

Appeal to City Council
of decision of Building + Fire Code
Board of Appeals, June 30, 2010

pursuant of
2-1-121 F

June 30, 2010

→ Regarding Appeal of Permit for 4605 Avenue B

1. Mity Myhr Clay

4528 Ave B

Austin, Tx 78751

2. We believe that the denial of stanching
is inconsistent and ~~of~~ conflicts with the
intent of the code.

3. Please find attached is my discussion
of stanching and my Appeal to the
Building + Fire Code Board of Appeals.

4. Remedy Requested: Please reject the building permit.
Mity Myhr Clay
June 30, 2010

AUSTIN CITY CLERK
POSTING DATE/TIME
2010 JUN 30 PM 3 03

BFCB Appeal, June 30, 2010

1. Question of Standing

The City Staff has challenged my standing to appeal this permit. I was accepted as an interested party by city staff on May 27. I acted as quickly as I could to find out the nature of this project and then to appeal when I discovered that it violates the Hyde Park Neighborhood NCCD zoning. I appealed within the 20-day window to appeal permits.

Chronology

My name is Mity Clay and I live at 4528 Avenue B. I started looking into this permit when I first saw activity on the site, which was on May 20/21 (demolition, clearing of lot and removal of trees). My family lives about 150 feet from the site and will be impacted by whatever changes take place there. As there were no permits posted on the property, my husband, Larry Clay, sought out and spoke with Mr. Kutner on May 22 to find out what he had planned for the lot. Mr. Kutner assured my husband that he had talked to the neighborhood association about his duplex project. He then informed my husband that his wife was a lawyer. Therefore, on May 25 I emailed the chair of our design review committee, Karen McGraw, to see if he had, in fact, contacted the Neighborhood Design Review Committee. Karen McGraw checked the AMANDA site and discovered that the permits were posted on AMANDA, but not the plans. After asking city staff for the plans, it became clear to us that the plans did not meet the standards of the NCCD. The permit incorrectly allows two driveways and two carports on the front.

Through emails with city staff, we were told that they believed the plans were in compliance. Our only avenue to try to correct this situation, which if continued will ruin the character of our block forever, was to appeal the permit.

I first appealed to the Board of Adjustment and my appeal was received by staffer Susan Walker on Friday, May 28. On June 3 I was told that I could not appeal to that board but that I could appeal to your board. I subsequently filed an appeal to your board on June 11. On June 10 I appeared at the City Council meeting to see if they could help in any way and on the way in to the meeting Mr. Guernsey informed us that he had ordered the work stopped and would allow me to approach the board in order to determine if I had standing to appeal.

Our understanding from City staff at this time is that in order to appeal a permit a neighbor has to file as an interested party between the time the application is made for permit and the release of the permit. This means the window of appeal may be a few hours up to a few days. More troubling, there is no way for a neighbor to know if an application has been made without checking on the city's AMANDA site every day to see if application has been made. Before May 20 this site had had no activity for many months, which would have required me to check AMANDA for a permit application every day for all these months. Under this situation it leaves neighbors no way to appeal a misinterpretation of the neighborhood zoning that we worked on in a fully public city sponsored process.

I request that you determine that I do have standing to appeal so this matter can be cleared up and staff will make the correct interpretation of this and any future similar applications. Otherwise, our months and thousands of hours of planning will have been for naught.

Appeal: Building Permit for 4605 Avenue B

My name is Mity Myhr Clay and I live at 4528 Avenue B, about 150 feet from the lot in question here today. I am appealing the duplex permit for 4605 Avenue B because the City of Austin has misinterpreted the North Hyde Park Neighborhood Conservation Combining District (NCCD). Under state law, zoning is enabled as a tool to implement an official and adopted comprehensive plan of the city. The Hyde Park Neighborhood Plan was adopted April 13, 2000, as an amendment to the Austin Tomorrow Comprehensive Plan (see exhibit) and then the zoning (in this case, a Neighborhood Combining Conservation District) was adopted to implement that plan for North Hyde Park in 2005..

Hyde Park is a neighborhood that all of you are likely somewhat familiar with. It's historic character includes homes with front porches facing front lawns and streets lined with sidewalks and street trees. The modern intrusion of speculative duplexes with front yard garages, carports and pavement undermines the very character and value of the neighborhood and was a compelling factor for neighbors to spend much of eight years in a city sponsored neighborhood planning process to achieve some measure of protection for the character of this valuable historic neighborhood.

The NCCD tool was selected to create an overlay district because it's purpose is as follows from the Land Development Code:

§ 25-2-173 NEIGHBORHOOD CONSERVATION (NC) COMBINING DISTRICT PURPOSE.

The purpose of a neighborhood conservation (NC) combining district is to preserve neighborhoods with distinctive architectural styles that were substantially built out at least 30 years before the date an application for an NC combining district classification is filed.

This tool requires a survey of neighborhood properties provided by neighbors like us. By identifying the patterns such as open lawns, front porches and parking in the rear, the NCCD zoning overlay was established to ensure that these patterns were respected and reflected in any new development. The Hyde Park Neighborhood Plan describes these patterns and does not mention or show any examples of desirable front yard parking. The NCCD was written to ensure that there was no parking in front of homes except for an exception for the area east of Duval to allow some garages in line with the fronts of homes. Elsewhere in the district no parking is permitted except for in a one-lane driveway beside a home.

We believe that since the zoning implements the neighborhood plan, that the city reviewers should reference that plan if a clause is not clear to them.

In this case we believe the clause is perfectly clear and cannot understand staff's confusion.

The issue is over one sentence in the NCCD as follows:

North HP NCCD Part 6.11.b states clearly that: "Two one-lane driveways (are permitted)... if they are separated by the house."

This is an exception that was inserted to reflect an existing pattern of a few traditional duplexes on large lots that have single lane driveways on each side of the house. This sentence, that the city staff does not understand, was written in conjunction with legal staff to allow "two driveways separated by the house".

The city says that this means that two driveways are permitted if any small bit of the house lies between them. I argue that this is a very minimal and incorrect interpretation that would not have even warranted that the sentence be included in the code. This would otherwise violate most other tenets of the plan and NCCD.

I assert that the sentence was intended as written to mean that the two driveways must be separated by the house - period - meaning the entire building. (The NCCD was examined by the city's legal department. If this had been a problem or unclear, it would have been changed at that time.)

Our interpretation is consistent with the remainder of the NCCD (2005) as well as with the City-adopted Hyde Park Neighborhood Plan (2000) and the Hyde Park Design Guidelines (2003) crafted by the City of Austin. Nowhere else is the idea of two driveways in front of a house discussed, noted as a complimentary pattern, diagramed, or permitted in any way.

See references as follows (copies are attached to this document):

1. Hyde Park Neighborhood Plan

A. Page 2 of 3: Number One Goal, "To preserve and enhance the unique historic and residential character of Hyde Park."

B. Page 6: Top Ten Priorities, the 1st action item is to complete the NCCD ordinance.

Page 11: Purpose of Residential District: "Modify single family permitted uses to permit the traditional garage apartment or two-family use. Maintain traditional civic and commercial uses without encroaching on single family character and value. Modify site development rules to preserve and enhance traditional development patterns."

C. Page 15: Describes goals of NCCD and central to that is "Prevent duplexes from being constructed that result in dormitory-like structures with numerous cars. Do not allow front yard parking." And it continues: "No parking may be established or counted for Code requirements in front or side yard or right of way adjacent to property. This includes not allowing paving of spaces in front or side yard."

2. North Hyde Park NCCD

A. Part 6. General Provisions, 1. Pedestrian-Oriented Uses. If a parking facility is located on the ground floor of a building, a pedestrian-oriented use or habitable space shall be located at the front of the building on the ground floor. (page 10)

B. Part 11, b. Except as otherwise provided in this section, access to a site is limited to one curb cut....In the Residential District, a site may have two curb cuts if the site has a total of 100 feet of frontage or more and has two dwelling units or is a through lot. For a duplex use or single-family attached use, a lot that is at least 50 feet wide may have two one-lane driveways that are a maximum of 10 feet wide if they are separated by the house.

C. Part 11, c,(i) A driveway located in a front yard for a residential use, may not exceed a width of 12 feet from the driveway apron to the building setback line and 24 feet from the building setback line to a parking area.

D. Part 11, d, (iii) A required or excess parking space may not be located in a street yard except that 25 percent of the width of a front yard or a maximum of 20 feet may be used for not more than two required parking spaces. (In this case 12.5 feet.)

The only exceptions to these rules apply to parts of North Hyde Park east of Duval Street.

3. North Hyde Park Design Guidelines

There are no photos or drawings in the Guidelines of a house with parking in front. Please see section 2.5 attached to this document.

I will show pictures of Avenue B. As you will see it maintains the character referenced in the adopted plan and zoning. The only exceptions were built before the NCCD was adopted and, together with other unfortunate examples in the neighborhood, served as negative inspirations for the NCCD. If this project goes forward with two driveways and a carport on the front, it will not only devalue our block, but it will undermine all of our planning and likely beget new similar designs being permitted.

The city says we can always change our plan, which is a very easy way out for them. For our neighborhood, however, the problem case will be built and will permanently damage the character of our street. We need to get a correct interpretation now, on this case, and we believe it is very clear.

3. Request: Please tell the city staff that the intent is no parking in front of houses and separated by the house means the entire house.

We appreciate your attention to this matter and your help in getting this cleared up.

Further Notes:

Staff will likely tell you that they have already corrected an error in calculating square footage regarding carports. While that is true that is NOT the item that we are appealing to you today. This issue is part of the McMansion code and the error had been brought to their attention previously by the RDCC. They studied the records and intent of that code and came to the correct conclusion. They are now asking the applicant to remove the roof of one carport. That is good but does not solve the misinterpretation of the NCCD regarding driveways and parking in front of houses.

Because staff believes their interpretation is correct, we have had to come to you for your determination of the correct interpretation and help us to get this neighborhood planning and zoning program back on track for our street and neighborhood.

Mr. Kutner has worked in our neighborhood before as he owns duplexes and rental properties in the area. He has a duplex in the neighborhood that does not include parking in the front and thus conforms to the NCCD.

We simply ask your help in declaring the correct interpretation of “two driveways separated by the house” as indicated on this final exhibit.

Thank you. Please let us answer any questions you may have.

ARTICLE 6. INTERESTED PARTIES, NOTICE, AND PUBLIC HEARING PROCEDURES.

Division 1. Interested Parties and Notice.

§ 25-1-131 INTERESTED PARTIES.

(A) An interested party is a person who has an interest in a matter that is the subject of a public hearing or administrative decision. A person has an interest if the person:

- (1) is the applicant or the record owner of property that is the subject of a public hearing or administrative decision; or
- (2) communicates an interest in a matter; and
 - (a) occupies a primary residence that is within 500 feet of the site of the proposed development;
 - (b) is the record owner of property within 500 feet of the site of the proposed development;
 - (c) is an officer of an environmental or neighborhood organization that has an interest in the site of the proposed development or whose declared boundaries are within 500 feet of the site of the proposed development; or
 - (d) has a utility account address located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.

(B) A person communicates an interest in a matter that is the subject of a public hearing by:

- (1) delivering a written statement that generally identifies the issues of concern to the body conducting the hearing, either before or during the public hearing; or
- (2) appearing and speaking for the record at the public hearing.

(C) A person communicates an interest in a matter that is the subject of an administrative decision by delivering a written statement to the responsible director or by making telephone contact with the responsible director. The communication must:

- (1) generally identify the issues of concern;
- (2) include the person's name, telephone phone number, and mailing address;
- (3) be delivered before the earliest date on which action on the application may occur; and
- (4) if the communication is by telephone, be confirmed in writing not later than seven days after the earliest date on which action on the application may occur.

Source: Section 13-1-240; Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-132 NOTICE OF PUBLIC HEARING.

(A) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before a board or commission by mailing notice not later than the 11th day before the date of the hearing to the:

- (1) applicant;
- (2) notice owner of property located within 500 feet of the subject property;
- (3) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development;
- (4) parties to an appeal; and

(5) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.

(B) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before the council by:

(1) publishing notice not later than the 16th day before the date of the public hearing; and

(2) mailing notice not later than the 16th day before the date of the hearing to the:

- (a) applicant;
- (b) notice owner of property located within 500 feet of the subject property;
- (c) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development;
- (d) parties to an appeal; and
- (e) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.

(C) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before a board or commission or the council by:

(1) mailing notice to a neighborhood organization not later than the 11th day before the date of a hearing scheduled before a board or commission and not later than the 16th day before the date of a hearing scheduled before the council; and

(2) publishing notice not later than the 16th day before the date of a hearing before the council.

(D) This subsection applies to public hearings on two or more matters related to the same property or development.

(1) One notice may be provided if the hearings are scheduled:

- (a) on the same date before the same body; or
- (b) before two or more bodies not later than the 45th day after the date of a notice.

(2) The responsible director shall provide notice not later than the date the earliest notice is required.

(E) Notice provided under this section must:

- (1) generally describe the subject matter of the public hearing;
- (2) identify the applicant and the location of the subject property;
- (3) identify the body holding the public hearing and the date, time, and place of the public hearing;
- (4) if the decision of the body holding the public hearing may be appealed, describe the procedure and requirements for an appeal; and
- (5) include the address and telephone number of the office from which additional information may be obtained.

Source: Section 13-1-200 and Section 13-1-202(b); Ord. 990225-70; Ord. 010329-18; Ord. 030828-65; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-133 NOTICE OF APPLICATIONS AND ADMINISTRATIVE DECISIONS.

(A) For notice required to be given under this subsection, the responsible director shall mail notice not later than the 14th day after the filing of an application to the:

- (1) applicant;
 - (2) notice owner of real property located within 500 feet of the subject property;
- and
- (3) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development; and
 - (4) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.

(B) For notice required to be given under this subsection, the responsible director shall mail notice not later than one day after an administrative decision to:

- (1) the record owner of the subject property; and
- (2) interested parties.

(C) Notice provided under this section must:

- (1) describe the general nature of the application;
- (2) identify the applicant and the location of the site;
- (3) generally describe the proposed development;
- (4) identify the entity that may approve the application;
- (5) state the earliest date that action under a decision may occur;
- (6) describe the procedure and requirements for becoming an interested party;
- (7) if the decision may be appealed, describe the procedure for an appeal; and
- (8) include the address and telephone number of the accountable official from whom additional information may be obtained.

(D) An accountable official may not make a decision on an application for which notice is required to be provided under this section earlier than the 14th day after the date the notice is issued. The responsible director may permit the decision to be made sooner.

Source: Section 13-1-201 and Section 13-1-202(c); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-134 PROCEDURES AND REQUIREMENTS FOR NOTICE.

(A) Published notice is effective on the date a notice is published in a newspaper of general circulation in the city.

(B) Mailed notice is effective on the date a letter is deposited in a depository of the U.S. Post Office, postage paid, and addressed:

- (1) to an applicant, by mailing notice to the property owner or agent at the address shown on the application or on a written change of address form filed with the responsible director or building official;
- (2) to a notice owner of real property, by mailing notice to the owner shown on the records of the county tax appraisal district;
- (3) to a record owner of real property, by mailing notice to the owner at the street address of the property or, if the property does not have a street address, to the return address shown on the deed; and
- (4) to a neighborhood organization, by mailing notice to the agent or officer of the organization at the mailing address specified in the City registration information.

(C) Notice by certified mail, return receipt requested, is only required if prescribed in this title.

(D) Notice by hand delivery may be substituted for notice by mail if the addressee provides a receipt of delivery.

(E) When mailed notice to a notice owner is required:

(1) except as provided in Subsection (E)(2), the responsible director shall prepare the list of notice owners; or

(2) if the county tax appraisal district maintains ownership records on an automated data base that is not accessible by the City, the applicant shall provide a complete list of notice owners from information obtained from the tax appraisal district and shall certify its accuracy on a form provided by the responsible director.

(F) The responsible director shall notify a neighborhood organization of:

(1) an application concerning property located completely or partially within the boundaries of the neighborhood organization; and

(2) a proposed amendment to the text of this title or the Comprehensive Plan.

Source: Section 13-1-202(a) and (b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-135 POSTING OF SIGNS.

(A) The responsible director shall post a sign required by this title.

(B) A sign must:

(1) specify the type of action pending, the file number, and the name and telephone number of the person to contact for additional information;

(2) be visible from the street; and

(3) be spaced not more than 200 feet apart from another sign for the same application.

(C) If the street frontage of the subject property is less than 200 feet in length, only one sign is required. Not more than three signs are required regardless of the length of the street frontage.

(D) A person may not remove a sign before the earliest date on which action may be taken on the application.

(E) If requested by an applicant, the responsible director may allow the applicant to post a sign. The applicant shall:

(1) place a sign on property in accordance with this section;

(2) provide verification of the placement of the sign in the manner prescribed by the responsible director; and

(3) respond to a complaint not later than 24 hours after receiving the complaint.

Source: 13-1-202(d); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

Division 2. Public Hearing Procedures.

§ 25-1-151 CONDUCT OF PUBLIC HEARINGS.

(A) A person shall register to speak at a public hearing with the presiding officer of the body conducting the hearing in the manner provided by the presiding officer.

(B) A person who registers before the hearing may speak at the time provided in Subsection (E). A person who registers after the beginning of a hearing may speak before the close of the hearing with the permission of the presiding officer.

(C) The speaker registration shall identify the name and mailing address of the speaker and the matter to be addressed.

(D) A speaker shall state the speaker's name at the beginning of the speaker's presentation when addressing the body conducting the hearing.

(E) Except as provided in Article 7 (Appeals, Variances, Special Exceptions, And Adjustments), a public hearing shall proceed as follows:

- (1) presentation of a report by City staff;
- (2) presentation by the applicant, for a hearing on an application;
- (3) presentation by interested parties supporting the application or proposal;
- (4) presentation by interested parties opposing the application or proposal;
- (5) rebuttal by the applicant, for a hearing on an application.

(F) A member of the body conducting the public hearing may ask questions of a person at any time during the hearing. With the approval of the presiding officer, a person may ask a question of another person.

(G) The body conducting a public hearing may limit a speaker's time to address the body. The presiding officer may request that a speaker eliminate repetitious or irrelevant testimony.

Source: Section 13-1-241; Ord. 990225-70; Ord. 031211-11.

§ 25-1-152 POSTPONEMENT AND CONTINUATION OF PUBLIC HEARINGS.

(A) The body conducting a public hearing may:

- (1) postpone a public hearing by announcing the postponement on the date and at the time and location stated in the notice for the scheduled hearing; and
- (2) continue a public hearing to a later date by announcing the continuance after the hearing begins.

(B) If the body conducting a public hearing postpones or continues a hearing to a specific date and time not later than 60 days after the date on which the postponement or continuance is announced, the announcement is adequate notice of the next hearing and additional notice is not required.

(C) When a body conducting a public hearing postpones or continues a hearing, the next hearing shall be held at the same location as the original hearing unless a change in location is announced at the time of the postponement or continuance.

(D) If a body does not specify a hearing date and time at the time that a postponement or continuance is announced, notice of the next hearing shall be provided in the manner required for the original hearing.

Source: Section 13-1-203; Ord. 990225-70; Ord. 031211-11.

City code addressing appeals 25-1-187

ARTICLE 7. APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS.

Division 1. Appeals.

§ 25-1-181 STANDING TO APPEAL.

(A) A person has standing to appeal a decision if:

- (1) the person is an interested party; and
- (2) a provision of this title identifies the decision as one that may be appealed by that person.

(B) A body holding a public hearing on an appeal shall determine whether a person has standing to appeal the decision.

Source: Section 13-1-250; Ord. 990225-70; Ord. 030828-65; Ord. 031211-11.

§ 25-1-182 INITIATING AN APPEAL.

An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 031211-11.

§ 25-1-183 INFORMATION REQUIRED IN NOTICE OF APPEAL.

The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-184 NOTICE TO APPLICANT CONCERNING INTERESTED PARTY.

The responsible director shall notify an applicant in writing if there is an interested party to an administrative decision.

Source: Section 13-1-251(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-185 NOTICE TO PRESIDING OFFICER AND APPLICANT.

On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official shall promptly notify the presiding officer of the body to which the appeal is made and, if the applicant is not the appellant, the applicant.

Source: Section 3-1-253(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-186 MEETING TO RESOLVE ISSUES.

If requested by an interested party, the responsible director shall schedule a meeting to discuss and attempt to resolve the issues raised by an appeal of an administrative decision. The responsible director shall notify all interested parties of a meeting scheduled under this section. All interested parties may attend the meeting.

Source: Section 13-1-251(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-187 DEVELOPMENT NOT PERMITTED DURING APPEAL.

(A) Development under a site plan may not occur during the time period during which an appeal of the site plan may be initiated.

(B) An approved plan or permit is suspended on the timely filing of an appeal of the plan or permit.

(C) Development affected by an appeal may not occur pending the final disposition of the appeal.

Source: Section 13-1-252; Ord. 990225-70; Ord. 031211-11.

§ 25-1-188 SCHEDULING OF PUBLIC HEARING.

A public hearing on an appeal shall be scheduled for the first available meeting for which notice of the hearing can be timely provided.

Source: Section 13-1-253(b); Ord. 990225-70; Ord. 031211-11.

§ 25-1-189 NOTICE OF PUBLIC HEARING.

(A) The responsible director shall give notice under Section 25-1-132(B)(Notice Of Public Hearing) of a public hearing on an appeal to the council.

(B) Except as provided in Subsection (C), the responsible director shall give notice under Section 25-1-132(A) (Notice Of Public Hearing) of a public hearing on an appeal to a board or commission.

(C) The responsible director shall give notice under Chapter 25-12(Technical Codes) and applicable state law of a public hearing on an appeal to a board or commission created by Chapter 25-12 (Technical Codes) or having jurisdiction over regulations contained in Chapter 25-12 (Technical Codes).

Source: Section 13-1-253(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-190 APPELLATE BURDEN.

The appellant must establish that the decision being appealed is contrary to applicable law or regulations.

Source: Section 13-1-254; Ord. 990225-70; Ord. 031211-11.

§ 25-1-191 CONDUCT OF PUBLIC HEARING.

(A) Before opening a hearing, a body hearing an appeal shall decide preliminary issues raised by the parties, including whether to postpone or continue the hearing and whether the appellant has standing to appeal.

(B) A public hearing on an appeal shall proceed in the following order:

- (1) a report from City staff;
- (2) a presentation by the appellant;
- (3) comment by persons supporting the appeal;
- (4) comment by persons opposing the appeal; and
- (5) a rebuttal by the appellant.

Source: Section 13-1-255; Ord. 990225-70; Ord. 031211-11.

§ 25-1-192 POWER TO ACT ON APPEAL.

A body hearing an appeal may, in accordance with the requirements of this title, exercise the power of the official or body whose decision is appealed. A decision may be upheld, modified, or reversed.

Source: Section 13-1-256; Ord. 990225-70; Ord. 031211-11.

Email Records: 4605 Avenue B

May 25, 2010, at 11:56 AM, myhr mitylene wrote:

Karen,

Larry and I have been watching for the past week the demolition and lot clearing at 4607 (ish, not positive) Ave B and we were wondering if the developer had contacted the neighborhood contact/review committee about his project. It seems to us that he is very very close to violating the NCCD. Larry talked to him on Saturday and he plans a duplex with 2 sides, each with 3 bedrooms, which he assured Larry would only hold 3 people on each side (1 in each bedroom). If I had been there, I would have laughed in his face, but Larry was much nicer. He then told Larry that his wife is a lawyer and that the development is within "the letter of the law" in terms of parking, trees etc.

Basically, I am wondering how we check his building plans. The direct neighbor, Sharon, is very upset and we haven't talked to Robert yet, but I imagine he is not happy either. I do not know the neighbor directly behind the lot, but do not mind checking in with them. We are happy to call inspectors at every step, if that is what is called for. Larry already called the police on Friday afternoon when they began cutting down all the trees and the tree office had, conveniently, already gone home for the weekend. (Larry emailed Michael Embesi to check the tree permits.)

However, if the planning team has already met with this guy (I do not know his name), then I do not want to harass him further.

Sorry for the long email - we just don't want to let this go further without asking questions.

Mity

RE: 4605 Avenue B Duplex permit Tue, May 25, 2010 11:00:04 PM
From: "Benavidez, Sylvia" <sylvia.benavidez@ci.austin.tx.us>
To: Karen McGraw [REDACTED] "Mikulenka, Ryan"
<Ryan.Mikulenka@ci.austin.tx.us>
Cc: "McDonald; John" <John.Mcdonald@ci.austin.tx.us>; "Guernsey; Greg"
<greg.guernsey@ci.austin.tx.us>; "Gibbs; Carol" <Carol.Gibbs@ci.austin.tx.us>; David
Conner [REDACTED]; Mity Clay [REDACTED]. more
Karen, I will get a copy of the permit tomorrow morning and review your concerns. The applicant will be notified in the event that a revision or correction is required.

A HOLD will only prevent a final inspection.

-----Original Message-----

From: Karen McGraw [REDACTED]
Sent: Tuesday, May 25, 2010 10:32 PM
To: Mikulenka, Ryan
Cc: McDonald, John; Benavidez, Sylvia; Guernsey, Greg; Gibbs, Carol;
David Conner; Mity Clay; Development hpna

Subject: 4605 Avenue B Duplex permit

Ryan,

I appreciate your quick response to my email and I am hopeful that we will get this permit corrected very quickly before work starts on the building. The neighbors are concerned so I want to get at least one of them on record as an interested party as well as the Hyde Park Neighborhood Association. I am copying Mity Clay of 4528 Avenue B and also David Conner, President of HPNA so they can contact you to enroll as interested parties. I am chairman of the Hyde Park Contact Team and need to know if I need to do something to be shown as an interested party also.

Thanks for your help.

Karen McGraw AIA
Karen McGraw Architect
4315 Avenue C
Austin, TX 78751
512-459-2261
512-917-1761 cell
[REDACTED]

4605 Avenue B
Tue, May 25, 2010 12:32:11 PM
4605 Avenue B
From: Karen McGraw [REDACTED]
To: ryan.mikulenska@ci.austin.tx.us
Cc: Mity Clay [REDACTED] Development hpna
<developmentreview@googlegroups.com>
Ryan,

I left you a phone message regarding this project. I cannot locate the application and plans online. We need to review those as the neighbors are concerned.

Thanks,

Karen McGraw AIA

RE: 4605 Avenue B Tue, May 25, 2010 12:39:17 PM
From: "Mikulenska, Ryan" [REDACTED] Mikulenska@ci.austin.tx.us>
To: Karen McGraw [REDACTED]
Cc: Mity Clay [REDACTED] Development hpna
<developmentreview@googlegroups.com>

4605 ave b.tif (6378KB)
What are the neighbors concerned about?

I don't why the plans didn't make it online.

Ryan Diebel Mikulenska
City of Austin, Texas
Planning and Development Review Department

Re: 4605 Avenue B Tue, May 25, 2010 1:53:15 PM
From: Karen McGraw [REDACTED]
To: "Mikulenska, Ryan" <Ryan.Mikulenska@ci.austin.tx.us>
Cc: Mity Clay [REDACTED] William Burkhardt
[REDACTED] John McDonald <John.Mcdonald@ci.austin.tx.us>;
Sylvia Benavidez <sylvia.benavidez@ci.austin.tx.us>

4605 ave b.jpg (209KB) View Image
Ryan,

I can barely read these plans but I know that the two front driveways are not legal in North Hyde Park. Please reference Part 6.11.b of the NORTH Hyde Park NCCD. Only one driveway is permitted. also review all of c and d.

Please note Part 6.1 that pedestrian uses are required on the front of the building.

I can't read the height but it should be limited to 30' and 2.5 stories.

Under McMansion only one 200' exemption is permitted for attached parking. You have permitted two. I am copying John McDonald and Sylvia Benavidez on this because we have discussed this before.

If this is under construction you need to hold this permit until it has been completely reviewed under the North HP NCCD.

Thanks,
Karen McGraw AIA

Re: 4605 Avenue B Tue, May 25, 2010 4:13:43 PM
From: Karen McGraw [REDACTED]
To: "Mikulenska, Ryan" <Ryan.Mikulenska@ci.austin.tx.us>
Cc: Mity Clay [REDACTED] William Burkhardt
[REDACTED]; John McDonald <John.Mcdonald@ci.austin.tx.us>;
Sylvia Benavidez <sylvia.benavidez@ci.austin.tx.us>
Ryan,

Thanks for answering. The clause on the driveways says separated by the house which means on either side of the house, not on the front. There are examples of this in the neighborhood which is why it was written that way.

The intention is to not have parking and carports on the front of houses because they are not in keeping with the patterns of this neighborhood. We accepted some allowance for front yard parking and driveways east of Duval. However, we still tried to maintain that intent west of Duval St. since it is not the pattern to put carports on the front. This project will have to be redesigned to move the driveways. it is very important that this be stopped now and corrected. The neighbors will have to live with the errors for decades.

Just fyi trees have also been cut - one for the driveway but now it looks like it's not even a legal driveway.

Karen

4605 Avenue B Wed, May 26, 2010 6:04:04 PM
From: "Benavidez, Sylvia" <sylvia.benavidez@ci.austin.tx.us>
To: "McDonald; John" <John.Mcdonald@ci.austin.tx.us>; "Gibbs; Carol" <Carol.Gibbs@ci.austin.tx.us>; [REDACTED]; David Conner [REDACTED]; Development hpna <developmentreview@googlegroups.com>... more
Cc: "Mikulenka; Ryan" <Ryan.Mikulenka@ci.austin.tx.us>; "Birkner; Donald" <Donald.Birkner@ci.austin.tx.us>; "Barba; Leon" <Leon.Barba@ci.austin.tx.us>; "Guernsey; Greg" <greg.guernsey@ci.austin.tx.us>; "Lloyd... more
I have called the applicant Jon Kutner and we are scheduled to meet tomorrow, and I also requested that he provide the full size set of approved plans.

PLEASE READ SYLVIA'S RESPONSE BELOW: *(RYANS RESPONSE IN RED)*

-----Original Message-----

From: Karen McGraw [mailto:[REDACTED]]
Sent: Tuesday, May 25, 2010 1:53 PM
To: Mikulenka, Ryan
Cc: Mity Clay; William Burkhardt; McDonald, John; Benavidez, Sylvia
Subject: Re: 4605 Avenue B

Ryan,

I can barely read these plans but I know that the two front driveways are not legal in North Hyde Park . Please reference Part 6.11.b of the NORTH Hyde Park NCCD. Only one driveway is permitted. also review all of c and d. "For duplex use, a lot at least 50 feet wide may have two one-lane driveways that are max 10 feet wide if they are separated by the house." *I read this in my initial review of the nccd, but I will get with John and Sylvia about this.*

SYLVIA RESPONSE: the two driveways were approved to the front of the residence, we will probably need some interpretation of "separated by the house". this could mean on either side of the house or possibly just spaced apart from the house, if the driveways are

not connected to the house but in front of the house ARE THEY SEPARATED BY THE HOUSE?

Please note Part 6.1 that pedestrian uses are required on the front of the building. *I missed this, but I will get with John and Sylvia.*

SYLVIA RESPONSE: PEDESTRIAN-ORIENTED USES MEANS THOSE USES IDENTIFIED IN SUBSECTION (C) OF SECTION 25-2-691

(C) A pedestrian-oriented use is a use that serves the public by providing goods or services and includes:

- (1) art gallery;
- (2) art workshop;
- (3) cocktail lounge;
- (4) consumer convenience services;
- (5) cultural services;
- (6) day care services (limited, general, or commercial);
- (7) food sales;
- (8) general retail sales (convenience or general);
- (9) park and recreation services;
- (10) residential uses;
- (11) restaurant (limited or general) without drive-in service; and
- (12) other uses as determined by the Land Use Commission.

I can't read the height but it should be limited to 30' and 2.5 stories. *I was aware of this provision during my initial Review of the NCCD and LDC.*

SYLVIA RESPONSE: THE PLANS WERE APPROVED FOR A 2ND STORY WITH A HEIGHT OF 29'(FEET)THIS WILL BE RE-MEASURED AND VERIFIED ON THE FULL SET OF PLANS.

Under McMansion only one 200' exemption is permitted for attached parking. You have permitted two. I am copying John McDonald and Sylvia Benavidez on this because we have discussed this before.

I will get with John and Sylvia on this.

SYLVIA RESPONSE: PRACTICE AND STAFF INTERPERTATION HAS BEEN TO GRANT UP TO 200 SQ FT EXEMPTION FOR AN ATTACHED PARKING IF IT IS USED TO MEET THE MINIMUM PARKING REQUIREMENT IF AN ATTACHED PARKING DOES NOT MEET MINIMUM AND THE SITE PROVIDES MORE THAN ONE ATTACHED PARKING TO MEET THE MINIMUM WE GRANT 200 SQ FT FOR EACH ATTACHED PARKING TO MEET THE MIMIMUM PARKING.

If this is under construction you need to hold this permit until it has been completely reviewed under the North HP NCCD.

I do not have the authority to put a hold on a permit, but I will get with John and Sylvia on this to determine if it is necessary. I will be in touch.

SYLVIA RESPONSE: A HOLD WILL ONLY PROHIBIT A FINAL INSPECTION ON THE PERMIT, I HAVE CALLED THE APPLICANT AND WE WILL BE MEETING TOMORROW MORNING TO DISCUSS THE CONCERNS OF THE NEIGHBORHOOD ASSOCIATION.

RE: 4605 Avenue B Duplex permit Thu, May 27, 2010 1:59:25 PM
From: "Mikulenska, Ryan" <Ryan.Mikulenska@ci.austin.tx.us>
To: [REDACTED]; Karen McGraw
[REDACTED]
[REDACTED]Mcdonald@ci.austin.tx.us>; "Benavidez; Sylvia"
<sylvia.benavidez@ci.austin.tx.us>; "Guernsey; Greg" <greg.guernsey@ci.austin.tx.us>;
"Gibbs; Carol" <Carol.Gibbs@ci.austin.tx.us>... more
Mity-

You've been acknowledged as an interested party.

Ryan Diebel Mikulenska
City of Austin, Texas
Planning and Development Review Department

-----Original Message-----

From: myhr mitylene [mailto:[REDACTED]]
Sent: Thursday, May 27, 2010 12:22 PM
To: Karen McGraw; Mikulenska, Ryan
Cc: McDonald, John; Benavidez, Sylvia; Guernsey, Greg; Gibbs, Carol;
David Conner; Development hpna
Subject: Re: 4605 Avenue B Duplex permit

As representative of the Avenue B property owners, I will be filing an appeal to the 4605 Avenue B Duplex permit this afternoon (Thursday, May 27). I need an email response to my request to be an interested party.

Thank you,
Mity Clay

FW: 4605 Avenue B Duplex permit Thu, May 27, 2010 5:06:51 PM
From: "Benavidez, Sylvia" <sylvia.benavidez@ci.austin.tx.us>
To: "Cain, Darren" <Darren.Cain@ci.austin.tx.us>
Cc: [REDACTED]
[REDACTED] please list her as an interested party.

4605 Ave B Thu, June 3, 2010 2:02:01 AM
From: Karen McGraw [REDACTED]
To: Donald Birkner <donald.birkner@ci.austin.tx.us>

Cc: [REDACTED] Robert James [REDACTED]
David Conner [REDACTED]; Carol Gibbs <Carol.Gibbs@ci.austin.tx.us>;
Greg Guernsey <greg.guernsey@ci.austin.tx.us>; Leon Barba
<Leon.Barba@ci.austin.tx.us>... more
Don,

Since I spoke to you last Friday maybe you can get the answers that we need:

- 1) to know the appeal to the BoA has been accepted and will be heard.
- 2) a blank form to appeal to the BFCBA before the appeal period runs out.
- 3) An explanation of why work has not been stopped even though an appeal has been filed.
- 4) A response to our concerns that the permit was issued in error and "two driveways separated by the house" means the house - not some piece of a house - and that carports and driveways are not permitted on the front of houses.

Thanks,

Karen McGraw AIA

Fwd: 4605 Avenue B Thu, June 3, 2010 12:39:45 PM
From: Karen McGraw [REDACTED]
To: myhr mitylene [REDACTED]
2 Files Appeal Form Page 1 of 2.pdf (49KB); 100 Appeal Form Page 2 of 2.pdf (38KB)

Begin forwarded message:

From: "Barba, Leon" <Leon.Barba@ci.austin.tx.us>
Date: June 3, 2010 10:57:23 AM CDT
To: "Karen McGraw" [REDACTED]
Cc: "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>, "Birkner, Donald"
<Donald.Birkner@ci.austin.tx.us>
Subject: RE: 4605 Avenue B

Karen, I am still waiting on an answer from other staff on your first question. As of this time, I have not been asked to place a Stop Work Order on this project. Attached are the forms that you would use to file an appeal to the Building and Fire Code Board of Appeals.

Leon

Fwd: 4605 Ave B Thu, June 3, 2010 2:57:58 PM
From: Karen McGraw <mcgrawka@earthlink.net>
To: myhr mitylene [REDACTED]; Robert James
[REDACTED]
[REDACTED]

From: "Birkner, Donald" <Donald.Birkner@ci.austin.tx.us>

Date: June 3, 2010 2:19:14 PM CDT

To: "Karen McGraw" [REDACTED]

Cc: "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>

Subject: RE: 4605 Ave B

The short answers to your questions are:

1. Currently, city legal is of the opinion that the BOA cannot hear interpretation appeals for NCCD requirements. The appeal was therefore not accepted and no "Stop Work Order" has been issued (question 3).
2. Mr. Barba sent you copies of the BFCBA forms this morning.
3. See above
4. Greg is waiting to review a response from John McDonald's staff concerning Mc Mansion parking questions you raised before he makes a final determination on the question of whether the permit was issued in error. That should happen later today or tomorrow. I am aware that you and Greg talked about this project at some length Friday night. My assumption is that the call on whether the permit was issued in error is above me at this point.