



**RULE INTERPRETATION DETERMINATION**

**Determination #:** 2017-006

**Title:** *Building Setback Lines*

**Drafted by:** *Land Development Division, Zoning Section*

**Rule in Question:** 35-516(o) Previous Plats

**Department Action:** The Director concurs with staff's position regarding the clarification of Building Setback Lines (BSL) and process for removal. This RID is for clarification purposes and the department concurs with staff's position as presented below.

Michael Shannon, PE, CBO  
Development Services Director

Date

**Effective Date of Determination:** *(Immediately or identify specific date)*

*Please note RIDs often result in direct or related UDC amendments to codify the clarification addressed within the RID. RIDs can also be superseded by subsequent RIDs or UDC amendments. The Development Services Department will remove RIDs from the website when they are no longer valid.*

**Staff Analysis:**

The intent of this RID is to provide clarification for customers and staff on the interpretation of Chapter 35 of the City Code of San Antonio, the Unified Development Code (UDC), as it relates to the enforcement of Building Setback Lines (setbacks) placed on subdivision plats recorded prior to December 2, 2002. This RID seeks to address and clarify the existing Department interpretations and business processes associated with platted building setback lines. This RID will not impose any new or additional requirements, but rather provides clarification on existing requirements to ensure uniformity.

In the 1987 Code, Article 4, Subdivisions, the plat process required that plats include the current setback for the zoning district at that time. In 2004, the code was revised to delete the requirement to show the setback on the plat and added the requirement for a note on the plat should the subdivider elect to impose greater setbacks or place building setback lines on the plat that states:

*“The setbacks imposed on this plat are the discretion of the developer or Bexar County and are not subject to enforcement by the City of San Antonio.”*

Since 2004, Development Services, Land Entitlements Section has worked on legislative and code amendments to resolve conflicts with code and the development process that would enable property owners to enhance their existing property by removing a restriction from a plat, such as an access easement or an abandoned utility easement or a building setback line (BSL). The intent of these amendments was to provide more flexibility with regulations and provide an expedited process should an owner want to or need to remove a restriction from a plat.

Prior to 2013, Local Government Code required that property owners wishing to remove a restriction from the plat secure written permission from all current property owners that were platted in the same development (Vacate and Replat). For example, if a property owner wishes to install a swimming pool in their backyard over a utility easement that is no longer being used, they would need all their neighbors signatures involved in the original plat in order to remove the easement and build the pool. From a practical standpoint, this is generally impossible, given absentee property owners and individuals that are hesitant to sign a legal document. The vacate and replat process for removal of a restriction was treated the same as any other large residential subdivision or commercial project requiring review by outside agencies, fees for public hearing procedures as well as additional time and expense for a simple procedure.

Beginning with a 2004 UDC amendment, language was added in Article 4, Procedures that created an expedited process for BSL plats where the sole purpose was to amend a building setback line. This process, which is detailed in Information Bulletin 533, removed the requirement for outside agency review so that an applicant reduced the time typically involved with the plat process. Subsequently, in 2006, a UDC amendment added additional language that clarified that these BSL plats, which waived public notification fees to assist with an expedited and streamline process, still required a Planning Commission public hearing to ensure that adjacent property owners are notified and given an opportunity to participate in the public hearing process.

In 2006, Development Services worked with legal counsel to develop language that would amend the Local Government Code and remove the requirement of securing written permission from all current property owners for a BSL replat. However, the final language signed by the Governor during that legislative session did not provide a workable solution.

In 2012, Development Services worked on proposed legislation (HB 1553) that was approved and signed by the Governor that successfully amended the Local Government Code and eliminated the requirement that every property owner’s signature be obtained in order for the applicant to replat their property for the simple purpose of removing a restriction on a plat,

thereby eliminating the need to vacate the preceding plat. The Land Entitlements Section followed up with an Informational Bulletin (IB 548) that laid out the process to replat without vacating, if the owner met certain circumstances. Subsequently the 2015 UDC Amendment process updated Article 4, 35-440, to reflect this new process.

Since the 2015 UDC Amendment process, staff has found conflicting language in Article 5, 35-516, that creates confusion regarding enforcement of platted setbacks, and creates another process for a property owner to remove a restriction on a plat. This section should have been amended during the 2015 Code Amendment process with 35-440 to address all issues related to platted setbacks.

### **Staff Position and Interpretation:**

Currently, Section 35-516(a), Front and Side Setbacks, includes language regarding imposing more restrictive setbacks on a plat:

*"A subdivider may elect to impose more restrictive setbacks on a plat; however they must be enforced through restrictive covenants. The city shall only enforce the setbacks required by article III."*

However, the UDC contains a provision, Section 35-516(o), which states:

*§35-516(o) Previous Plats. The setback line, as shown on plats initiated two (2) years prior to December 2, 2004, shall be recognized as the official setback line.*

The UDC does not define "official setback line" in 35-A101. As a result of this lack of definition, DSD has interpreted this provision of the UDC to mean that DSD enforces building setback lines on plats recorded prior to December 2, 2002, as the zoning setback line if that setback is greater than the setbacks established by Section 35-310.01 and Table 310-1 of the UDC. For example, if a property zoned with a base zoning district of "R-6", requiring a 10-foot setback pursuant to Table 310-1, is platted pursuant to a subdivision plat initiated prior to December 2, 2004, with a 20-foot setback shown on the recorded plat, then DSD would recognize the 20-foot setback as the official required setback.

With this interpretation of "official setback line" as the zoning setback line, Section 35-482(a) of the UDC outlines the sections to which the Board of Adjustment is authorized to grant a zoning variance, including Section 35-516 as an applicable code section, in order to provide an option to the property owner as a means of relief from a platted setback. However, the property owner can opt to remove the building setback line, per Section 35-431(c), through a "Building Setback Line Plat". The property owner can still remove the building setback line if denied a variance from the Board of Adjustment, thereby negating the need for a variance process. There have been situations where an owner, who was approved for a variance, is now required by their financial institution to remove the BSL restriction from the plat. As a result, the owner will have gone through two separate processes and paid fees for both. The Board of Adjustment has asked staff to review these sections and provide a clear process for the property owner.

These two provisions in 35-516 are in direct conflict with each other. 35-516 (a) states that DSD only enforces setbacks in Article 3 as platted setbacks can only be enforced through restrictive covenants and the City does not enforce restrictive covenants. 35-516 (o) contradicts 35-516 (a) by requiring DSD to enforce platted setbacks.

Since 35-516 (a) states that the city shall only enforce setbacks required by Article 3, and DSD does not enforce platted setbacks or other forms of deed restrictions on a plat, Section 35-516(o) should be deleted from the UDC. Should the property owner need to remove the building setback line from the plat, the process is outlined in Section 35-431(c). Additionally, IB and building permit applications should be updated to no longer require review of the plat but rather inform the owner to review their plat and provide the option to remove the Building Setback line, should they want or need to remove the BSL. This applies to both residential and commercial plats.

**Future UDC Amendments:**

~~§35-516(o) **Previous Plats.** The setback line, as shown on plats initiated two (2) years prior to December 2, 2004, shall be recognized as the official setback line.~~