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Typical three-story townhouse development in the Museum District demonstrating stairway projection into the citywide ten-foot setback zone.

Tools of the Development Trade

Interpreting Building Codes and Planning Ordinances

By William F. Stern

The building boom of the late nineties has dramatically altered the character in many of Houston's near-downtown neighborhoods. Hundreds of cottages, bungalows, and modest two-story houses built earlier in the century have been demolished in the last few years to make way for an onslaught of townhouse and apartment developments. Montrose and its adjoining neighborhoods are quickly becoming a hodgepodge of three-story townhouses mixed in with single-family houses on what is becoming increasingly valuable land. Lacking deed restrictions, these communities will continue to change as long as the market demands. And while the repetitive archi-

ture of the new housing might be disturbing for its sameness in neighborhoods that were previously characterized by a richness of variety, the density of the developments has an even greater detrimental effect, because precious open space is all too often sacrificed.

Rarely do the developers of the new infill housing projects incorporate much public or private open space, opting instead for housing blocks that virtually fill a lot, with separations of five feet or less between adjacent property lines. Today's builders are primarily interested in maximizing their financial return, and they have found a winning formula for doing so. But it is not solely their busi-

ness sense that has produced success. New and, some might well argue, questionable interpretations of city ordinances and codes have unleashed developers on land that previously would have been economically unfeasible for dense townhouse construction.

Although the city lacks zoning, development and building in Houston are regulated through other means. Over the years City Council has passed a number of ordinances that regulate everything from parking to the location of sexually oriented businesses. Without the framework of a comprehensive zoning law, Council must rely on this patchwork of ordinances, each passed as a need arises. The



The city's interpretation of the Uniform Building Code allows townhouse developers to build three full stories without a second means of egress from the third floor, a boon to those who want to maximize square footage on narrow inner-city lots.

enforcement and interpretation of the ordinances is left to the city's Department of Planning and Development and the Planning Commission. Additionally, the city regulates building through building codes administered by the Department of Public Works and Engineering. As any homeowner who has built or remodeled a house knows, a building permit, based on architectural and structural drawings, must be obtained before construction begins, and through periodic inspections the construction is monitored by the Department of Public Works.

The interpretation of two simple rules — one from a planning ordinance and the other from the building code — has had a startling effect on how Houston's developers build and plan, yielding densities that heretofore were inconceivable. Adopted in 1982, the so-called development ordinance (Chapter 42 of the Code of Ordinances) required citywide building setbacks for the first time in Houston's planning history. Building setbacks have been utilized as an instrument of planning in the city since the turn of the century, but only in deed restricted neighborhoods, where a front setback from the property line of 25 feet was not uncommon, along with shallower side and rear setbacks. For purposes of both opening the public right-of-way and allowing for future street widening, the 1982 development ordinance established building setbacks of ten feet for properties facing local and interior streets and 25 feet on major thoroughfares for "all structures and improvements."¹

In separate conversations, two planners in the Department of Planning and Development confirmed that the city will

allow landscaping, driveways, walkways, and a wooden fence under eight feet in the setback zone but will permit no other structures. That, at least, is the rule. But observation of many new townhouse developments reveals what appears to be a clear violation of the ordinance. On any number of new townhouse projects the primary stair, which leads to a second floor main entrance, projects well into the setback zone. With only a two-car garage entrance at the ground floor, this allows the developer to optimize building frontage and justify the construction of townhouse units on property that would otherwise be too narrow to economically accommodate both pedestrian and vehicular entrances at grade for multiple units. By projecting the primary entrance — and thereby the primary means of egress — into the setback zone, the developer gains the extra space needed to build multiple units economically on property formerly occupied by a single dwelling unit.

When asked about this seemingly obvious violation, one of the city planners explained that it would not be possible for a plat to be approved with a stair in the setback zone, and suggested that this information might not appear on drawings until they are submitted to the Department of Public Works, which is only responsible for issuing a building permit and does not review plans for ordinance compliance. Alternatively, for properties not required to have a plat reviewed by the Department of Planning, a developer could easily bypass the scrutiny of that department by submitting solely to the Department of Public Works for review of code compliance. This explanation raises serious questions about the

process of plan review and ordinance enforcement.

Equally astounding is an interpretation of egress and square footage as found in the 1994 Uniform Building Code, the code used by the City of Houston. In Houston, the typical two-story residence is required to have only one means of egress, which means a ground floor exit and one set of stairs from the second story to the ground floor. However, in a three-story dwelling two exits (or two continuous stairways to the ground floor) are required when the area of the third floor exceeds 500 square feet.² The additional stairway can be on the exterior of the dwelling.

This rule applies to both freestanding residences and townhouse developments. But in apparent disregard for the language of the code, hundreds of three-story townhouse units have been built in recent years with only one stairway where the space on the third floor clearly exceeds 500 square feet. How is this possible? Simple — building officials have interpreted the 500 square feet to encompass space that is "habitable," even though the term "habitable" is not included in the language of the code that addresses egress from a third floor.

By code definition, habitable space in a structure is defined as space for "living, sleeping, eating, or cooking" but "bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space."³ According to one former building official, when this particular egress provision was incorporated into earlier versions of the code, the 500 square feet of allowable space was calculated as actual square

footage no matter what the usage: i.e., bathrooms and hallways were included. One might ask why the code limits space on a third floor if a second stairway is not included. Like many items in the Uniform Building Code, this provision deals with safety in the event of a fire, ensuring safe egress to the ground floor with two ways out when occupied space on a third floor exceeds 500 square feet.⁴

This is not the case in Houston, however, where the code has been interpreted to the obvious advantage of the townhouse developer. By allowing more than 500 square feet of space on a third floor through the definition of "habitable" space, the developer can essentially build out the entire third story with not just one bedroom but two. Once again valuable land becomes more desirable for development, because in the numbers game a larger townhouse can be built, selling for enough money to justify the high cost of land. Without the Department of Public Works' generous interpretation of egress requirements from a townhouse with a full third story, many inner-city lots probably could not be economically developed.

Planning regulations are passed to protect the common good, which is the purpose of Houston's ordinances and codes. If these are left to interpretation or procedural violations, then the common good can be easily ignored, and in the two examples cited exactly that appears to have occurred. Individuals frustrated with the overbuilding of their neighborhoods need look no further than instruments of planning and building law as a way to enforce more conscientious building. While such laws might only marginally affect density and have no effect on architectural quality, they have been implemented to provide a minimal means of development control and guidance. These rules were established for the safety and welfare of the public at large, and when they are loosely interpreted or not enforced, they produce a gain for the developer that comes at the expense of the people and their city. ■

1. Code of Ordinances, Chapter 42, p. 2865.
2. 1994 Uniform Building Code with City of Houston Amendments, Chapter 10, section 1003.1, p. 175.
3. Ibid, Chapter 2, section 209, p. 16.
4. In a two-story residence, only one stairway is required because one could presumably exit or jump to grade through a window from the second story in the event that a fire has blocked the stairway.

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