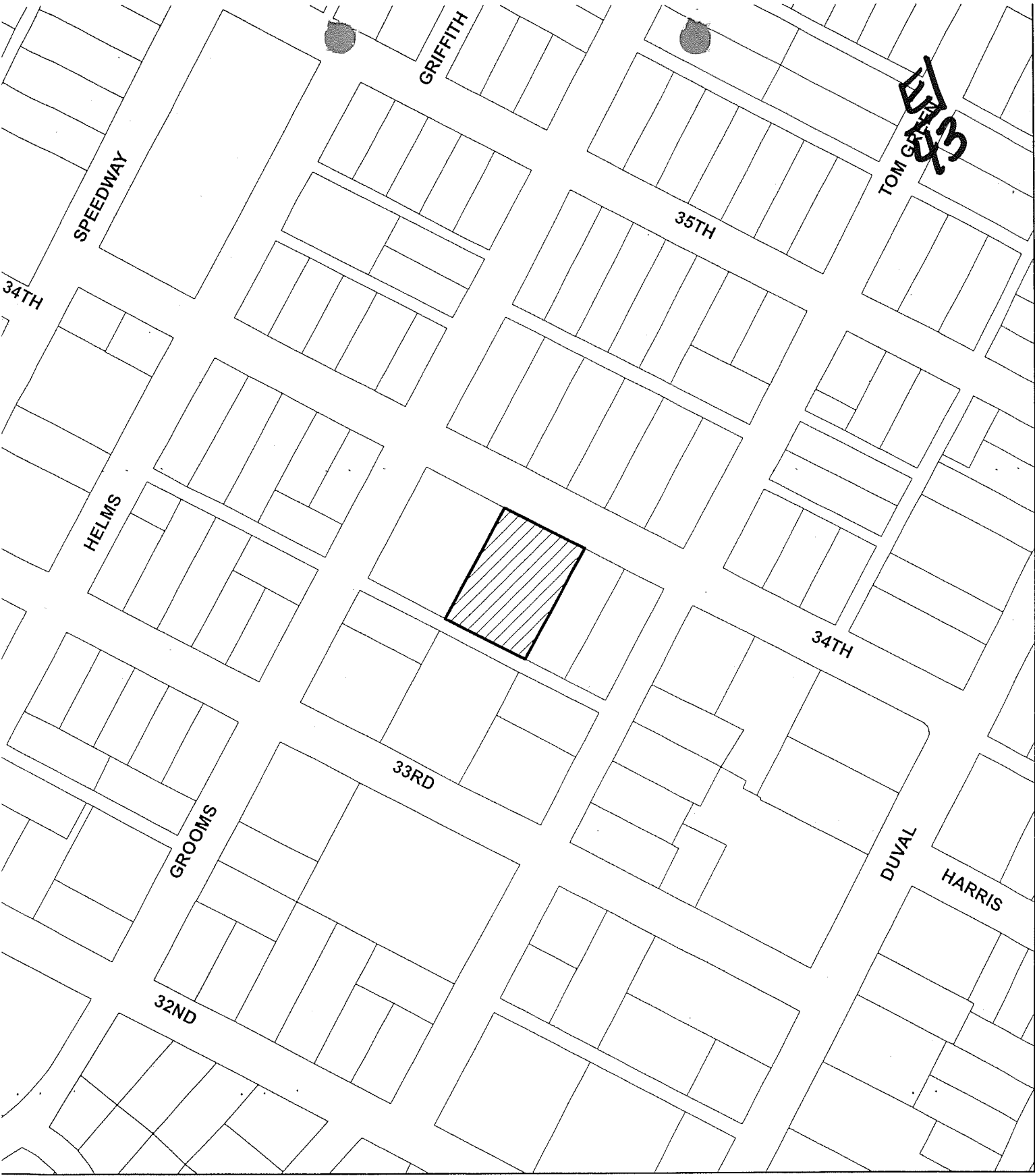
The number of bedrooms in a property controls the number of required parking spaces, so it is imperative for staff to correctly analyze what is and what isn't a bedroom. In this case, staff used a BOA interpretation from 10-29-2011 (Case C15-2012-0126) to define whether a study was actually a bedroom


EJ
42

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.







N



SUBJECT TRACT

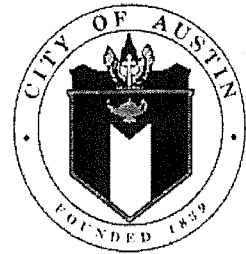


PENDING CASE



ZONING BOUNDARY

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



1" = 173'

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.

Leon J. Barish

00-209-0101
ROW 11443967
ROLL 0217060203

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

EJ
44

October 12, 2015

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

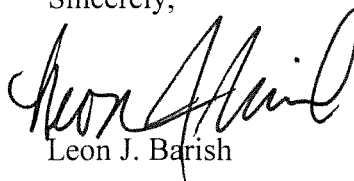
Re: Application To Appeal Department Interpretation
Street Address: 305 E. 34th St

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

EJ
45

**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 of 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

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 use 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

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.

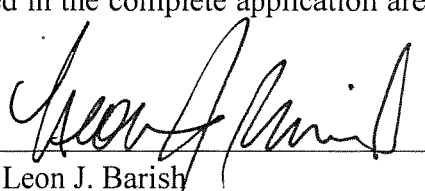
NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

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 Joseph ^(mark)

Mailing Address 2805 Windsor Rd.

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

7/49



City of Austin

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

EL/50

September 28, 2015

Dear Citizen:

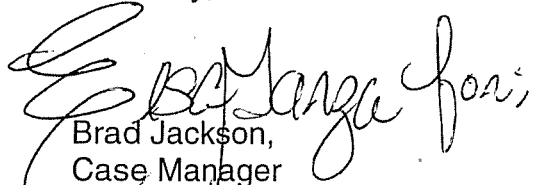
Because of your expressed interest in the site plan **Steck House Apartments** site plan Case No. **SP-2014-0169C**, this is to advise you that the site plan was approved administratively and the site development permit was issued **September 24, 2015**. The current development process provides that 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

60' R.O.W.

ACCESSIBLE ROUTE

QAL AREA INLET

C/g CURB & CUTTER

2/9 SPECIAL CURB

PRIVATE OPEN SPACE
AREA (1107 SF = 5.2%)

BENCHMARK
Triangle cut on top of c1
Elevation = 599.54'

~~SECRET~~

± TO FIRE HYDRANT

EXIST. APARTMENT
BLDG

MF-3-NCCD-NP
LOT 5, BLK 18.
E.L. STECK
SUBDIVISION

EXIST. covered parking

20' Alley

SITE LAYOUT PLAN

—drive

SP. 20K. 0169C

NLNA 7-10-15

'2 " Iron pipe
but not used base
S56'14"W 0.53'

END 6' WOOD
PRIVACY FENCE

calculated point				
---------------------	--	--	--	--

55 ft
eop

12.5

E/52

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.

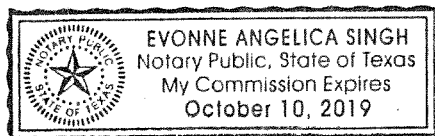
In 2004, changes were made in the City's historic landmark program. Included in the ordinance adopting these changes was a re-statement of a previously adopted provision of the land development code which states that "no provision of these Compatibility Standards shall be applied to ...(ii) property 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 Singh
Notary Public, State of Texas

