

ORDINANCE AMENDMENT REVIEW SHEET

AMENDMENT CASE # C2O-06-011

DESCRIPTION

• **REQUESTED ACTION**

Approve second/third readings of an ordinance amending Title 25 of the City Code relating to height provisions, compatibility provisions, noncomplying structure provisions, building permit provisions, and the applicability of the residential design and compatibility regulations adopted by Council on June 22, 2006; additional amendments necessary to reformat the residential design and compatibility regulations adopted by Council on June 22, 2006, including provisions related to the Residential Design and Compatibility Commission; repealing Ordinance No. 20060309-058 and Ordinance No. 20060622-022; and providing for emergency passage.

• **PROPOSED CHANGES FROM 1st READING**

Combined Ordinances: The ordinance proposed for second and third readings combines the two ordinances that were approved on first reading. The ordinance reflects what the Council approved on June 22 as the new residential design and compatibility standards (the "McMansion ordinance") and the other Code amendments approved on first reading regarding noncomplying structures, building and demolition permits, and height limits within a Capitol view corridor and under compatibility standards. Clarion Associates' rewrite of the residential design and compatibility standards is included in Part 4 of the ordinance as Attachment A and is proposed to be adopted as Subchapter F of Chapter 25-2 of the City Code.

Additional changes to height: The currently proposed ordinance does not include the citywide change adopted on first reading that would require that height be measured from the lower of natural or finished grade because of concerns about unintended consequences. The ordinance presented for consideration on second and third readings applies the height measurement change (Attachment A, Section 3.4) only to the residential structures described in the ordinance to provide for additional time to review citywide changes for unintended consequences.

Non-substantive and corrective changes: Since first reading, nonsubstantive changes keeping with the intent of what Council approved as the new residential standards have been made to improve the Clarion document. One change however has also been made that should be pointed out. In reviewing the Clarion work for accuracy, it was discovered that there was no reference to the public hearing that the new Residential Design and Compatibility Commission should hold when considering requests. This requirement was approved by the Task Force this spring but it was inadvertently not captured in the ordinance that went before Council in June and hence, also not captured in the Clarion document.

In summary: the ordinance proposed for second and third readings

- (1) Does not include the citywide change to height measurement;
- (2) Includes nonsubstantive changes to the Clarion document; and
- (3) Corrects the ordinance to provide for a public hearing before the Residential Design and Compatibility Commission for consideration of requests for relief from the requirements of the Code Provisions concerning residential design.

The proposed ordinance, which includes the Clarion rewrite, has been drafted for emergency passage effective on October 1, 2006 (the date that new residential standards are to go into effect) if that is the Council's desire.

BACKGROUND

The proposed Code amendments were initiated by the City Council on June 22, 2006 in response to the work of the Residential Development Regulation Task Force ("McMansion Task Force"). Earlier this spring when the Task Force was devising recommendations for single-family and similar residential construction and remodels, the Task Force had also proposed amendments to other parts of the Land

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Development Code. However, the Planning Commission and Council were not posted to consider amendments that would affect non-residential uses so the Task Force's recommendations in these areas had to be deferred. The Council then initiated the Code amendments on June 22.

As they did initially, the Task Force now recommends:

- A reformat of the new residential development regulations (the "McMansion ordinance") via adoption of the rewrite provided by Clarion Associates;
- Amendments to how height is measured;
- Amendments that govern when and how one can rebuild and modify a noncomplying structure; and
- Clarification regarding building and demolition permits.

Reformatting & Applicability of the New Residential Design and Compatibility Standards

On June 22, the Council directed staff to reformat the new residential development regulations with the assistance of Clarion Associates, a private land use planning firm. Clarion was tasked with reformatting the regulations and providing illustrative diagrams. Clarion's draft of the regulations is attached and is proposed as text that would be directly inserted into Chapter 25-2 of the City's Code as a new Subchapter F. Clarion continues to reformat their draft to add and amend illustrations and to reword text so that it reflects the intent of the Task Force's recommendations and what Council approved on June 22. Therefore the draft has been subject to non-substantive changes prior to the time of City Council review.

Within the current Clarion draft, additional language is now proposed that was not already approved by Council in June. The Task Force recommends these changes to reflect the intent of what they had originally recommended but was not captured in the ordinance that went to Council for approval in June. The additional language

- Expands the applicability of the new regulations by adding bed and breakfast (group 2) as a use subject to the new regulations (this is consistent with the already approved regulation of a bed and breakfast (group 1) use (Clarion draft page 3);
- Specifies that for second-story additions to a one-story building, a higher setback plane over the normal setback plane is allowed but *only* for the portion of the addition over the *existing* footprint of the building (Clarion draft page 12) (the intent is to encourage additions over demolitions);
- Specifies that if a structure is located in a Local or National Historic District and it is a "contributing" structure to that district, no waiver may be granted by the Residential Design and Compatibility Commission for an addition or remodel if the waiver would render the structure non-contributing to the District (Clarion draft page 20) (the original McMansion ordinance addressed only local contributing structures); and
- Specifies that the new Residential Design and Compatibility Commission hold a public hearing when considering requests for modifications to the residential standards.

Since the Clarion rewrite replaces the McMansion ordinance, that ordinance is proposed for repeal. Therefore, some of the provisions of that ordinance must be readopted because they will not be included in the Clarion rewrite. These provisions proposed for re-adoption are worded exactly as they were when Council approved them as part of the new residential regulations adopted on June 22. These provisions are listed in the proposed draft ordinance and include

- The creation of the Residential Design and Compatibility Commission (the body authorized to grant modifications to the residential development regulations for specific projects);
- The requirements for connecting the two units of a duplex;
- The provision that a neighborhood planning area may modify certain elements of the new regulations within their planning area; and
- The requirement that the new Residential Design and Compatibility Commission hold an organizational meeting.

See

- *Proposed Clarion draft dated September 21, 2006*
- *Proposed draft ordinance dated 9/20/2006*

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["McMansion ordinance" reformat and applicability; amendments related to height measurement, compatibility, noncomplying structures, and building and demolition permits]

Height Measurement

Regarding height measurement, the Task Force proposes the following Code amendments to apply to all development. The amendments:

- Redefine how height is measured so that it is measured from the lower of natural or finished grade (the City currently measures from finished grade);
- Specify that for a stepped or terraced building, the height of each segment is determined individually (this is an existing practice);
- Specify that for general height measurement and under compatibility regulations (Land Development Code (LDC) Article 10), maximum height limits are limited by *both* the number of feet *and* number of stories if both measurements are prescribed, even when the measurement is conjoined with "or" (existing practice) (proposed draft ordinance pages 4-5); and
- Prohibit the exceptions (per section 25-2-531; e.g., chimneys, antennas, cupolas, safety features) to zoning district height limits within the Capitol View Corridor (existing practice) (proposed draft ordinance page 2).

The proposed amendments to height measurement are consistent with the provisions already approved by Council to apply within the new residential regulations.

Additionally, prior to the creation of the Task Force, Watershed Protection and Development Review (WPDR) staff had been considering changes to how the City measures height. The changes recommended by the Task Force are generally consistent with what WPDR had considered proposing previously. While WPDR had previously considered proposing that height be measured only from natural grade (again, current practice is from finished grade), the Task Force recommended that the City measure from the lower of natural or finished grade. The Task Force based this recommendation on their research of other cities that had implemented similar regulations after problems arose when height was measured only from natural grade.

Prior to and since 1st reading, concerns have been raised about the change in the height definition, specifically the requirement that height be measured from the lower of natural or finished grade. Requests have been made to defer that issue so that any unintended consequences can be examined. In response, the currently proposed ordinance does not include the citywide change adopted on 1st reading that would require that height be measured from the lower of natural or finished grade. This change however would still apply to those uses subject to the new residential design standards since this provision was already adopted by Council in June.

See proposed draft ordinance.

Noncomplying Structure Provisions

Code amendments are proposed to the regulations that govern how noncomplying structures may be modified or maintained, and when and how they can be restored if damaged or destroyed.

The proposed amendments add language to the Code to:

- Specify that when a person modifies a building that is noncomplying because it does not meet the minimum required yard setback(s), the additional length of the modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet measured from the existing building and parallel to the lot line (addition of the underlined language is the proposal);
- Specify that when a person modifies a noncomplying building that is noncomplying based on the minimum yard setback requirement, the allowed modification cannot violate the height limit;
- And conversely, specify that when a person modifies a noncomplying building that is noncomplying based on the height limit, the allowed modification cannot violate the yard setback requirement;
- List the specific circumstances under which a structure can be restored to its prior noncompliant state (for example, fires, floods, or accidents of any kind) (this language was removed when the 'plain English' rewrite of the Code occurred in the 1980s); and

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- Limit a structure that is restored under these circumstances to the same building footprint, gross floor area, interior volume, location and previous degree of noncompliance.

The amendments regarding noncomplying structures are worded exactly as they were within the new residential regulations approved by Council in June.

See proposed draft ordinance (pages 3-4).

Building and Demolition Permits

Code amendments are also proposed to

- Specify that a building permit does not authorize demolition or removal of any part of a structure; and
- Clarify that a demolition permit is not required to modify all or part of an interior floor, wall, or ceiling (existing practice).

See proposed draft ordinance (pages 7-8).

Deferred Issues

Though public notice for this Code amendment also included consideration of the applicability of the new residential regulations; residential occupancy limits; use and site development regulations for flag lots; and modification of the new residential regulations in neighborhoods areas other than neighborhood plan zoning districts, the Task Force deferred discussion of these items in order to complete work on the currently proposed amendments. Should the Task Force make recommendations on these issues, they will be brought back to the Planning Commission and to the City Council.

PLANNING COMMISSION ACTION: August 22, 2006.

Motion made to recommend the draft ordinance and Clarion rewrite with the following amendments:

- Direct staff to add language to the draft ordinance to amend section 25-2-963 to allow a 2nd floor to be added to a noncomplying structure that does not meet the current minimum required yard setback for the street side yard, so that the 2nd story addition may encroach into the street side yard setback to the same extent as the existing noncompliant 1st floor (this provision applies to corner lots only.)
- Recommend that Council consider any additional language recommended by staff regarding the height definition as it affects affordable housing.
- (J. Reddy, G. Stegeman 2nd: 5-2 (D. Sullivan and M. Dealey no)

OTHER COMMISSION ACTION: Recommended by the Residential Development Regulation Task Force ("McMansion Task Force")

CITY COUNCIL ACTION:

1st reading on August 31, 2006 – Approved the Part One and Part Two ordinances on a vote of 7-0, which included the Planning Commission's recommendation regarding noncomplying structures and the exemption of the Mueller Planned Unit Development from the proposed change to measure height from the lower of natural or finished grade.

2nd / 3rd reading(s): September 28, 2006

CITY STAFF: Tina Bui, NPZD, (512)974.2755, tina.bui@ci.austin.tx.us; Information online at http://www.ci.austin.tx.us/zoning/sf_regs.htm

Rltd. to Code amendment C20-06-011
["McMansion ordinance" reformat and applicability; amendments related to height measurement, compatibility, noncomplying structures, and building and demolition permits]

From: Gary Mefford
Sent: Tuesday, August 15, 2006 2:03 PM
To: Bui, Tina; Guernsey, Greg
Subject: Proposed Code Amendments

Tina/Greg,

I am writing regarding the proposed code amendment that would revise the way building height is measured and am requesting that consideration be given to exempting the properties within the recently adopted University Neighborhood Overlay. Simmons Vedder & Company currently has projects that are being reviewed for building permit that would have been impacted had we not submitted prior to discussion and resolution of this proposed amendment. While the amendment will not have an impact on these two projects it will on the next tower which may result in our losing an entire floor of the building; something that I believe is counter to the intent of the UNO to provide higher density. With the adoption of this new height interpretation you will in fact, be limiting or reducing something that was one of the primary goals of the stakeholders and the UNO ordinance.

Thanks,
Gary

Gary Mefford
Simmons Vedder & Company

Reltd. to Code amendment C20-06-011
["McMansion ordinance" reformat and applicability; amendments related to height measurement, compatibility, noncomplying structures, and building and demolition permits]

From: Mike Mchone
Sent: Friday, August 18, 2006 5:00 PM
To: Zapalac, George; Bui, Tina
Cc: Hersh, Stuart; 'Gary Mefford'; Mike McHone; 'Rick Hardin'
Subject: Proposed change in definition of measurement of height

Hi George and Tina,

The following is a short list of the projects in the UNO Overlay District that would have or will be negatively impacted by the proposed change:

Texan West Campus, 2616 Salado

Texan Shoal Creek, 2502 Leon

The Block on Leon, 2510 Leon

The Block on 28th Street, 701 W. 28th Street

Sterling West Campus, 2704 Rio Grande

The Quarters Projects, at 22nd and Pearl,

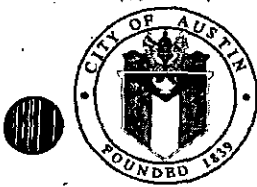
PRM- Stonehill Project at 2501 Longview

First Worthing Project at Pearl and MLK (the old medical/dental center)

These are just the projects in the 50-65 ft height districts, remember all of these are S.M.A.R.T. Housing project with Street ROW improvements required, and design guidelines that must be followed. I have not had the time to evaluate the impact on the projects in the higher height districts; however any reduction in the number of units that can be built as a result of a reduction in overall height will have a negative impact on affordability and the feasibility of constructing the project and could result in project termination.

Thanks,

Mike



City of Austin

MEMO

P.O. Box 1088, Austin, TX 78767-1088

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Neighborhood Housing and Community Development Office

Paul Hilgers, Community Development Officer

(512) 974-3108, Fax: (512) 974-3112, paul.hilgers@ci.austin.tx.us

Date: August 31, 2006

To: Mayor Will Wynn and City Council Members

From: Paul Hilgers, Director

Subject: Affordability Impact Statement - Residential Design Ordinance

AFFORDABILITY IMPACT STATEMENT *Updated*

This Affordability Impact Statement for the Residential Design Ordinance modifications and amendments includes recommendations that could minimize impacts on housing affordability while meeting the intent of the ordinance. These recommendations are discussed in detail in the attached Affordability Impact Statement from June 21, 2006. (*See Exhibit "A."*).

Housing Affordability Impact: Small Lots and Small Units within the Urban Core

NHCD has the following recommendations:

- Exempt new construction less than 2,300 square feet in gross floor area that are less than 32 feet in height.
- Exempt replacement homes of 2,300 square feet and less than 32 feet in height.

Housing Affordability Impact: Height Definition & Measurement

NHCD has concerns about the change in definition of height and the potential negative impact on housing affordability. NHCD will work with WPDR to monitor the implementation and production under the proposed change, and staff will present Council with an update, if it is determined that there is a negative impact to affordable housing production.

Date Draft Received: August 24, 2006

Date Impact Statement Prepared: August 31, 2006

Director's Signature

Paul Hilgers

Neighborhood Housing and Community Development



City of Austin

Exhibit "A"

MEMO

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Neighborhood Housing and Community Development Office

Paul Hilgers, Community Development Officer

(512) 974-3108, Fax: (512) 974-3112, paulhilgers@ci.austin.tx.us

Date: June 21, 2006
To: Mayor Will Wynn and City Council Members
From: Paul Hilgers, Director
Neighborhood Housing and Community Development
Subject: Affordability Impact Statement - Residential Design Ordinance (June 8, 2006 Council Action)

I am providing an Affordability Impact Statement for the Residential Design Ordinance approved by the City Council on first and second reading at the June 8, 2006 meeting. This statement replaces all previous assessments.

I am offering suggestions that could minimize impacts on housing affordability while meeting the intent of the proposed ordinance. These recommendations are discussed below.

1. Areas of Support

NHCD supports the following recent changes to the proposed ordinance:

A. Limiting Ordinance to the Urban Core and Exclusion of RMMA Development

The City Council's decision to limit this ordinance to the Urban Core and to exclude the former Robert Mueller Municipal Airport site allows most proposed S.M.A.R.T. Housing™ single-family applications to be submitted with no additional cost to the applicant.

Within the ordinance boundary, the ordinance would significantly impact the NHCD/AHFC Montopolis subdivision and the E. 12th Street Anderson Hill Townhome development. It may impact efforts to achieve housing affordability goals in Transit Oriented Development Areas, and could impact PDA and PUD developments. However, most S.M.A.R.T. Housing™ subdivisions are located outside of the proposed boundary.

B. Setback Averaging

The June 8, 2006 draft would create new standards for setback averaging that will increase the flexibility in how averaging is determined. This could reduce costs associated with filing a Board of Adjustment case when the front yard setback for a proposed home can be averaged with the four closest homes on the same block.

2. Issues That Potentially Affect Housing Affordability

A. Wall Articulation Requirement: Conflict with Two-Story Homes on Narrow Lots

The primary affordability impact identified by NHCD staff is a decreased ability to build on small lots.

All of the two-story house plans selected for the NHCD/AHFC Montopolis subdivision – some homes as small as 1102 square feet – will not be in compliance with the new ordinance, due to side wall lengths of greater than 32 feet. Redesigning the plans will add

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.

architectural expenses to each home, and any required wall articulations are likely to increase construction costs. The City of Austin has committed to selling all 81 of the homes in this new subdivision to households at or below 80% MFI.

The ordinance section that creates this impact is:

§ 25-2-566 (I): "...the side wall may not extend in an unbroken plane for more than 32 feet along a side lot line. To break the plane, a perpendicular wall articulation of not less than four feet, for a distance along the property line of not less than 10 feet, is required."

The vast majority of lots in the Montopolis subdivision range from 40 - 45 feet in width and 4500 square feet in area. Most of these lots require a two-story design in order to allow a home large enough for a family while meeting impervious cover limits. Narrow lots also require home designs that yield a longer, more narrow home. The subdivision is zoned SF-3-NP and utilizes the Urban Home Lot provision in the Montopolis Neighborhood Plan. (Please see Attachment: AHFC House Plans for Montopolis Subdivision.)

Several non-profit Community Housing Development Organizations (CHDOs) such as Habitat for Humanity will be building homes in the Montopolis subdivision. NHCD has not verified whether or not the proposed wall articulation requirement poses a problem for the CHDOs' home designs.

NHCD's recommendation is to amend the wall articulation requirement § 25-2-566 (I) to apply to allow an unbroken plane of 45 feet.

B. Building Envelope Requirement: Potential Conflict with Two-Story Homes on Narrow Lots

The building envelope requirements of § 25-2-566 (K) may limit the feasibility of two-story construction on narrow lots. On a 40' - 50' lot, there is often no additional space for a side yard setback of greater than 5', thus limiting the building height to 20' at the setback line. Depending on factors such as foundation requirements and ceiling height, 20' may be an insufficient height for a two-story home on a narrow lot.

NHCD's recommendation is to amend the building envelope requirement § 25-2-566 (K) to allow for 23' in height at the side setback line.

C. Customization of Standards

Areas within the ordinance boundary may modify the ordinance standards to establish customized floor-area ratios, maximum square footage, setback requirements, and building envelope requirements. This allows for the possibility of neighborhood-specific standards that are more restrictive than those standards in proposed ordinance. Of particular concern is the possibility that restrictive standards may be applied to Urban Home Lots, Cottage Lots, and small non-conforming lots.

NHCD's recommendation is to amend the customization options in § 25-2-1406 (8) to remove options for additional customization of site development standards for Cottage

Lots, Urban Home Lots, and those substandard lots regulated by § 25-2-943 or § 25-2-1406 (3).

D. Submittal Requirements for Smaller Homes

NHCD recommends implementing building permit submittal requirements that do not increase the cost of preparing and submitting plans. Staff recommends the development of an alternate method of compliance for all housing that is 32 feet in height or less and 2300 square feet of gross floor area or less. This would include an implementation strategy for building permits, inspections and continuing the expedited review for S.M.A.R.T. Housing™ developments.

3. Summary of Recommendations

In summary, the proposed ordinance modifying residential design standards could be implemented with minimal impact on housing affordability if the suggestions listed below were adopted.

- A. Amending the wall articulation requirement § 25-2-566 (I) to allow an unbroken plane of 45 feet;
- B. Amending the building envelope requirement § 25-2-566 (K) to allow for 23' in height at the side setback line;
- C. Amending the sub-area customization options in § 25-2-1406 (8) to remove options for additional customization of site development standards for Cottage Lots, Urban Home Lots, and those substandard lots regulated by § 25-2-943 or § 25-2-1406 (3);
- D. Establishing an alternate method of compliance for all housing that is 32' in height or less and has a gross floor area of less than 2300 square feet.

Please contact Paul Hilgers at 974-3108 if you need additional information.

cc: Laura Huffman, CMO
Chief Michael McDonald, CMO
Victoria Hsu, WPDR
Greg Guernsey, NPZD
Kelly Weiss, AHFC
Gina Copic, NHCD
Tina Bui, NPZD

Att: AHFC House Plans for Montopolis Subdivision

Attachment: AHFC House Plans for Montopolis Subdivision (sample)



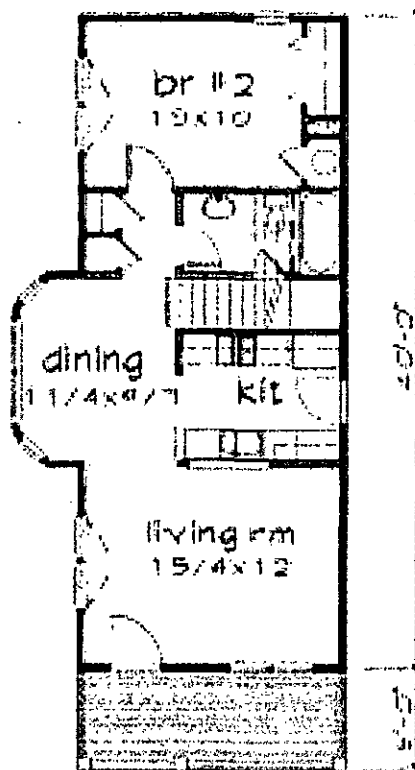
Rick Thompson
Architect



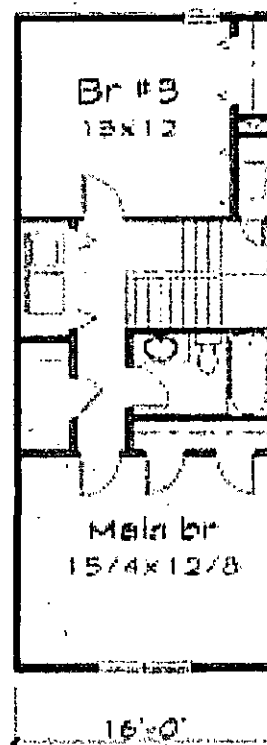
www.thompsonplans.com

P.O. Box 180
Lake Junaluska, NC
28745

828-627-1479



Floor 1 plan



Floor 2 plan

plan #
1202B

Size Fl 1 684
Size Fl 2 595
Size Total 1279

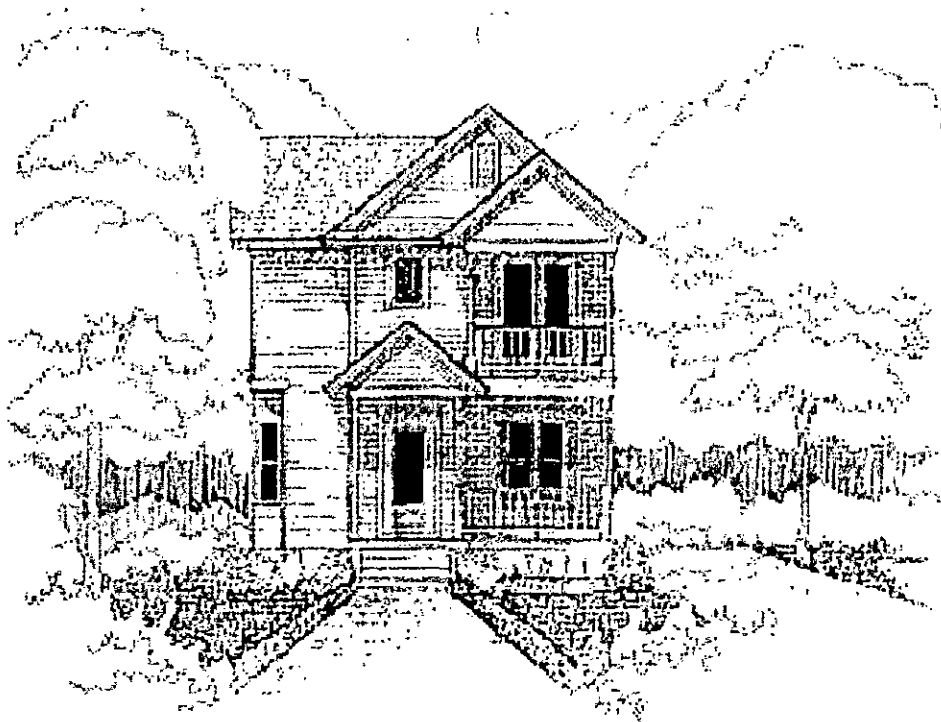
Width 20'-0"
Depth 40'-0"
Porch 6'

Fl 1 ceiling 9'
Fl 2 ceiling Vaulted
Roof pitch 10/12
Height 29'-6"

Prints 5 sets Please see
Prints 5 sets web site for
Volume current
Material list pricing
CAD thank you

Please specify foundation type (consult standard). Available types: - Craw or Slab

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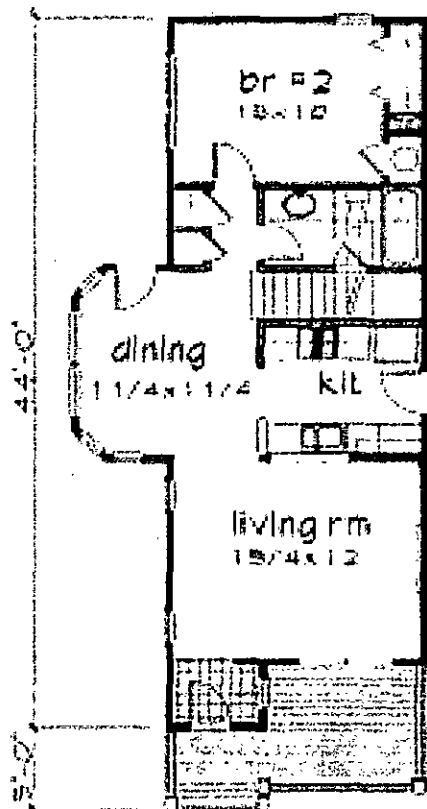
Rick Thompson
Architect



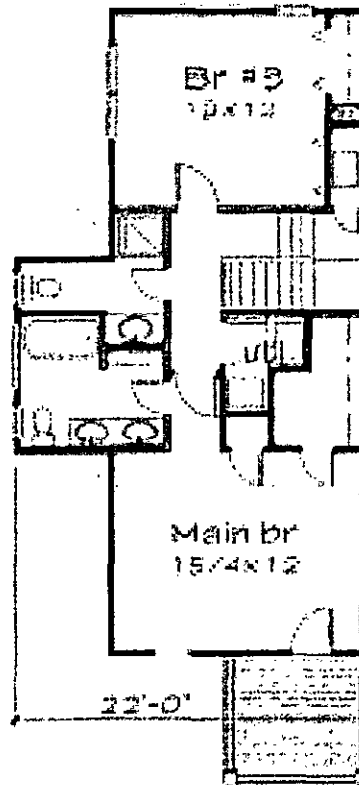
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28745

828-621-1479



Floor 1 plan



Floor 2 plan

plan #

1307A

Size R 1 708
Size R 2 664
Size Total 1372

Width 22'-0"
Depth 44'-0"
Porch 6'

F1 ceiling 9'
F2 ceiling 8'
Roof pitch 9/12
Height 25'

Prints 5 sets Please see
Prints 5 sets web site for
Volumes current
Material list pricing
CAD thank you

Please specify foundation type (crawl standard) Available types - Crawl or Slab

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