

Applicant claims FIA apoc is inside attic over one-story section of house (top-notched); rest of house is two-story house.

Test 1. Visual Inspection: Looks like full two-story house, not part one-story

H-4 roof ridge is about:

Test 2. Riggs of HA roof is over 1st floor apartment bath

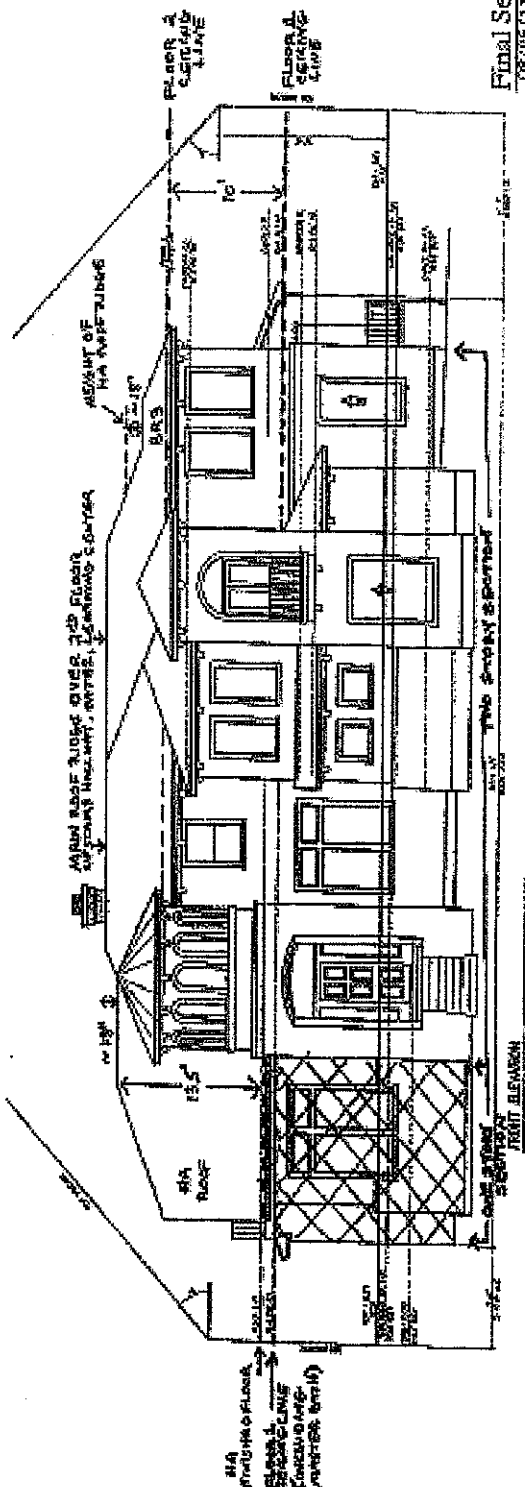
ceiling of master bath is 10 feet below ceiling of 2nd floor rooms, so would expect ridge of HA roof to be considerably lower than other roof ridges, but see Test 1.

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Roof roof slopes are 5.5 to 12 over 14 and 4 to 12 over 14 (see Exhibit E-25). Ridge of 14 roof is 13.5 feet above finished floor of 14A.

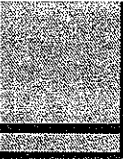
If slope reduced to match main house, height would be $13.5 \text{ feet} \times (4 / 5.5) = 9.8 \text{ feet}$, i.e., 3.7 feet lower!

Conclusion: MA attic roof elongated/tilted/very large compared to roof over two-story section of houses; so adds loads to house.



Final Set
03/05/11

[illegible]



Staff interpretation is that the area identified as “habitable attic space” adds no additional mass to the structure because it fits inside the building envelope or “tent.”

The interpretation is applied by staff only to new construction since applicant has no existing structure and no mass exists just plans.

Staff applies this increase in mass
only to existing structures.

FACTS OF THIS CASE:

3704 Bonnell Road is the only vacant lot in the subdivision and is claimed to be 11,683 sq. feet and permissible 40% FAR is 4,673 sq. feet.

In April 2011 lot owner submitted a 5 bedroom plan which exceeded 40% FAR.

On July 6, 2011 the RDCC voted to deny the Application for a FAR increase based upon a determination that the house was too large for the lot in comparison to surrounding existing homes.

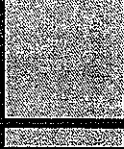
The plans submitted by lot owner and approved by Director on August 26 are nearly identical to the RDCC denied plans:

- a. Footprint of house and garage is unchanged
- b. Layouts and gross floor area of finished rooms and garage are unchanged.
- c. **Difference:** Owner increased the mass of the structure by raising the roof and extending the second floor exterior wall and converting the 5th bedroom into a 944 sq. ft. attic which staff found to meet the habitable attic exemption thus reducing from 5,481 sq. ft. to 4,537 sq. ft. used in FAR calculation.



Examination of plans show:

1. In both the front and rear of the house the slope of the habitable attic roof is greater (steeper) than the slope of the roof over the main living areas of the home.
2. We contend that this adds mass and violates 3.3.3 (c) 5.



In this case a 5-bedroom house deemed incompatible in scale & bulk by RDCC has been altered to increase its mass but due to staff interpretation that the plans meet their interpretation of "habitable attic", the administrative decision made by the Director resulted in treating the structure as though its mass had been reduced.



Intent of McMansion ordinance found in Section 1.1

This Subchapter is intended to minimize the impact of new construction, remodeling, and additions to existing buildings on surrounding properties in residential neighborhoods by defining an acceptable building area for each lot within which new development may occur. The standards are designed to protect the character of Austin's older neighborhoods by ensuring that new construction and additions are compatible in scale and bulk with existing neighborhoods.




Interpretation 3

Mr. Guernsey, the administrative official erred in his interpretation of Subsection 245.002(b) of the Local Government Code

Section 245.002(b)

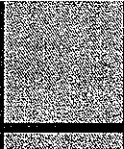
If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time of the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

Mr. Guernsey's interpretation implies that Clark's project of building a house at 3704 Bonnell Drive is the same project that the developer KMS Ventures undertook in the 1970's to subdivide and plat Mount Bonnell Terrace Section 3.



The two projects are not the same. KMS Ventures project was to subdivide into lots suitable for the construction of single family homes for the purpose of selling those lots. That project was completed 30 years ago.

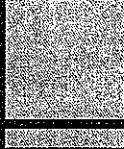
Clark's project in 2011 is to build a house.



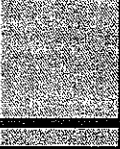
Mr. Guernsey erred in supposing them to be the same project and that the regulations in effect on June 18, 1979 apply.

Interpretation 4

Mr. Guernsey erred in his enforcement of the FAR provisions of the McMansion Ordinance.



Mr. Guernsey determined that Clark's project of building a house is not subject to the FAR provisions of the McMansion Ordinance because they were not in effect in the 1970s.



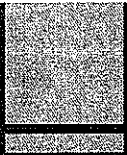
We assert that the correct interpretation is that the project of building a house at 3704 Bonnell Drive is subject to the FAR provisions of the McMansion Ordinance because FAR provisions regulate the bulk of a building and pursuant to Subsection 245.004(2) Chapter 245 does not apply to bulk zoning regulations.



Sec, 245.004 Exemptions.

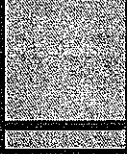
This chapter does not apply to:

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;



The McManson ordinance is a zoning ordinance that regulates the bulk of buildings and FAR is a measure of a building's bulk.

The COA's Zoning Information home page define bulk as "density/floor to area ratio"

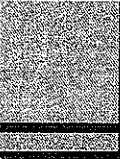


Since 1921 the State of Texas has granted home-rule municipalities the authority to regulate the bulk of buildings pursuant to Senate Bill 312 enacted by the 37th Legislature. The authority to regulate zoning has been expanded and extended to all municipalities, and today the zoning regulatory powers granted to municipalities are codified in Chapter 211 of the Texas Local Government Code. With one exception, the items that can be regulated by home rule municipalities are also regulated by all municipalities with one exception that being the authority to regulate the "bulk" of buildings, which is extended to only home-rule municipalities by Subsection 211.003 (c).



In everyday conversation we tend to think of bulk and size as terms with similar meanings.

It is clear that the State of Texas by listing the power to regulate size and bulk separately and by extending the power to regulate size to all municipalities and the power to regulate bulk only to home-rule municipalities that the State considers the power to regulate the bulk of building to be a different sort of power from the power to regulate the size of buildings.



The size of a building is an absolute magnitude that is measured by square footage. The bulk of a building, measured by FAR, is not an absolute magnitude. It is the ratio of the gross floor area to the size of the lot on which the building sits.

We are asking the BOA to find that PDRD made errors in its decision to "approve for permit" by its interpretations and follow our interpretations that:

1. The areas of the proposed structure that have ceiling height greater than 15 ft. need to be counted twice and recalculate the gross floor area.
2. Deny the habitable attic exemption because the habitable attic space increases the mass and recalculate the gross floor area.

3. Current regulations shall govern the project of building a house at 3704 Bonnell Drive as it is not the same project that the developer of the subdivision undertook in 1979 that being the selling of lots.

4. The project of building a house at 3704 Bonnell Drive is subject to the FAR provisions of the McMansion Ordinance in that FAR regulates the bulk of a building.

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
 - appearing and speaking for the record at the public hearing;
- and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.ci.austin.tx.us/development.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2011-0110 - 3704 Bonnell Drive

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, November 29th, 2011

Your Name (please print)

Tom Shelton

☒ I am in favor
☐ I object

Your address(es) affected by this application

3703 MT. BONNELL ROAD

Don Shetter

11-20-11

Signature

Date

Daytime Telephone: 512-453-5949

Comments:

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor

Susan Walker

P. O. Box 1088

Austin, TX 78767-1088