



# City of San Antonio

## Agenda Memorandum

**File Number:** 18-2680

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**Agenda Item Number:** 5.

**Agenda Date:** 4/2/2018

**In Control:** Board of Adjustment

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**Case Number:** A-18-059  
**Applicant:** Mary Johnson  
**Owner:** Mary Johnson  
**Council District:** 1  
**Location:** 311 West Norwood Court  
**Legal:** Lot 23, Block 1, NCB 6555  
**Description:**  
**Zoning:** "MF-33 AHOD" Multi-Family Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Principal Planner

### Request

A request for an appeal of the Director's decision on UDC Section 35-515(a): Buildings on a Lot and UDC Section 35-517: Building Height Regulations.

### Applicable Code References

- (a) UDC 35-515(a). Buildings on a Lot. Except as permitted in the planned unit development district, every building shall be located on a lot. In the "RP" and residential zoning districts, no more than one (1) principal building may be erected on a lot unless otherwise permitted in this chapter.
- (b) UDC 35-517. Building Height Regulations.
  - (a) **Generally.** Building height shall conform to the requirements of section 35-310, Dimensional Matrix.
  - (b) **Measurement.** Building height shall be measured as provided in the International Building Code.
  - (c) **Height Exceptions.** The height limits for the various districts do not apply to church spires, belfries, cupolas, or domes not used for human habitation, nor to chimneys, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning and do not exceed the limitations of the airport hazard zoning regulations.
  - (d) **Setbacks for Height Increases.**
    - (1) With the exception of residential uses located in single-family residential zoning districts,

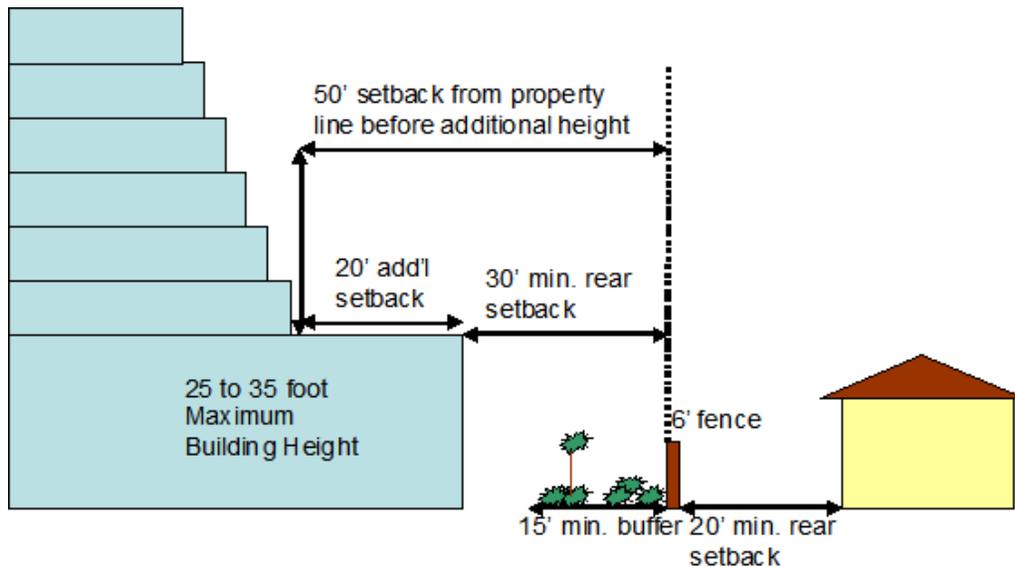
any portion of a structure in any zoning district may be erected to exceed the height limit established in section 35-310.01, Table 310-1, provided that such portion is located back from the side and rear setback lines one (1) foot for each two-foot of height in excess of the height limit prescribed in such section unless otherwise prescribed in subsections (2) and (3), below or through a specific use authorization and further provided the height does not exceed the limitations of the airport hazard zoning regulations. Distance credits shall be allowed for space occupied by structures of conforming height extending from the setback lines, except as specified in Table 310-1(k). The requirements of subsection (2) and (3) shall only apply to permits for new construction submitted after December 31, 2010.

(2) The maximum height of any portion of a commercial, office or multi-family zoning district located within fifty (50) linear feet of the property line of an established single-family residential use shall be limited to the maximum height of the single-family district. The height limit shall not apply where a property is zoned single-family residential but not used for residential purposes, such as a church, school, park or golf course. The measurement of fifty (50) feet shall occur from the property line of the residential use to the structure in the zoning district subject to this subsection.

*For example, where a C-2 zoned property abuts single-family property with R-5 zoning, the C-2 property shall be limited in height to thirty-five (35) feet or two and one-half (2½) stories for that portion of the property within fifty (50) feet of the property line with the R-5 district.*

(3) For portions of a zoning district subject to the height limit of subsection (2) the maximum height limit may be exceeded through the specific use authorization ("S") process.

*Illustration based on rear setback example:*



(Ord. No. 2010-11-18-0985, § 2, 11-18-10)

## **Background**

Development Services Department received plans for the development of four detached dwelling units in March of 2017. On January 4, 2018 a building permit was issued for construction. On January 17, 2018 the permit was revoked by the Director of Development Services for violations to City Code related to minimum parking standards, as established by Section 35-526, Table 526-3A, as well as for violations to City Code related to driveway width, as established by Section 35-526, Table 526-1. After revisions to the plans were

submitted, the permit was reinstated on February 9, 2018.

### **Zoning History**

The subject property was annexed into the City of San Antonio on May 31, 1940, the fifth annexation program in the City's history, and was known as the "Olmos Terrace" annexation area. Upon annexation into City Limits, the property was originally zoned "A" Residence District. The was the City's single-family zoning district in the 1938 Unified Development Code, which was established by Ordinance O.I. 191, dated November 3, 1938.

The "A" Residence zoning remained until July 13, 1950 when, through adoption of Ordinance 12271, the subject property, as well as the abutting lot to the west, were rezoned from "A" district to "D" Apartment District. Upon adoption of the 2001 Unified Development Code, formalized by ordinance 93881, dated May 3, 2001, the subject property converted to the current "MF-33" Multi-Family District.

### **Appeal History**

On February 28, 2018 Mary Johnson, the President of the Monte Vista Terrace Neighborhood Association, filed an appeal of two sections: Section 35-515(a) and Section 35-517.

Related to Section 35-515(a), the applicant ascertains that the correct decision would have been to limit the lot to only one structure. Related to Section 35-517, the applicant states that the correct decision would have been to limit any structure height to a 35 foot, two and a half story building.

### **Staff Analysis on Section 35-515(a) Buildings on a Lot:**

The applicant interprets the intent of this section of code to limit any lot from having more than one primary structure built upon it. The section states:

*"Except as permitted in the planned unit development district, every building shall be located on a lot. In the "RP" and residential zoning districts, no more than one (1) principal building may be erected on a lot unless otherwise permitted in this chapter."*

Clearly, the code recognizes there are situations in which more than one (1) principal structure may be erected on a single lot. There are numerous references throughout the Unified Development Code related to "unless otherwise permitted in this chapter". Section 35-A101: Definitions has the following references:

**Principal building or principal structure.** "A building or structure or, where the context so indicates, a group of buildings or structures, in which the principal use of a lot or parcel is conducted. This shall include any buildings which are attached to the principal structure by a covered structure".

**Dwelling, multi-family.** "A dwelling or group of dwellings on one (1) lot containing separate living units for five (5) or more families, but which may have joint services or facilities".

**Comprehensive Land Use Category: Medium density residential** - accommodates a range of housing types including single-family attached and detached houses on individual lots, duplexes, triplexes, fourplexes, and low-rise, garden-style apartments with more than four (4) dwelling units per building. Cottage homes and very small lot single-family houses are also appropriate within this land use category. Detached and attached accessory dwelling units such as granny flats and garage apartments are allowed when located on the same lot as the principal residence. Certain nonresidential uses, such as schools, places of worship and parks, are appropriate within these areas and should be centrally located to provide easy accessibility. Permitted zoning districts: R-3, R-4, RM-4, RM-5, RM-6, MF-18 and UD, as well as IDZ with uses and density permitted in R-3, R-4, RM-4, RM-5, RM-6, MF-18 and UD.

**Comprehensive Land Use Category: High density residential** - includes low-rise to mid-rise

apartments with more than four (4) dwelling units per building. High density residential provides for compact development including apartments, condominiums and assisted living facilities. This form of development is typically located along or near major arterials or collectors. Certain nonresidential uses, such as schools, places of worship and parks, are appropriate within these areas and should be centrally located to provide easy accessibility. This classification may be used as a transitional buffer between lower density residential uses and nonresidential uses. High density residential uses should be located in a manner that does not route traffic through other, lower-density residential uses. Permitted zoning districts: MF-25, MF-33 and UD, as well as IDZ with density permitted in MF-25, MF-33, and UD.

Further, within Section 35-310, Table 310-1: *Lot and Building Dimensions Table*, there is a reference in the multi-family districts to Note (8):

*“When multi-family units (apartments) are developed in a non-multifamily zoning district as stand alone apartments **the buildings** and lot shall conform to the standards of development (setback, yards, buffer, landscaping, etc.) for one of the following "MF-18," "MF-25," "MF-33," "MF-40" or "MF-50" zoning districts. The specific district shall be determined by the density to which the apartments are being developed”.*

This would reasonably imply that, in the situation that multi-family units, or apartments, are developed on a multi-family zoned district as stand alone units, that each of **the buildings** shall conform to the standards of the district in which it is zoned.

These references in the Unified Development Code would allow apartments in multi-family zoning districts to have multiple principal buildings to accommodate for the density of units permitted in the multi-family zoning category.

**Staff Analysis on Section 35-517: Building Height Regulations:**

Section 35-310.01: Lot and Building Dimensions Table provides required development standards by district including minimum lot size, setbacks, lot width requirements, and building height, among others. For a lot zoned “MF-33” Multi-Family District, this Section of the Unified Development Code provides a maximum of 45 feet in building height.

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
LOT DIMENSIONS							BUILDING ON LOT				BUILDING		
Zoning District	Lot Size (min)	Lot Size (max)	Density (max) (units/acre)	Street Frontage (min)	Width (min)	Width (max)	Front Setback (min) * ** *	Front Setback (max)	Side Setback (min)	Rear Setback (min)	Height (max) (feet/#of stories)	Size - Individual Building Size (max)	Size - Aggregate Building Size (max)
"MF-33" 1.4.8	—		33	50	50	—	—	20 <sup>3,4,6</sup>	5	10	45	—	—
C-2	—		—	20	—	—	—	—	10 <sup>2</sup>	30 <sup>2</sup>	25	—	—

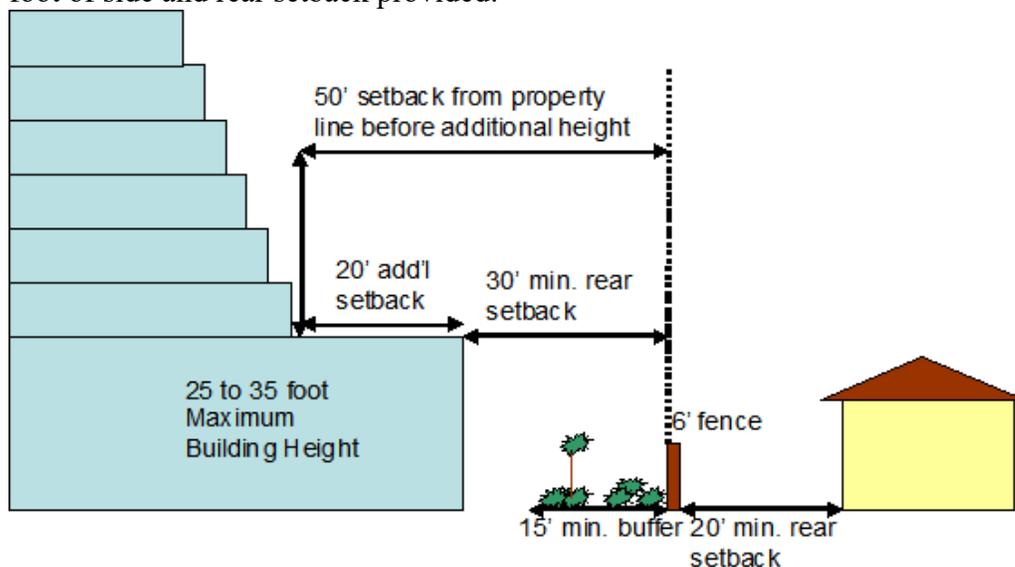
Within some columns in the table, exceptions and added restrictions to the development standards are noted as indented numbers, as in the case of the “Front Setback (max)”, which draws attention to notes three (3), four (4), and six (6). Within the “C-2” Commercial District, the side and rear setbacks carry the note “2”. Note 2 states that setbacks shall only apply when they abut residential uses. Within column L “Height (max) (feet/number of stories)” there are no listed notes to reference exceptions. The definition of Column L states:

*The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of ceiling of the top story in the case of a flat roof; to the decline of a*

*mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof. All dimensions are in feet provided, however, that for zoning districts "RP" through "RM-4," the first number refers to feet and the second number refers to stories. A "story" is that part of a building between the surface of a floor and the ceiling immediately above. Additional height may be provided pursuant to subsection 35-517(d).*

It is in this section of Column L where 35-517 (d) is referenced, but only when the project is requesting additional height than permitted by right.

Section 35-517 was amended in the 2010 Code Amendment cycle to add language that addresses height limitations when requesting additional height. That is, specifically, when seeking height in excess of that already provided in Section 35-310.01, above. This section is sometimes referred to as the “Wedding Cake” approach to allow for additional height, and permits two (2) extra feet of building height for every one (1) extra foot of side and rear setback provided:



The adoption of the 2010 Unified Development Code amendments included limitations when requesting height in excess of that permitted by Section 35-310.01. This section prevents an owner of a lot zoned “MF-33” adjacent to a lot zoned single-family from being able to erect a 55 foot tall structure ten feet from the side property line. The amendment required a gradual increase in height should an applicant seek to develop higher than that allowed by Section 35-310.01. This gradual increase would cap building height for the first fifty (50) feet, then allow the “Wedding Cake” approach.

Example:

A developer wants to build a forty-five (45) foot tall building on a lot zoned “C-2” Commercial District. The “C-2” base zoning district limits height to a maximum of twenty-five (25) feet and requires a ten (10) foot side setback when it abuts residentially-zoned property.

As such, the development is permitted to build twenty-five (25) feet tall at the ten (10) foot setback line. The developer could build two (2) feet taller for every one (1) foot of extra setback. So at an eleven (11) foot setback, the height could increase to twenty-seven (27) feet.

To reach the desired forty-five (45) foot building height, under 35-517(d), the applicant can build to a maximum of 35 feet within the first fifty (50) feet measured from the shared property line. Beyond the fifty (50) foot setback line the height can be increased above thirty-five (35) feet, following the “Wedding Cake” approach: an additional five (5) foot setback would permit an extra ten (10) feet in building height to reach the desired forty-five (45) feet. This section only applies if the development is

seeking height in excess of that permitted by Section 35-310.01.

### **CCR (D1): Review of Multi-Family and Residential Mixed Districts and Building Height**

On August 22, 2017 potential code amendments for multi-family zoning districts, as well as residential-mixed zoning districts were filed by City Council District 1. On November 1, 2017 the Governance Committee considered and recommended the item move forward for staff review. This request is in the que and will be taken up by staff after completion of the “IDZ” Infill Development Zone CCR review and updates. This Council Consideration Request recognizes that the code does not address building massing (related to scale and height) for properties zoned as multi-family when they are adjacent to lots zoned as single-family. The CCR calls attention to the need for revisions to allow for compatible and appropriate design.

### **Board of Adjustment**

The Board of Adjustment is asked to determine the intent of Section 35-515(a): *Buildings on a Lot* and Section 35-517: *Building Height Regulations*.

In addition, in this case, the *Board of Adjustment* has the authority to review and consider the appeal before it, investigate facts, weigh evidence, and draw conclusions. The *Board* may reverse or affirm, in whole or in part, the administrative decisions brought forward by the appellant and discussed in this report.

Therefore, the *Board* is charged with reviewing the subject decisions described below pursuant to *Section 35-481* of the *UDC*:

Staff correctly interpreted the intent of Section 35-515(a) and Section 35-517. Further, the context of the project, as well as the code, establish that more than one principal structure may be erected on a multi-family lot. Lastly, that the requirements of Section 35-517 shall only apply when a project needs to exceed the maximum building height as established by Section 35-310.01.

Staff has consistently applied the codes as interpreted for decades. Should the Board reverse the decision regarding 35-515(a) and 35-517, the impact of that decision would immediately render similar multi-family developments into non-conforming status.

### **Conclusion:**

Staff concludes that the decision to issue the permit was correct, based on the following findings of fact:

- 1) Section 35-515(a) expressly recognizes that the regulations requiring only one principal building on a lot shall not apply when otherwise permitted by subsequent sections of Chapter 35, such as in the case of a multi-family development.
- 2) Section 35-517(d) applies only to projects seeking height beyond what Section 35-310.01 permits by right. Because the applicant is not exceeding the height permitted by the “Lot and Building Dimensions” table, there is no need to reference 35-517(d).