

Zilker Neighborhood Association

2009 Arpdale ♦ Austin, TX 78704 ♦ 512-447-7681

July 9, 2017

Re: Case C15-2017-0031
2005 Bluebonnet, Austin TX 78704
Agenda item M-2, July 10, 2017

Chair William Burkhardt and Board of Adjustment Members:

This variance isn't about a garage door, it's about building bigger houses than are allowed by Austin's Land Development Code. The code allows you to build a bigger house if you incorporate a carport to reduce the mass of the structure. Enclosing a carport is taking the square footage from the carport bonus and then not building a carport. It's as simple as that. Fear of theft is not a qualifying hardship, per the Board of Adjustment rules. There are many thousands of homes with carports in Austin whose occupants secure their belongings.

The Executive Committee of the Zilker Neighborhood Association is not opposed to the installation of an overhead door on the carport at 2005 Bluebonnet (or any of the thousands of other carports in Austin), as long as one or both of the side walls are removed in compliance with the governing ordinance. The current application, however, does not present a qualifying hardship or any of the findings required for a variance. The required findings ensure the integrity of the code and reinforce community cohesion and the rule of law. Therefore, the ZNA Executive Committee does not support variances that do not present the findings required by the Board of Adjustment.

The underlying premise of the variance request is that the owners want to store unsecured belongings in the carport rather than in the house, which is about 400 sf larger than it would be without the FAR exemption for the "carport," or a fenced yard. That is a self-imposed hardship and a privilege not available to dozens of other owners of nearby properties that have been built to conform with the McMansion ordinance. The Board, the Residential Design and Compatibility Commission (RDCC), and the City Council have all decided this issue many times in the past.

The privacy fence surrounding the yard already provides reasonable security. A short walk down Hether and nearby blocks will reveal that this is a common feature of McMansion carports; many are inside fenced yards, but the covered parking has no walls. (See Exhibit A.) The builder and owners have always had the option of removing 80% of one or both of the side walls, so it's really not a question of justifying a variance. They simply need to decide which of their three walls they prefer to remove.

The factor offered as a hardship unique to the property is that the slope impairs visibility from the street. Exhibit B is a photo of the "carport" under construction, at the time of the previous variance request in 2013. As you can see, the structure is visible from the street, unobstructed by the slope of the lot. The only obstruction is the wall of the carport itself. The photos presented with the application confirm that the slope and width of the lot have nothing to do with the visibility issue, because the carport is surrounded by a privacy fence. Following the Board's

denial of the 2013 variance, the builder should have removed the west wall of the carport, which would have allowed the installation of an overhead door without any variance at all. If the owners are concerned about visibility over the fence, they may install any of a wide range of solutions, such as decorative screens or vegetation along the top of the fence or on the carport itself. There are numerous examples of attractive screens within a couple of blocks, including right next door. This is a design issue, not a variance issue.

A rational interpretation of the code would define “detached carport” as covered parking with no walls. In that situation, the ZNA zoning committee would not oppose a variance to allow an overhead door on the carport at 2005 Bluebonnet, because the result would be a completely open structure with a door on only one side, similar to numerous nearby examples of carports secured within fenced yards. Regrettably, a rational interpretation was not applied in this case, despite the Board’s 2013 decision. Since then, the definition of “carport” in the context of the McMansion FAR exemptions has been thoroughly examined at the RDCC, in Board of Adjustment hearings, and by the City Council, always with the same result. Exhibit C is a “Buyer Beware” article in the July 2014 ZNA newsletter, which was inspired by the Board’s denial of the previous variance at 2005 Bluebonnet.

Under the circumstances, we cannot support this variance. Please do not reopen this can of worms.

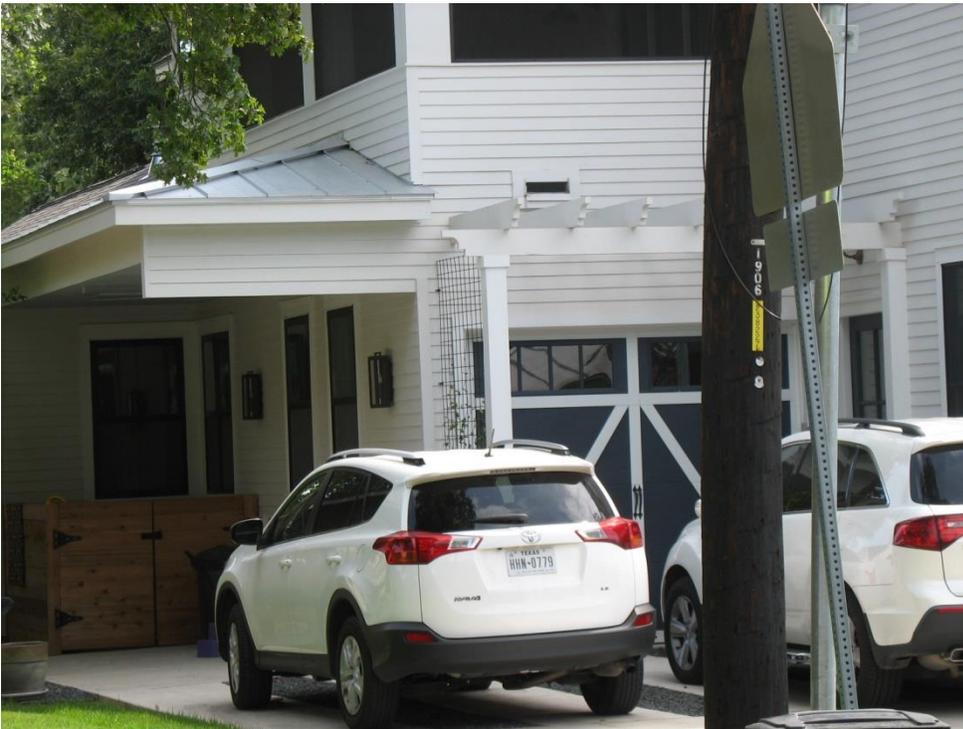
ZNA appreciates your service to our community.

Bruce Wiland
Chair, ZNA Zoning Committee

Exhibits A, B, and C follow.

Exhibit A, three open carports within fenced yards, near 2005 Bluebonnet . . .





... and fenced storage within a code-compliant carport.

Exhibit B, 2005 Bluebonnet construction in 2013, after being stopped by building inspector



Exhibit C, July 2014, *ZNews*. See paragraph beginning “On July 2”

McMansion Buyers Beware: What You See Is What You Will Have to Live With

IF YOU KNOW any families planning on buying a large house in the neighborhood, please alert them to these "Buyer Beware" tips.

Under Austin's city code, houses are limited to a floor-to-area ratio (FAR) of 40% and impervious cover of 45%. (See page 6 for more information on the importance of impervious cover.) If you are considering buying a house that you would like to add on to or change, you need to be sure that the house is not already built out to those limits.

Developers have been taking advantage of loopholes in the city's McMansion ordinance to build residences that would otherwise exceed the maximum square footage and impervious cover allowed under city code. When these maxed-out houses are sold, the buyers expect to be able to add a garage or pavement similar to features common to smaller houses in the neighborhood. When they try to do so, they find that city inspectors will not allow it.

Some homeowners have sought exemptions or variances through the city's Residential Design and Compatibility Commission (RDCC) or the Board of Adjustment. So far, none has been successful. The message seems to be: If the owner was somehow misled by the developer into believing a garage could be added, then the owner's redress is with the builder, not the city. In other words, buyer beware.

The most common sign of trouble ahead is

a garage that looks unfinished, as though the builder left off the garage door and windows so that the new owners could choose the door style for themselves.

This often means that the developer chose to have the parking structure permitted as a carport so that its square footage would not count toward the FAR for the whole house. This is called a carport exemption. Builders are using the carport exemption to build as large a house as possible under the McMansion ordinance. The homeowner needs to understand that such a carport cannot be enclosed in the future, and that includes installing a garage door.

On July 2, the ZNA zoning committee asked the RDCC, which oversees the McMansion ordinance, to consider revising the ordinance to remove the distinction between carports and garages with regard to FAR. For the last year, ZNA has had to deal with a series of attempts to circumvent the ordinance. The first case was at 2005 Bluebonnet; the Board of Adjustment denied the variance requested there in May 2013. But the cases seem to be multiplying, and they are wasting the time of development review staff, code compliance inspectors, our zoning committee volunteers, the nearby neighbors, and especially the time and money of the new homeowners. The RDCC agreed that the definition of carport is a problem, and it has added the carport exemption to its list of abuses of the McMansion ordinance.

Another common issue that new homeowners need to be aware of is impervious cover. Builders are building right up to the impervious cover limit and not putting walkways up to the front, side, or back porches. The actual unused amount of impervious cover remaining is critical. Homeowners should determine whether there is enough unpaved area to allow the addition of walkways, patios, swimming pools (the concrete around a swimming pool above the water is impervious cover), and decks in the future.

If the builder used any of the other exemptions in calculating McMansion FAR, the homeowner needs to understand exactly what that exemption requires.

While researching these doorless garage cases, the ZNA zoning committee has uncovered another disturbing trend. The builders of almost all of these new houses are being allowed to pay a fee-in-lieu instead of building the required sidewalks. With the number of remodels and new construction in Zilker, we would have sidewalks all through the neighborhood in a few years if the required sidewalks were

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