

CITY OF AUSTIN
Board of Adjustment
Decision Sheet
ITEM02

DATE: Monday October 13, 2025

CASE NUMBER: C15-2025-0035

Y Thomas Ates (D1)
 Y Bianca A Medina-Leal (D2)
 Y Jessica Cohen (D3)
 Y Yung-ju Kim (D4)
 Y Melissa Hawthorne (D5)
 Y Haseeb Abdullah (D6)
 Y Sameer S Birring (D7)
 Y Margaret Shahrestani (D8)
 Y Brian Poteet (D9)
 - Michael Von Ohlen (D10)
 Y Jeffery L Bowen (M)
 Y Corry L Archer-mcclellan (Alternate) (M)
 - Suzanne Valentine (Alternate) (M)
 - VACANT (Alternate) (M)

APPELLANT: Bob Kaler and Carol Journey

OWNER: Kateryna Luschchenko

ADDRESS: 205 34TH ST

APPEAL REQUESTED: The appellant has filed an appeal challenging the approval of a building permit (BP No. 2025-072930) and related construction plans for proposed development of a three-unit residential use at 205 East 34th Street, Austin, TX 78705. The appeal alleges that City staff’s decision to approve the permit failed to comply with applicable zoning regulations, including requirements of the North University Neighborhood Conservation-Neighborhood Plan (NCCD-NP) Combining District ([Ordinance No. 040826-58](#)) and/or Chapter 25-2 relating to required setbacks, limits on gross floor area, and other site development standards, as well as requirements for development applications in Section 25-1-82 (*Non-Subdivision Application Requirements and Expiration*).

Note:

- **Ordinance No. 040826-58** North University Neighborhood Conservation Combining District **Part 6 General Provisions.** Except as otherwise provided in this ordinance, the following provisions apply to all property within the NCCD-NP. This section does not apply to Waller Creek/Seminary District 7 or District 7A.
 - ♦ Section 3 - Street yard setbacks.
 - a. Front yard setback. The minimum front yard setback equals the average of the front yard setbacks of the principal single-family buildings on the same side of the street of a block. The maximum setback may not exceed the average setback by more than five feet.
- **Part 7 RESIDENTIAL DISTRICT.** The Residential District is intended to protect the original buildings and development patterns of the neighborhood that were established for residential use. Single family homes and some of the older multi-family structures were built in the context of the traditional development patterns. New residential development should respect traditional patterns including building orientation, scale, height, setbacks and parking location.

1. Site Development standards table. Except as otherwise modified in this part, the following site development regulations apply.

| RESIDENTIAL DISTRICT | SITE DEVELOPMENT STANDARDS | | | | |
|------------------------|----------------------------|-------|-------|----------------|--------|
| | SF-2/SF-3 | MF-1 | MF-2 | MF-3 thru MF-6 | NO |
| Min. lot size | 5750* | 8000* | 8000* | 8000* | 5750* |
| Min. lot width | 50* | 50* | 50* | 50* | 50% |
| Max. FAR | Duplex 0.4:1 | 0.5:1 | 0.5:1 | 0.5:1 | 0.35:1 |
| Max. building coverage | 40% | 45% | 50% | 55% | 35% |

| RESIDENTIAL DISTRICT | SITE DEVELOPMENT STANDARDS | | | | |
|--|----------------------------------|---------|---------|----------------|---------|
| | SF-2/SF-3 | MF-1 | MF-2 | MF-3 thru MF-6 | NO |
| Max. impervious cover | 45% | 55% | 60% | 65% | 60% |
| Max. height | (See Height Map -- Exhibit -D) | | | | |
| Min. front setback | (See Part 6. General Provisions) | | | | |
| Max. front setback | (See Part 6. General Provisions) | | | | |
| Min. street side yard setback | (See Part 6. General Provisions) | | | | |
| Min. interior side yard setback | 5' ** | 5' ** | 5' ** | 5' ** | 5' ** |
| Min. rear setback -- principal structure | 10' *** | 10' *** | 10' *** | 10' *** | 10' *** |
| *See Part 6. Subsections 5 & 6 (General Provisions) | | | | | |
| **A new principal structure must be at least 10' from a principal structure on an adjacent lot | | | | | |
| ***For a through lot the rear setback is 15' | | | | | |

♦ Footnote **a new principal structure must be at least 10 feet from a principal structure on an adjacent lot.

▪ Land Development Code, **25-1-82 Non-Subdivision Application Requirements and Expiration**

This section does not apply to an application for preliminary plan, plat, or subdivision construction plan.

(A) The responsible director may adopt rules establishing the requirements for an application, including timelines for completing staff review and deadlines by which an application must be updated to meet the requirements of this title and other applicable regulations. The rules adopted must be consistent with the timelines for action established in [Section 25-1-64](#) (Action on an Application; Deadline).

(B) The responsible director or building official may permit an applicant to omit required information from an application that the responsible director or building official determines is not material to a decision on the application. An applicant who disagrees with a determination under this subsection may appeal the decision to the city manager.

(C) Except as otherwise provided for in this section, the director is authorized to certify a site plan application if it complies with this subsection.

(1) An application is complete after the applicant pays the required fee and provides the information required to be included in the application no later than the 45th day after the application is submitted.

(2) If the director rejects an application as incomplete, the director shall provide an applicant with a written explanation that identifies the deficiencies and information needed to complete the application. The director must provide the written explanation within 10 working days after the application is received.

(3) An application expires if it is not complete on or before the 45th day after the application is submitted. An applicant may submit additional information and correct any deficiencies at any time before the 45th day after the application was submitted.

(4) A certification that the site plan application is administratively complete is valid for 45 days after the certification has been issued.

(D) The director is authorized to review a site plan application if the applicant pays the required fee and the site plan application has a valid certification of completeness. If the application has not yet been certified, the certification is no longer valid, or the submitted site plan does not match the certified materials, the director may not review the application but shall provide the applicant a written explanation that identifies the deficiencies within 10 working days after application is received.

(E) The responsible director or building official may not accept a building or demolition permit application described in [Chapter 25-11, Article 2 \(Building and Demolition Permits\)](#) unless the application is determined to be complete in accordance with this subsection.

(1) The responsible director or building official shall accept an application as complete if the applicant has paid the required fee and provided the information required to be included in the application no later than the 45th day after the application is submitted.

(2) If the responsible director or building official rejects an application as incomplete, the responsible director or building official shall provide an applicant with a written explanation that identifies the deficiencies and information

needed to complete the application. The responsible director or building official must provide the written explanation within 10 working days after the application is received.

(3) An application expires if it is not complete on or before the 45th day after the application is submitted. An applicant may submit an update to provide additional information and to correct deficiencies at any time before the application expires.

(F) An application for a site plan expires one year after the application is submitted unless:

(1) the application has been approved; or

(2) the director has granted additional days for the applicant to submit an update under [Section 25-1-90\(A\)](#) (Extension of Update Deadline).

(G) If the director grants additional days to the applicant under Subsection (F)(2), then the expiration date of the application is extended by the number of days granted.

(H) Applications subject to [Section 25-1-712](#) (Tenant Notification Required).

(1) The responsible director may not certify a site plan application as complete until the applicant has paid the required fee, provided the information required to be included, and complied with the notification requirements or the required number of days lapse.

(2) The responsible director or building official may not accept an application as complete until the applicant has paid the required fee, provided the information required to be included, and complied with the notification requirements or the required number of days lapse.

(3) If, at the time an application is submitted, a multi-family property is unoccupied but was occupied within the previous 120 days, the application will be rejected as incomplete.

(4) If, at the time an application is submitted, a mobile home park is unoccupied but was occupied within the previous 270 days, the application will be rejected as incomplete.

Source: Section 13-1-31; Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; [Ord. No. 20140612-084, Pt. 6, 6-23-14](#); [Ord. No. 20160421-039, Pt. 3, 5-2-16](#); Ord. No. [20160901-050](#), Pt. 6, 9-12-16; Ord. No. [20190822-117](#), Pt. 6, 9-1-19; [Ord. No. 20230831-141](#), Pt. 8, 9-11-23; [Ord. No. 20230831-103](#), Pt. 1, 9-11-23.

BOARD'S DECISION: The public hearing was closed by Chair Jessica Cohen, Board member Corry Archer-McClellan's motion to approve appeal; Vice Chair Melissa Hawthorne second on 11-0 votes.

APPEAL GRANTED- The Board of Adjustment finds that the plan set for Permit No. 2025-072930 PR does not demonstrate compliance with all relevant regulations

Specifically:

1) The staff determination for the number of units of three (3) is incorrect.

2) The approved plans do not meet the criteria for front yard and side yard setback requirements per the NCCD

3) The approved plans do not meet the criteria for FAR requirements under the gross floor area definition of attic in 25-2-773 (E)(1)(b).

The Board of Adjustment determines that:

1) The number of units shown in the design should be interpreted as greater than three (3).

2) The average front yard setback should have been calculated from the four (4) adjacent properties on the same side of the street. The average side yard separation should be calculated per the nccd.

3) The approved plans should meet the criteria for FAR requirements under the gross floor area definition of attic in 25-2-773 (E)(1)(b). The definition of floor in 25-2-773 (E)(1)(b) is not limited to whether the floor is load-bearing or not

FINDING:

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

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



Elaine Ramirez
Executive Liaison



Diana Ramirez for
Jessica Cohen
Chair