



City of San Antonio

Agenda Memorandum

File Number:
{{item.tracking_number}}

Agenda Item Number: {{item.number}}

Agenda Date: December 11, 2024

In Control: Planning Commission Meeting

DEPARTMENT: Development Services Department

DEPARTMENT HEAD: Amin Tohmaz, Interim Director

COUNCIL DISTRICTS IMPACTED: District 4

SUBJECT:

An appeal of the Director's decision to exempt a zoning regulation from an approval of vested rights.

SUMMARY:

The Development Services Department has evaluated an application submitted by Ortiz McKnight, PLLC seeking vested rights for 0.46 acres of land located at 3054 & 3050 McArthur Avenue. Specifically, the applicant sought vested rights for residential uses to May 6, 2022, which was ascertained to be the submittal date of McArthur One Subdivision Plat 22-11800266.

BACKGROUND INFORMATION:

The Rights Determination process allows an applicant to complete a project under the rules that were in place when the project was originally initiated. Rights are established for a project based on the first permit in a series of permits that are required for the project and require the applicant to

demonstrate progress on the project every five years. The applicant is requesting this vesting date to be exempt from UDC 35-310.06, which took effect January 1, 2023, and indicates that multiunit construction on lots one-third of an acre in size or smaller must be located within a single structure. This amendment to the UDC was recommended for approval by the Planning Commission Technical Advisory Committee, Planning Commission, Zoning Commission, the Zoning Board of Adjustment, and, ultimately, City Council. The applicant's project consists of eight detached single family residential dwelling units on lots with each lot being 0.23 acres.

Section 245.004 of the Texas Local Government Code establishes exemptions to vested rights. Specifically, Section 245.004 (2) states that vesting shall not apply to "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 applicant for this appeal ascertains that they should qualify for vesting because the amended chapter of the Unified Development Code requiring units to be in one structure constitutes a lot coverage regulation. Development Services Department disagrees with this analysis. The entire lot may still be covered, so long as setbacks are met. The ability to cover the entire lot, minus setbacks, is not at all affected by the adopted UDC amendment. In short, the applicant retains the ability to cover as much of the lot with improved structures as before the code was amended.

The applicant filed an appeal on the Director's decision to exempt a zoning regulation from an approval of vested rights on November 15, 2024, based on the City's approval of statutory rights associated with LAND-RD-24-12500024, McArthur. The Unified Development Code (UDC) 35712(d) authorizes the Planning Commission to hear such appeals. In this appeal, the applicant questions the City's determination not to recognize vesting from this zoning provision.

The applicant could submit an application to the Board of Adjustment for relief from this provision. The Board of Adjustment is authorized to hear requests for variances from zoning regulations.

ISSUE:

The review and final consideration of an application is done administratively in accordance with Unified Development Code section 35-712 and Chapter 245 of the Texas Local Government Code. Appeals are considered by Planning Commission and may be appealed to City Council.

ALTERNATIVES:

Planning Commission is asked to determine whether staff made the correct decision in exempting the zoning regulation from the approval of vested rights. The Planning Commission may choose to uphold staff's decision or reverse staff's decision, in whole or in part.

RECOMMENDATION:

Staff recommends Denial of the appeal based on the following:

- Chapter 245 does not allow vesting from the zoning provision that is the subject of this application, specifically being Sec 35-310.06(a)(1)b: Multi unit construction on lots one third (1/3) of an acre in size or smaller shall be within a single structure.