

## **RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET**

**CASE:** C14-72-015(RCA) / 1517 E. Anderson Lane – Restrictive Covenant Amendment

**PC DATE:** December 8, 2009

**ADDRESS:** 1517 East Anderson Lane

**OWNER:** ZIF Holdings, Inc. (Iniyat Fidai)

**AGENT:** DCI Permitting and Land Consulting (David Cancialosi) (512) 799-2401

**ZONING:** GR (Community Commercial)

**SITE AREA:** 3.58 acres (155,944 sq. ft.)

### **AMENDMENT REQUESTED:**

1. Delete (1) (e) which prohibits drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building);
2. Delete (1) (h) which prohibits auto repair garages (but not prohibiting filing stations); and
3. Delete (1) (j) which prohibits new or used car or automobile selling lots.

\*Note: The applicant has amended the request to only Delete (1) (e) which prohibits drive-in cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building).

**SUMMARY STAFF RECOMMENDATION:** Staff recommends amending the Restrictive Covenant to delete Item (1) (e) which prohibits drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building).

Staff does not recommend deleting Item (1) (h) which prohibits auto repair garages (but not prohibiting filing stations); and Item (1) (j) which prohibits new or used car or automobile selling lots.

**PLANNING COMMISSION RECOMMENDATION:** On December 8, 2009, the Planning Commission voted to *DENY* the amendment to the restrictive covenant; was approved by Commissioner Jay Reddy's motion, Commissioner Clint Small second the motion on a vote of 8-0; 1 vacancy on the commission.

### **ISSUES:**

The owner and the Coronado Hills / Creekside Neighborhood Association have agreed to delete the provision (1) (e) which prohibits drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building) and add language regarding the development of this property. Staff has also indicated which items cannot be part of the amended Restrictive Covenant and should be placed in a Private Restrictive Covenant between the Neighborhood and the owner.

1. For the measurement of the masonry wall to be taken from the improved grade level, so that the wall would not wind up being backfilled and essentially become a wall that is 6 feet on the creek side and at grade on the developed side of the property. Such wall

shall be measured 6 feet in height using construction elevation grades as shown on an approved City of Austin site plan.

2. Along the rear property line, landscaping requirements as outlined in the Land Development Code Chapter 25-2-1006 (Visual Screening) and Section 2.4.3 (Buffering) of the Environmental Criteria Manual must be exceeded at least 50 percent. The Private Restrictive Covenant will define the specific types of landscaping (such as evergreen).
3. For the drive thru restaurant to be a mix of drive thru and a sit-down restaurant (instead of a drive thru only), in order to reduce the amount of vehicle idling and emissions. Since the Land Development Code does not specifically identify the design of a drive thru use, this provision would have to be placed in a Private Restrictive Covenant between the applicant and the neighborhood.
4. For amplification devices to point away from the neighborhood. Any amplification devices would have to comply with the City's sound ordinance and any provisions of the Compatibility Design Regulations of the Land Development Code Chapter 25-2-1067(B). *NOTE:* Any other request would have to be in a Private Restrictive Covenant and if the owner is the developer, he has agreed to this provision.
5. For grease receptacles to be placed away from the neighborhood side of the property. This provision would have to be placed in a Private Restrictive Covenant. The owner has agreed to accommodate this provision
6. No pre-dawn trash collection. As pick up times are set by trash service providers, this provision must be placed in a private covenant. However, if the current property owner is the developer, he will try to accommodate the request.
7. Outdoor lighting shall be limited to height that will be determined in a private restrictive covenant. *NOTE:* All exterior lighting must comply with the Commercial Design Standards of the Land Development Code Chapter 2.5.

**DEPARTMENT COMMENTS:** This Restrictive Covenant was executed in 1972 in association with an ordinance which rezoned a larger property fronting East Anderson Lane, from "A Residential" to "GR, General Retail". The covenant restricted several uses and called for the construction of a 6 foot high masonry fence roughly along the south boundary of the larger tract.

The applicant's request is to delete provision (1) (e) which prohibits drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building); delete (1) (h) which prohibits auto repair garages (but not prohibiting filing stations); and delete (1) (j) which prohibits new or used car or automobile selling lots. Staff recommends the deletion which prohibits drive-in cafes as outlined in the Issues section above, but does not recommend deleting the provisions of auto repair garages and new or used car or automobile selling lots.

It is the position of the staff that any noise anticipated with a drive-in would not be any greater than the noise generated by the abutting two lane access road or the overhead expressway. Additionally, any drive-in café would be oriented towards the street and would not interface with the neighborhood.

The staff does not support deleting provisions of auto repair garages or new or used car or automobile selling lots due to the Buttermilk Branch Creek which forms the south property line. Additionally, those uses typically have operating characteristics incompatible with residential environments. Since

the subject lot abuts single family residences, it is the position of staff to not recommend the deletion of auto sales and repair uses.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	GR	Undeveloped
<i>North</i>	GR	Retail / Office
<i>South</i>	SF-3	Single-family Residences
<i>East</i>	GR	Apartments
<i>West</i>	CS	Retail / Service Station (Under Construction)

**NEIGHBORHOOD PLAN AREA:** St. Johns/Coronado Hills

**WATERSHED:** Buttermilk Branch

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**SCENIC ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

Home Builders Association of Greater Austin  
Austin Neighborhoods Council  
Villas of Coronado Hills Homeowner's Assn.  
Edward Joseph Developments, LTD  
Homeless Neighborhood Organization  
Austin Parks Foundation  
NorthEast Action Group  
Austin Street Futbol Collaborative  
Coronado Hills Neighborhood Assn.  
League of Bicycling Voters  
Old Town Homeowners Assn.  
Super Duper Neighborhood Objectors and Appealers Organization  
Austin Monorail Project

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-97-0165 – 1608 BLOCK OF E ANDERSON LA – TPA EXPANSION	From SF-3 to GR	1/12/1998 APVD STAFF ALT REC OF GR-CO BY CONSENT (9-0)	2/12/1998 APVD PC REC OF GR-CO W/CONDS (7-0) 3 RDGS – Limits vehicle trips to less than 2,000 per day.
C14-96-0024 – 7605 CAMERON RD – MITCHELL REZONING	From SF-3 to GR-CO (TR 1), From SF-3 to SF-5 (TR 2), From SF-3 to RR (TR 3)	4/26/1996 APVD GR, SF-5 & RR (9-0)	6/6/1996 APVD GR-CO (1ST 150'); SF-5 & RR (FLOODPLAIN) CONDS; (6-0); 2ND/3RD RDGS – Limits vehicle trips to less than 2,000 per day.
C14-96-0003 – 1700	From MF-3-CO	2/27/1997 APVD LO-CO	6/13/1997 APVD LO-CO & RR

BLOCK OF E ANDERSON AV – CREEKWOOD OFFICE BLDG.	to LO-CO (TR 1), From MF-3- CO to RR (TR 2)	AND RR FOR FLOODPLAIN SUBJ TO CONDS (7-0)	(FLOODPLAIN) SUBJ TO CONDS (6-0); 2ND/3RD RDGS – Limits vehicle trips to less than 2,000 per day.
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**RELATED CASES:** C14-85-339 – Original Rezoning Case

**CITY COUNCIL DATE:**

January 28, 2010

**ACTION:**

This item was postponed on consent to February 25, 2010 at staff's request on Council Member Morrison's motion, Council Member Spelman's second on a 7-0 vote.

February 25, 2010

This item was postponed on consent to March 25, 2010 at the staff's request on Council Member Spelman's motion, Council Member Riley's second on a 7-0 vote.

March 25, 2010

**ORDINANCE READINGS:** 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Joi Harden

**PHONE:** 974-2122

**E-MAIL:** [joi.harden@ci.austin.tx.us](mailto:joi.harden@ci.austin.tx.us)



**N**

**SUBJECT TRACT**

**ZONING BOUNDARY**

**PENDING CASE**

**OPERATOR: S. MEEKS**

**1" = 400'**

**RESTRICTIVE COVENANT AMENDMENT**

**ZONING CASE#: C14-72-015(RCA)**

**ADDRESS: 1517 E ANDERSON LANE**

**SUBJECT AREA: 0.000 ACRES**

**GRID: M27**

**MANAGER: J. HARDEN**



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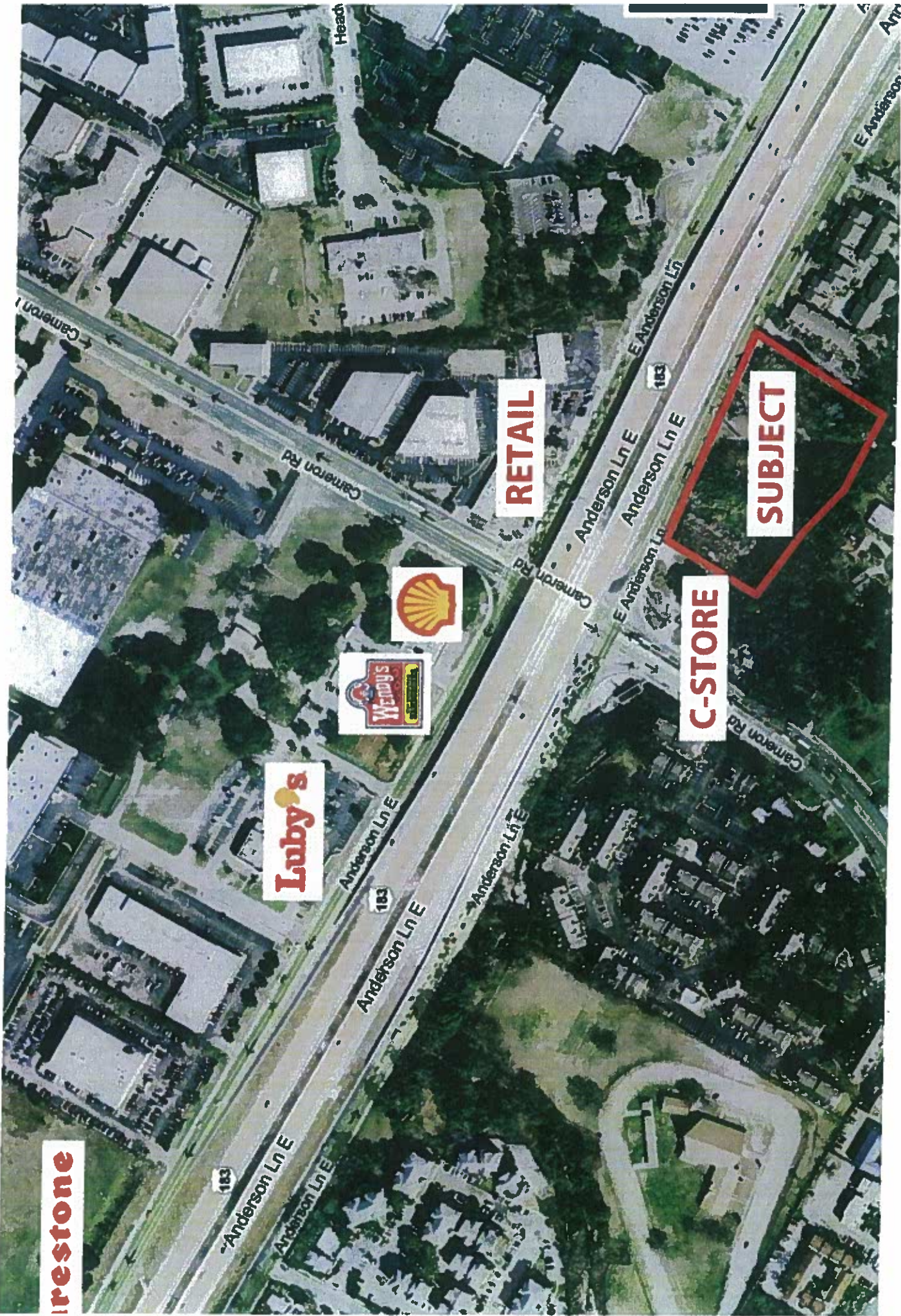
**Luby's**



**RETAIL**

**C-STORE**

**SUBJECT**





ACTUAL RC

932

DEED OF TRUST  
COUNTY OF TRAVIS

61-0082

WHEREAS, John D. Byram, herein called "Byram", is the owner of 31.49 acres of land in Travis County, Texas, described as Parcels I and II on Exhibit "A" attached hereto and made a part hereof for all pertinent purposes; and

WHEREAS, Byram has heretofore applied for a zoning change so as to change the zoning thereof from "A" Residential to "G2" General Retail; and

WHEREAS, certain adjoining landowners objected to such zoning change but withdrew such objections in favor of a compromise and settlement agreement whereby Byram agreed to place certain restrictive covenants on such property;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration moving to Byram, the receipt of which is hereby acknowledged and confessed, Byram does hereby place the following covenants and restrictive covenants on the land described in Exhibit "A" attached hereto and made a part hereof for all pertinent purposes, to-wit:

(1) Such land described on Exhibit "A" shall not be used for any of the following purposes, to-wit:

- (a) Trailer courts;
- (b) Veterinary hospitals or dog kennels;
- (c) Public stables or riding academies;
- (d) Auto laundries (but not prohibiting filling stations);
- (e) Drive-in type cafes (but not prohibiting restaurants or eating places whereby all customers are served inside a building);

- (f) ~~Scrap~~-in theaters;
- (g) Truck centers;
- (h) Auto repair garages (but not prohibiting filling stations);
- (i) Dyeing plants; and
- (j) New or used car or automobile selling lots.

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(2) Prior to the commencement of construction of any building upon the tract described in Exhibit "A", Byram, his successor or other owner of such property, will cause to be erected and maintained in a reasonable manner a masonry wall six feet in height along the line described on Exhibit "B" attached hereto and made a part hereof for all pertinent purposes. Such wall may be built by using the most economical methods and materials then being used in the construction business in Austin, Texas, for building masonry walls, but such wall shall be built in a good and workmanlike manner and shall be built along the entire line described in Exhibit "B". It is further agreed that if such wall is built while Byram is still the owner of such property, he shall not be required to expend more than Ten Thousand Dollars in the actual cost of constructing said wall; provided, however, that such cost limitation shall not relieve Byram of the aforesaid obligation to build the wall along the entire line described in Exhibit "B". However, in the event Byram sells such property, or its ownership is transferred to another owner by voluntary or involuntary means, there shall be no such cost limitation applicable.

(3) All trash disposal containers or loading docks located to the rear of any building which are not otherwise shielded by the aforesaid wall shall be shielded from view along the south or southerly portion of such container or loading dock. It is the intention



of this provision to maintain shielding so as to reasonably prohibit view of such loading docks and waste disposal containers from the lots adjoining and contiguous on the south to the property described on Exhibit "A". Such shielding may be done in any reasonable manner acceptable to the City of Austin, but in no event shall any shielding be required to extend more than twenty feet in height.

(4) Nothing herein shall be construed to prohibit Byram or other owner of such property from building buildings up to the aforesaid line described on Exhibit "B", it being understood that the said Byram or other owner shall have such right.

(5) It is agreed that the portion of the property to be zoned General Retail includes a 50-foot strip along Buttermilk Creek shown on a plat marked Exhibit "C" and attached hereto and made a part hereof for all pertinent purposes and sometimes referred to as "Green Belt". Byram agrees that no buildings of any kind or character shall be built on such 50-foot strip.

(6) The covenants herein shall be deemed covenants running with the land. If any person or persons shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate such agreement or covenant, or either to prevent him or them from so doing or to collect damages for such violation.

(7) If any part or provision of the agreement or covenant herein contained shall be declared invalid by a Judge or Court order, the same shall in nowise affect any of the other provisions

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of this agreement, and such remaining portion of the agreement shall remain in full force and effect.

(8) The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

(9) This agreement may be modified, amended, or terminated only after notice and hearing to all adjoining property owners and by joint action of both (a) a majority vote of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner of the above described property at the time of such modification, amendment, or termination.

DATED: June 2, 1972.

  
JOHN D. BYRAM

THE STATE OF TEXAS   )  
                              (  
COUNTY OF TRAVIS    )

BEFORE ME, the undersigned authority, on this day personally appeared JOHN D. BYRAM, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14 day of JUNE, 1972.

NOTARY SEAL

  
Notary Public, Travis County, Texas