



To: Chair Cohen
Board of Adjustment Members

From: Brent D. Lloyd, Development Officer, ADS
Lyndi Garwood, Principal Planner, ADS

Date: October 3, 2025

Subject: **Appeal of Staff Interpretation of Site Development Standards in North University Neighborhood Conservation Combining District (NUNA NCCD)**

The matter before the Board of Adjustment (“BOA” or “Board”) is an administrative appeal challenging staff’s approval of residential building plans submitted for development of a proposed three-unit residential use at 205 E. 34th Street. The issue in the appeal is whether the Austin Development Services (“ADS”) correctly applied site development standards established in the North University Neighborhood Conservation Combining District (“NUNA-NCCD”) and other adopted zoning regulations.

Summary of Issues & ADS’s Position

As discussed below, following submission of the appeal, ADS determined that errors were made in the review process that render the approved structure noncompliant with NUNA-NCCD setback requirements. Our intent is to require the permit applicant to submit revised construction plans to fix the setback errors prior to proceeding with construction, so we would ask the Board to take action to modify the plan approval to explicitly require these corrections.

We respectfully disagree with appellants, however, that the NUNA-NCCD’s 0.40 limit on floor-to-area ratio (FAR) applies to the proposed three-unit residential use. As discussed below, this NCCD only limits FAR for duplexes and two-family uses within the Residential District; the proposed development, while within the Residential District, is not a duplex or a two-unit use, but rather a three-unit residential use that is not subject to a FAR limit under the NCCD.

Additionally, while appellants are correct that not all of the required materials were provided during the plan review process, the permit applicant has submitted revised application materials and stamped surveys that remedy this deficiency and demonstrate

that the proposed corrections will achieve compliance with the NCCD setback requirements.

Procedural Requirements for Appeal

DSD believes that this appeal is properly before the BOA because it was filed within 20 days of the date the plans were approved¹ and because the named appellants, Bob Kaler and Carol Journey, own property within 200-feet as required by state law to invoke the BOA's authority to review permitting decisions.² We encourage the Board to consult legal counsel if you have questions on standing, timeliness, or other issues affecting the legal sufficiency of the appeal under Local Gov't Code Sec. 211.010 or other authority.

In acting on an appeal, the BOA may affirm or reverse ADS's decision to approve the plans, in whole or in part, and may make the correct determination based on the applicable regulations and the evidence before you. As mentioned above, ADS acknowledges errors were made in the review process, and we ask the Board to modify the plan approval to require corrections to the approved setbacks.

Summary of Issues Based on Applicable NCCD/LDC Provisions

The primary issues before the board can be summarized as follows:

- 1. Is a three-unit residential use subject to the 0.4 floor-to-area ratio established in NUNA-NCCD for duplex and two-unit residential uses? (Ordinance No. 040826-58, Part 7, Section 1. and Ordinance No. 20110804-040, Part 3, 5.b.)*
- 2. Were the setback averaging requirements established by the NUNA-NCCD ordinance adhered to? (Ordinance No. 040826-58, Part 6, Section 3.a.)*
- 3. Was the NUNA-NCCD side yard setback requiring a structure to be ten feet from an adjoining property's structure adhered to? (Ordinance No. 040826-58, Part 7, Section 1.)*

Review History

The initial application of the plans was accepted by Residential Intake on June 12, 2025. The zoning, tree, fire, and technical reviewers met with the applicant in a virtual meeting on Monday, June 30, as is standard Expedited Review protocol for all projects.

The zoning reviewer rejected the application in three review cycles on July 7, July 18, and August 5, 2025. The project was approved on August 14, 2025.

The appeal was filed on August 27 and officially accepted on September 3, 2025.

¹ The plans were approved on August 14, 2025, and the appeal was filed on August 27, 2025.

² Ms. Journey and Mr. Kaker are the owners of the adjacent property at 207 East 34th Street.

Applicable NUNA NCCD Ordinances

The NUNA-NCCD was established by a single ordinance that has since been amended three times. The original ordinance and all subsequent amendments are collectively referred to as the “NUNA-NCCD.” The following two ordinances that are most germane to the issue at hand.

- Ordinance No. 040826-58 (“Original NCCD Ordinance”)
- Ordinance No. 20110804-040 (“Amended NCCD Ordinance”)

ADS’s Position on Appeal:

As detailed below, ADS recommends that the BOA:

- Reject the appeal and vote to affirm staff’s interpretation of the NUNA-NCCD FAR requirements.
- Modify staff’s approval of the application as it relates to the front yard averaging and side yard setbacks.

— NUNA-NCCD Floor-to-Area Ratio (FAR) Applicability

NUNA-NCCD establishes site development regulations throughout the ordinance by location (i.e., NCCD subdistrict and zoning district) and land uses.

Original NCCD Ordinance, Part 7, Section 1 establishes the site development standards for the Residential District, including all SF-2 and SF-3 properties. For these areas, a maximum FAR of 0.4 is established for duplex residential uses but not for any other allowed uses in the Residential District.

Amended NCCD Ordinance, Part 3, 5.b. modifies Part 6. (*General Provisions*) of the Original NCCD Ordinance to establish a 0.4 FAR for all two-family uses of 5,750 square feet to less than 7,000 square feet of lot area in all districts of the NCCD.

Single-family residential uses do not have a NCCD FAR limit as the NUNA-NCCD does not establish a FAR limit specific to that use. In a similar manner, three-unit residential use does not have a FAR limit because the NUNA-NCCD does not establish a FAR limit for that use.

While three-unit residential use was established after the adoption of the NUNA-NCCD ordinances, the NUNA-NCCD ordinances rely on the Land Development Code (LDC) for all allowed residential uses that are not specifically prohibited in the ordinances. Part 5, Section 1.a. of the Original NCCD Ordinance states “*Except as provided in this section, the permitted and conditional uses for the residential base zoning districts apply in accordance with the Code.*” The reference back to the LDC for the permitted residential uses allows new uses to be utilized within the NUNA-NCCD, including three-unit residential use.

As detailed above, staff maintains that the application is not subject to the 0.4 FAR limit established in the NUNA-NCCD for other uses, and recommends the BOA reject the appeal and uphold Staff's determination.

— ***NUNA-NCCD Setback Averaging Requirements***

Original NCCD Ordinance, Part 6, Section 3.a. allows the minimum setback to equal the “*average of the front yard setbacks of the principal single family buildings on the same side of the street of a block.*”

During the review process, staff initially rejected the application for not meeting the required front yard setback. The applicant revised the proposed setback from 15.5-feet to 23.67-feet and provided an analysis of the two adjacent properties setbacks, which averaged to 24.29-feet. The approved plan set did not meet this minimum setback average, and the applicant did not survey all single-family buildings on the same side of the block, as is required by the NUNA-NCCD.

Furthermore, the Building Criteria Manual (BCM) Section 4.4.6.3. requires that projects utilizing front setback averaging per Subchapter F Article 2.3.B submit a survey by a Texas Registered Land Surveyor demonstrating the front yard setback dimension of the four required principal residential structures to be used for setback averaging. While the NUNA-NCCD and the BCM do not detail what is necessary to comply with front yard averaging for the NCCD, typically staff require the same documentation for NCCD front setback averaging as is applied in Subchapter F front setback averaging.

Since the approval of the application, the applicant has provided a survey performed by a Texas Registered Land Surveyor showing their property and the adjacent properties on the same side of the block. The average setback of the adjacent properties is 24.4-feet.

As the applicant has provided a survey from a Texas Registered Land Surveyor showing the correct number of lots, staff recommends the BOA modify staff's approval to require the applicant to:

- Submit a revision to Plan Review to move the structures to the front yard average found by the licensed surveyor.

— ***NUNA NCCD Side Yard Requirement:***

Part 7, Section 1, of the Original NCCD Ordinance adds an additional stipulation to the minimum interior side yard setback: “*A new principal structure must be at least 10' from a principal structure on an adjacent lot.*”

As part of the application, the applicant provided documentation that demonstrated a 10-foot separation between the proposed structure and the adjacent lot's structure, which satisfied the requirement of the NUNA-NCCD. Upon further investigation, staff agrees that

ITEM09/5-STAFF REPORT

the structure on the adjacent lot is closer than 10- feet, likely due to the structure being sited legally albeit non-compliantly within the side yard setback.

Since the approval of the application, the applicant has provided a survey performed by a Texas Registered Land Surveyor showing the proximity of the neighboring lot's existing structure.

As the applicant has provided a survey from a Texas Registered Land Surveyor showing the correct location of the existing, neighboring structure, staff recommends the BOA modify staff's approval to require the applicant to:

- Submit a revision to Plan Review to move the structures to a minimum distance of 10-feet from the sited location of the adjacent lot's existing structure.

Application and Process

During the application process, the applicant did not complete the "Requirements Applicable to Duplexes, Two-Unit Residential, and Three-Unit Residential" portion of the "Residential New Construction and Addition Permit Application." However, the FAR for the project was provided on other pages of the application and verified by the ADS reviewer. As the FAR information was provided through other documentation, staff determined completion of this portion of the application was not necessary for the review and approval, as is permitted by LDC Section 25-1-82(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.

Nonetheless, the applicant has provided an updated application that completes the portion in question.

Conclusion:

ADS recommends that the BOA affirm staff's decision regarding the applicability of the NUNA-NCCD 0.4 FAR limit and modify staff's approval of the application as outlined above. Staff appreciates the Board's guidance on these matters and will be available at the public hearing to answer any questions.