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November 19, 2025

Jessica Cohen
Chair and Members
Austin Board of Adjustment
Attention: Elaine Ramierez

Via email: elaine.ramirez@austintexas.gov

Re: C15-2025-0041; 6706 Bridge Hill Cove; BP No. 2022-083202

Dear Ms. Cohen and Members of Board of Adjustment,

The purpose of this supplemental response on behalf of Appellant, Christy May, is to address the jurisdictional question regarding any limits on the Board's power to act to correct identified errors in the issuance of the building permit in question.

The Attorney for the Board has taken the position that the Board of Adjustment must ignore any errors in issuance of the permit under the requirements of Title 25 if an appeal by an interested party has not been made within 20 days of the date of the administrative decision per Section 25-1-182 and 211.010(b) Local Government Code.

This opinion is not correct and would set a terrible precedent in enforcement of the Code for the benefit of the health, safety, and welfare of the public if it were implemented. My understanding of the opinion as articulated to the Board on Monday, November 10 was that because no interested party initiated an appeal of the administrative decision in 2022 to issue Building Permit 2022-083202, the Building Official and the Board are both required to ignore all the downstream affects of the initial error in permit issuance forevermore.

If the Board's Attorney did not mean to exclude the Building Official himself from being barred from correcting the many errors in the issuance of the building permit that were identified Monday night because of inadequate information received by the Building Official from the Permit Holder, she should make that point clearer to the Board.

Section 25-1-411 does not impose any time constraint on when the Building Official can determine errors were made in the issuance of the permit because of any noncompliance with any chapter in Title 25, including zoning regulations in Chapter 25-2.

The authority granted to the accountable official in Section 25-1-411 is broad and allows the Building Official to suspend an issued building permit, subdivision construction plan, and even a certificate of occupancy whenever such error is discovered (see Section 25-1-411-413). The Code also allows the Building Official to revoke a permit after suspension, if the Permit Holder does not comply in a reasonable time with the requirements of the Title for which the suspension

was ordered (see Section 25-1-416).

In this case, the building permit was issued in 2022 without requiring an as-built survey for review by the Building Official before permit issuance, even though the Reviewing Staff should have known the permit was for a major revision of a legal noncomplying structure to the applicable zoning code. Furthermore, the Reviewing Staff did not require fully dimensioned drawings of the existing improvements to determine if the modifications complied with the requirements of 25-2-963 regarding modifications and maintenance of noncomplying structures. Without knowing the internal dimensions of the existing improvements, it was impossible for the Reviewing Officials to initially know where the proposed modifications exceeded the allowance for modifications of a noncomplying structure in 25-2-963.

Clearly, errors were made, as was disclosed in Monday night's hearing. It may be that the Building Official, on advice of counsel, believed he was incapable of correcting the errors on his own initiative after the 20 days from issuance of the permit had passed. We know that the Building Official admitted at the hearing that the plans evolved over a significant period of time as the building modifications were actually constructed. No doubt the Building Official has been struggling with the review of this permit since the summer of 2024 when the issues raised by the Appellant May were first brought to the Building Official's attention. Ms. May was assured at that time that once the Building Official had sorted everything out, Ms. May would have her opportunity to appeal any decision regarding the compliance of the permit with the applicable code.

On March 18, 2025, the City's Master Comment Report on Plan Revision 2022-066047 determined the following:

- Steel canopy cannot be in the setback
- The outdoor kitchen cannot be in the setback
- Additions look to extend further than the existing impervious cover allowed
- The pool is not over existing impervious cover, so it is not able to be approved. (To clarify, the existing pool was replaced with impervious decking and a basement on a project that already exceeding allowed impervious cover. The legal nonconforming impervious cover was exceeded by the construction of the new deck in place of the previous pool surface area).

By September 23, 2025, Mr. Leitch had reversed his office's decision and advised Ms. May that the "administrative decision to approve the permit is no longer subject to appeal and the existing development approved in 2022 cannot be reviewed." This comment by Mr. Leitch suggests that Mr. Leitch felt compelled to ignore errors identified by his Plan Review Staff in March of 2025 because they were not identified by him in 20 days. This thinking is in conflict with the broad authority vested in the Building Official by Sections 25-1-411-416.

This bring us to the question of Appellant's role in this appeal. Clearly numerous errors in the issuance of this remodel permit have been identified by Ms. May and acknowledged by Board Members during the Board's November Hearing. The plan revisions were required by the Building Official because the original plans were inaccurate, incomplete, and in the words of

Mr. Leitch, misleading. Once he got the revisions which he requested, his staff in March of this year demanded that the trellis be removed, that the outdoor kitchen be removed, and that the pool could not be built because the Project exceeded allowable impervious cover for reasons addressed above. The Building Official only reversed his decision in September on the theory that what had already been built since 2022 could not be reviewed because of the 20-day rule.

The Building Official by law is not estopped from enforcing the Code whenever he determines error has occurred in the issuance of a permit. Davis v. Abilene, Court of Civil Appeals, Eastland; 250 Southwest 2nd 685, stands for the proposition that the City Building Inspector is not estopped from revoking a permit after the Owner has incurred obligations in reliance on the permit issuance, when the permit was issued in error. The City Inspector in this case issued a permit to allow construction of a garment factory in a residential zone district with a yard setback less than what the zoning code required. The building construction started and was later ordered to stop by the Building Inspector because it was in violation of the zoning ordinance. The Permit Holder appealed, and the Trial Court found the issuance of the permit was in violation of the zoning ordinance and the stop-work order was valid. The Permit Holder appealed, and the Court of Appeals upheld the Trial Court. The Permit Holder claimed her rights in the permit vested after the time for appeal of the City Inspector's decision had lapsed under the terms of the statute authorizing appeals to the Board of Adjustment (see Article 1011G Vernon's Texas Civil Statutes). This Code section was subsequently recodified at Chapter 211.010(b) Local Government Code.

The Court in Davis v. Abilene stated that the expiration of the appeal period by persons aggrieved by a decision of the Administrative Official does not bar the Administrative Official from correcting any error in issuance of the permit that violated the zoning ordinance. In the Konkel case, it is undisputed that the second-story bedroom addition encroaches 5' into the 10' required setback and is expressly prohibited by Section 25-2-96 F(b)(2) because such second-story will increase the degree of legal nonconformity in a massive way.

The latest evidence offered by Ms. May this week also shows that the basement addition was not built on the existing foundation as Mr. Konkel testified at the November meeting but was excavated approximately 6' down from the original crawlspace under the prior patio. The basement foundation did not exist prior to Mr. Konkel's excavation. The new foundation, which encroaches into the required setback, the two-level patio deck and trellis structure above are all in violation of the zoning ordinance. It is the Building Official's duty to enforce the ordinance and require their removal from the required setback. See attached Exhibit.

This law is consistent with the authority granted to the Building Official in 25-1-411 through 416. Even if the Appellant is bound by a discretionary application of 25-1-182 to limit her objections to the Building Official's decision on the revisions, the original permit with revisions must be denied as not consistent with the zoning code because they are not allowed in the LA setback and are not legal noncomplying. Furthermore, the Building Official is under no constraint to correct error in a permit issuance whenever he discovers it. The Board has the authority in this case to hear and decide an appeal alleging error in the Building Official's approval of revisions to the initial Plan Review documents authorizing the Building Permit because Appellant timely filed her appeal to those revisions. Once the Board has jurisdiction to review the Building Official's determination with respect to the permit, it has the same authority as the Building Official to

reverse or affirm in whole or in part, or modify the Building Official's permit issuance determination with respect to all aspects of the permit and make the correct order, requirement decision or determination whether raised by an aggrieved third party or not.

Once your jurisdiction has been properly invoked, as it has in this case by Appellant's appeal to revisions, the Board has the authority to review any errors in the decision of the Building Official with respect to the permit as a whole and not just the revisions, just as the Building Official can reverse any decision with respect to the original permit when he discovers error in its issuance. The errors made in approving the revisions are inseparable from the errors made in issuing the original permit.

The Building Official never had a firm grip on what the last legal noncomplying status of the Property was and did not have clear and complete dimension of plans describing the scope of the modifications to the legal noncomplying Property. This information is vital to a proper determination of compliance with Section 25-2-963 modifications to a noncomplying structure. That is why the Building Official asked for plan revisions. The Appellant is appealing the decision on the plan revisions which inextricably relates back to errors made when the building permit was initially issued.

Very truly yours,
SPROUSE SHRADER SMITH PLLC

Terrence L. Irion
Attorney for Christy May, Appellant