

Heldenfels, Leane

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**From:** David King [REDACTED]  
**Sent:** Monday, December 12, 2016 10:38 AM  
**To:** Heldenfels, Leane  
**Subject:** Board of Adjustment Interpretation Case C15-2016-0115 - December 12, 2016  
**Attachments:** ANC - BOAletterOctober 10.doc.pdf

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Leane,

Please include the attached letter in the late back up for this case at the Board's meeting this evening. The attached letter affirms the Austin Neighborhoods Council's (ANC) support for the interpretation request by the South Lamar Neighborhood Association regarding staff's decision on *Single Family Attached* for case C15-2016-0115.

Respectfully,

David King  
ANC President

*The Austin Neighborhoods Council (ANC) is Austin's only comprehensive representative of the City's neighborhood associations. More than 40 years old, ANC consists of nearly 100 member neighborhood associations representing hundreds of thousands individual residents all across Austin.*

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October 10, 2016  
Re: 3206-3208 Aldwyche Drive  
BOA Interpretation: C15-2016-0115

Members of the Board of Adjustment:

The *Single Family Attached* issue has come to our attention, because it could affect every neighborhood in the City. It appears that the intent of the code is being stretched; *Single Family Attached* is being used to carve up **administratively** parcels of land into smaller lots, which have and will impact the unsuspecting, adjacent property owners due to the lack of a public process.

*Single Family Attached* is being used to create 2 units on a lot, which should be considered a duplex that requires a shared wall. In order to avoid this shared wall requirement, *Single Family Attached* may be "**attached**" by way of **nonfunctional structural element** such as a trellis. This is an example of where form and function defy logic. Moreover, this *Single Family Attached* designation defies definition and the code's intent; it is being duplicitously used. If we are going to have administrative decisions made by City staff about the code and its application, then the code must be precise in meaning, functionality, and intent.

We request that a thoughtful interpretation be made by the Board of Adjustment to define exactly what single family attached means, what functional structural elements it encompasses, and how it is different from a duplex (2 units on a residential lot), or remove the current determination of *Single Family Attached* from the code. Thank you for your attention to this matter.

Respectfully,

Mary Ingle  
ANC President

**Jeff Jack**

**Architect**

2008 B Rabb Glen

Austin Texas, 78704  
[jjack2@austin.rr.com](mailto:jjack2@austin.rr.com)

Fax & Tel (512-447-5877)

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December 12, 2016

City of Austin Board of Adjustment

Re: Interpretation Case # C15-2016-0115 (Single Family Attached)

Chair William Burkhardt and Board Members

I support the appeal of the City staff's interpretation of the Single Family Attached ordinance with regard to the building permit issued for 3206 and 3208 Aldwyche (BP-2016-107075). I believe the correct interpretation of this ordinance would require a significantly larger connection between the two residential units than is proposed by the developer ( an "arbor", "loggia", or "trellis") and which has been approved for these two lots with the issuance of this building permit.

To be consistent with the evolution of the duplex ordinance and the reasons for the creation of the Single Family Attached ordinance would require a connection between the two units that would be of the magnitude of what is clearly stated in the ordinance as a "common or abutting wall or a carport, garage ..." and that the reliance on the term "or other structural element" as defined in the general definitions used for the entire code as justification of allow a minimum connection between the two units as an "arbor" is not consistent with the intent of the Single Family Attached ordinance.

The following analysis of the duplex ordinance and the creation of the Single Family Attached ordinance provides the rational for approving this appeal and provides what I believe to be a reasonable standard for setting the degree of connectivity between the two residential units allowed by the Single Family Attached ordinance.

I appreciated the opportunity to speak at the first Board hearing on this issue. However this is a very complex case to cover in just a few minutes and therefore I hope you will consider the following arguments in favor of this appeal.

Jeff Jack  
Architect  
Zilker neighborhood

## The Duplex Ordinance

- The duplex ordinance was created to facilitate the creation of a building product that was more affordable than a standard single family house on a separate lot of 5,750 sf.
- The tradeoff for allowing two units was that the lot size would be bigger to offset the additional density and a 7,000 sf lot was set as the minimum lot size so each unit was essentially on a 3,500 sf parcel.
- The other part of the tradeoff was that the two units had to have a common wall. This was done to reduce construction costs by eliminating two exterior walls and replacing them with one interior wall and a contiguous roof assembly.
- It was hoped that by allowing a certain amount of added density, one unit per 3,500 sf of lot area, and by requiring a common wall and contiguous roof assembly, that reduced construction costs would translate into a reduced market price for each unit.
- The intent of utilizing these cost savings measures is also clearly called out in current residential use definitions

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25-2-3

(4) Duplex Residential use is the use of a site for two dwelling units within a **SINGLE** building. (emphasis JJ)

Attempts to "game" the Duplex ordinance's intent.

- While the intent to bring to the market a lower cost single family unit, it carried with it a certain stigma as being something less than a real single family home due to the connectivity of the units.
- Developers who wanted to reap the benefit of the market demand and therefore the higher purchase price for standalone housing attempted to work around the requirements of the duplex ordinance in two ways

Carport as separation

- One way was to separate the two units by a carport. But this then negated the construction cost reduction obtained by the elimination of the two exterior walls.
- This was recognized by the city council and the ordinance was revised with the following provision to ensure that the connectivity requirement continued to provide the construction cost benefit of the common connection and the elimination of exterior wall areas.

## 25-2-773 Duplex Residential Use

(D) The dwelling units are subject to the following requirements:

- (4) The two units may **NOT** be separated by a breezeway, carport or other open building element. (emphasis JJ)

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### Staggered or offset units

- The second way to game the ordinance was to stagger the two units so that they were essentially separated by a very small common wall that then gave the appearance of two standalone units, thus increasing their potential market value.
- This was also recognized by the city council as detrimental to the intent of the duplex ordinance and the following provision was added to the duplex ordinance to ensure that the economy of the common wall was not lost by the staggering the two units. This provision is commonly referred to as the "zipper wall" provision.

## 25-2-773 Duplex Residential Use

(D) The dwelling units are subject to the following requirements:

- (1) The two units must have a common floor and ceiling or a common wall, which may be a common garage wall, that

(a) extends for at least 50 percent of the maximum depth of the building, as measured from the front to the rear of the lot,...

These provisions set the minimum connectivity of the two units to qualify for being classified as a duplex.

### The Single Family Attached Ordinance

This ordinance is almost 20 years old and was created as a result of the real estate crash in Texas in the late 1990's when there was a glut of duplex units standing vacant all over Austin. The intent was to create a new zoning category that would allow these existing empty duplex units to be sold separately as a way to entice more sales to remove this glut from the market.

- Up until this code change the only way to sell one side of a duplex was by the use of the Texas Property Code that allowed for "condominium residential" use.

- Unfortunately such a vehicle for separate sale of the two sides of a duplex created the need for a condo association since only the individual unit footprint could be held in fee simple, the remainder of the lot area had to be held by the "condominium association".
- This presented many obstacles to utilizing this vehicle to sell off the different sides of the duplexes. These obstacles include the time and cost of setting up a condo regime, the ongoing administration of the condo association for common area maintenance, the difficulty in ensuring equitable sharing of cost for repairs and maintenance of the building proper and all the legal paperwork when subsequent sales were attempted.

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As a way to increase the opportunity to sell off the different sides of a duplex the Single Family Attached Ordinance was created.

- This ordinance eliminated the need for the condo regime in that it allowed for individual ownership for each side of the duplex by right due to the legalization of the 7,000 sf lot now being subdivided into two 3,500 sf lots.
- But the duplex provisions that addressed the connectivity of the units in order to maintain the design features needed to ensure the continued affordability of these units are clearly spelled out in the current residential use definitions.

#### 25-2-3

(11) Single family Attached Residential use is the use of a site for two dwelling units, each located on a separate lot, that are constructed with common or abutting walls or connected by a carport, garage or other structural element.

- The inclusion of carport as an allowed connection was a reflection of the fact that many of the glut of duplexes built at that time had connecting carports that were allowed back then but were subsequently prohibited as noted above.
- However the priority in the code is clear that the expectation for there to be constructed with "common or abutting walls" and that "or connected by a carport, garage or other structural element" should be in the same scale as the common or abutting walls to ensure the continued benefits of economy of construction the provisions of the duplex ordinance has.
- Since the inclusion of these provisions are derived from the original duplex ordinance they should be respected. Had the city council wanted to create a new zoning district devoid of these duplex conditions they could have simply created a new zoning tool that would have allowed disconnected standalone units on 3,500 sf lots, but that is not what the council did but the developer is attempting to do by their reliance on the "other structural element" provision of the current code.

The inclusion of the "other structural element" in this Single Family Attached ordinance is now being used by the developer as a means to circumvent the other provisions of the duplex code meant to be fundamental to the usage of the Single Family Attached ordinance.

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- The developer's position that a Loggia (by extensions a Trellis) is an acceptable connection is based on the general provisions in the definition section of the entire zoning code as follows:

#### 25-2-21 Definitions

(7) Attached, when used with reference to two or more buildings means having one or more common walls or being joined by a covered porch, **loggia** or passageway ( emphasis JJ)

- It is clear from the evolution of the duplex ordinance to the single family attached ordinance that the concept has always been that the two residential units are in **ONE** building so the application of this definition is entirely inappropriate since it is for "two or more buildings" (emphasis JJ)
- The developer and staff have also relied another overall zoning code definition to suggest that a "structure" would allow for a Trellis to be considered as an appropriate connection between the two units thus keeping them classified as ONE building.

#### 25-1-21 Definitions

(113) Structure: "a building of any kind, or a piece of work artificially built up or composed of parts joined together in a definite manner"

- The use of a general definition that is used to cover many different situations in the code should not be seen to take priority over the specific intentions of the specific code provision intended for the single family attached code.
- But rather the wording "other structural element" should be seen in the context of the underlying intent of the code, which I believe was to make a duplex more marketable by allowing each side to be sold independently and not for the purpose of creating two standalone buildings connected by a trellis, arbor or loggia.
- If this section of the definitions was taken literally with regard to the single family attached ordinance then any 2 x 4 connected to the two separate units would then be a "structural element" and legitimize the building of essentially DETACHED single family units on 3,500 sf lots which is not what the city council approved.

The developers position and that supported by staff is that a Trellis, arbor, loggia, or passageway all meet the intend of the Single Family Attached requirement for connectivity so that these units can be counted as a single building is preposterous at best and in complete conflict with the evolution of this code and the action of the city council to embed the affordability aspects of the former duplex code in the Single Family Attached code.

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- The fact that the city staff has been approving similar projects for a long time is not a reason for continuing to miss apply this code to facilitate projects that clearly do not meet the requirements of this code. It is time to fix this mistake by setting a clearly defined and appropriate scale for the connectivity between the two units.
- The assertion that if the Board of Adjustment supports the appeal of this interpretation, it would harm many existing owners of such units that have been approved by staff, built out and sold over the years. While it is true that these existing units would no longer conform to the correct interpretation of the code, they would be legal non-conforming properties and would not have to modify their construction at all. The cry that these existing units would have to be torn down and rebuild to conform to the correct interpretation is a red herring and should not be considered.1.
- As legal non-conforming properties they would join the thousands of other legal non-conforming properties we already have in the city. All lots with less than 50 foot street frontage, all lots less than 5,750 sf with existing homes, all lots build out before we adopted impervious cover, building coverage and Floor Area Ratios, are all legal non-conforming properties.
- In the Austin market such properties are bought and sold regardless of their legal non-conforming status all the time without undue hardship on the sellers. Yes a bit more disclosure but not enough to slow down real estate transactions.
- The attempt to justify staff's interpretation base on the general definitions for the entire code should not take priority to the clear intent of the provisions of the code.
- The fact that such an appeal has not happened sooner is not a justification for not approving this appeal. While other similar projects have been approved without neighborhood appeals should not preclude an appeal from a neighborhood with significant code enforcement experience
- Developers are profit seekers and work hard on developing projects with the most opportunity to generate greater profit, that's their job. But it is not the role of the city staff to be supportive of that agenda at the expense of the city's desire for more affordable housing.



## Suggested Interpretation

Based on all of the above, I believe the minimum connectivity between the two units of a Single Family Attached development should be either of the following

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- The size of a two car garage, approximately 20' x 22' or a minimum of 450 sf feet of contiguous area that is covered by a common roof.

This would respect the clear call out that is in the current wording of the SFA code for a garage to be permissible for establishing connectivity while eliminating the carport hold over from the clearing of the older duplexes.

- A common or abutting wall area that is 50% of the depth of the building measured from the front of the lot to the rear of the lot

This would be consistent with the zipper wall requirement for duplexes.

And include the following provisions

- And that the area of the connectivity be counted toward impervious cover
- That the area of connectivity be used as a element of the housing unit such as a bedroom, living space, or supporting element such as a carport or garage
- Connections which are not an integral interior part of a housing unit, such as an exterior loggia, arbor, breezeway or open passage way cannot be counted toward connectivity

Either of these interpretations coupled with the note additional provisions will result in the Single Family Attached ordinance continuing the intent of the city council to provide for the ability to easily sell either unit and avoid the complexities of a condo regime, but also retain the underlying intent of providing a move affordable housing product by maintaining the economies of construction afford by a more robust connection between units.

Thank you for considering this information and recommendation on the correct interpretation for this case.

C15-2016-0115

Heldenfels, Leane

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**From:** James C Packer [REDACTED]  
**Sent:** Wednesday, December 07, 2016 10:53 AM  
**To:** Heldenfels, Leane  
**Subject:** 3208 Aldwyche Dr  
[REDACTED]

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Leane Heldenfels

Board of Adjustments Liaison

City of Austin Development Services Department

December 7, 2016

Dear Leane,

I would like to object to the appeal of case number C15-2016-0115 for 3206 and 3208 Aldwyche Drive.

I am aware of the trellis connection and I've have seen other homes with the same feature. The reason I bought this home is because I like the look and feel better than a duplex with a shared living wall. There are many disadvantages to sharing a wall with a neighbor and I would not be interested in living in this situation.

Please consider helping us out with this situation. With the rising cost of living in Austin it is difficult for people to find affordable housing in the area they want to live. I searched for this home for 4 years before I found it. I hope to see it resolved at this next meeting.

Sincerely,

James Casey Packer

**Heldenfels, Leane**

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**From:** Victoria Dames [REDACTED]  
**Sent:** Tuesday, December 06, 2016 1:19 PM  
**To:** Heldenfels, Leane  
**Cc:** Danielle Reali  
**Subject:** C15-2016- 0115 for 3206 and 3208 Aldwyche Drive  
[REDACTED]

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Leane Heldenfels  
Board of Adjustments Liaison  
City of Austin Development Services Department

December 6th, 2016

Leane,

I would like to object to the appeal of case number C15-2016- 0115 for 3206 and 3208 Aldwyche Drive.

We have purchased a home in this new community and am aware of the trellis connection. After an extensive home buying search, I have seen many homes with similar features (arbor/trellis). This attracts a buyer, like ourselves, who are seeking a community and more long term residency in a single family type of home. I have seen duplexes with a shared living wall and do not feel they will protect and increase long term property values.

Lastly, the current code language has permitted many homes already to be built under these terms and sets a precedent for the granted approval. This should not contribute to delays.

If changes are desired to the code (and follow the process etc. to change/update), that should be addressed independent of existing approvals and impact decisions on future projects who have not already been approved.

Thank you for your time and service on this matter,  
Victoria Dames

C15-2016-0115

**Heldenfels, Leane**

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**From:** Shaadi Oreyzi [REDACTED]  
**Sent:** Wednesday, November 30, 2016 4:13 PM  
**To:** Heldenfels, Leane  
**Subject:** Lightsey Ridge Appeal Letter

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Dear Leane,

I would like to object to the appeal of case number C15-2016-0115 for 3206 and 3208 Aldwyche Drive.

I have purchased a home in this new community and am aware of the trellis connection. I have seen other homes with the same feature and like the look and feel better than a duplex with a shared living wall.

Thank you for your time and attention to this matter. I hope to see it resolved at this next meeting.

Sincerely,

Shaadi Oreyzi

SHAADI OREYZI  
SENIOR ACCOUNT EXECUTIVE  
CELL: 512.426.7896  
OFFICE: 512.329.3900  
DIGITAL BROCHURE



1330 Shore District Dr. #2302  
Austin, TX 78741

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Leane Heldenfels  
Board of Adjustments Liaison  
City of Austin Development Services Department

December 08, 2016

Subject: Appeal of case number C15-2016-0115

Dear Leane,

I would like to object to the appeal of case number C15-2016-0115 for 3206 and 3208 Aldwyche Dr. Austin, TX.

I am one of the buyers who purchased a home in this new community, and I am familiar with the trellis connection between homes. I have seen other houses in Austin, TX with this same feature; I prefer the trellis feature rather than a duplex with a shared living wall.

Thank you for your attention to this issue, I look forward to a resolution at the next Board of Adjustment meeting.

Kind regards,

James Conaty

## Single Family Attached – “Other Structural Element” Appeal

## Board Comments, Issues, and Questions

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1. Requiring a more substantial, real world connection it **does not change density.** The density remains the same.
2. Affordability improves with a more substantial connection between units. A real covered connection counts towards impervious cover limits and will create smaller, more affordable units. More in line with Multi-Family pricing.
3. Existing properties are grand fathered. City Legal informed the board that they would be Legal Non-Conforming structures.
4. This is not a Code Change. It only better defines the existing code to a more realistic definition in line with that of a reasonable person.
5. This interpretation does not remove SF-3 attached zoning or remove any missing middle housing. If fact, by better joining units with a substantial attachment, it should actually lower price points.
6. If no substantial connection were present, a zoning change would be appropriate.
7. Daniel Word informed the Board that there was disagreement within staff. This clearly indicated staff confusion with this memo from the 2000's and needs guidance from the BOA to resolve the issue. Word informed the board that the BOA was the appropriate place for this appeal.
8. Perpetuating an obvious conflicted interpretation is not good policy. Staff is not in agreement on this policy but chose to default to a past position rather than clarify to improve development going forward
9. PSW is currently building SF attached with superficial “screwed on structural elements” *see attached photo from Cima project*

Background -

It is clear this loophole appeared, unknown to the public, in unpublished, internal memo classifying the use of a grape arbor as a structural element. The public was unaware of this memo until the developer's attorney produced it for this very appeal. The appellant did not know of this internal memo.

It appears the developer did not know that that the city had corrected their position on the attachment issue in December 2015 to a more reasonable person's definition of structural element, more in line with the rest of the code provision text. They only discovered the city's new interpretation when their new plan was reviewed and rejected.

It is clear the city's policy of disseminating code interpretation is flawed when neither developers nor average citizens can know what internal "unofficial" policy exists. Therefore, BOA must define this via this public interpretation.

The appellant was unaware the 2004 Village Oaks project was not just a "one-off" until the 2010 Corbin Lane project was discovered. When the appellant became aware, and inquired it was too late to appeal. Director Guernsey informed the appellant they needed to wait for a new permit to be administratively approved and then appeal it within 20 days.

**The appellant was unaware of any other projects using this loophole. When the appellant learned of PSW's plan to use this loophole they proactively contacted the City of Austin in 2015 and received information that the loophole was closed. We felt the issue had been resolved.**

Then the City did another about face and again began approving grape arbors in 2016.

This confusion in the code is exactly what the BOA's code interpretation process is designed to remedy. An approved project is necessary in order to file an appeal, within 20 days of an administrative approval. The approval of this building permit was done by administrative approval by way of internal discussions and a reversal of position. *See McDonald email.*

The BOA's function is to apply a reasonable person interpretation to unclear and confusing code language where conflicting interpretations occur.

To be clear, this interpretation is to clarify the code and how applications are to be treated going forward. Existing projects constructed under past interpretation are legal non-conforming and suffer no penalty on their current form and use. There is NO hardship imposed on existing constructed projects.

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### **Suggested interpretation language:**

The code implies that single-family attached homes are to be attached with a massing similar to a carport, passageway, common or abutting wall, or loggia. When looking at the scale of these types of attachment, it should be somewhere between unattached (0%) and a fully attached duplex (the 50% zipper wall)

It would be appropriate that SF attached should offer a missing middle position between 0% attachment of regular single family and the 50% connection of a duplex, that being 25%.

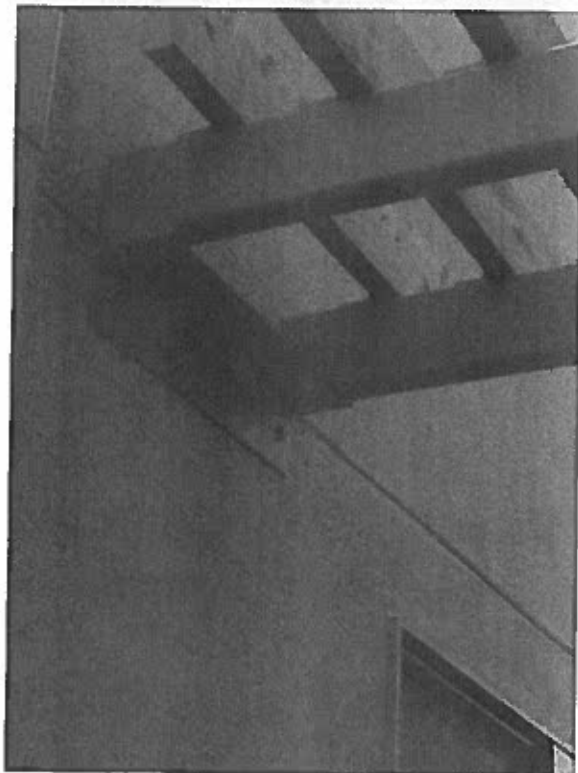
Therefore:

**“Single Family Attached development requires an attaching structure, serving a common purpose to the two dwellings. The connecting feature must have a width of 25% of the average of the length of two side walls it connects and a minimum of 10 feet, be fully covered and thus contributing to the impervious calculations on the lot.”**



PSW Current Construction showing present attachments – Cima Serena Drive

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