

ZONING CHANGE REVIEW SHEET

CASE: C14-2011-0060 – West Gibson Commercial **P.C. DATE:** July 12, 2011

ADDRESS: 108 West Gibson Street

OWNER/APPLICANT: SC Investors, LLC., (Peter Barlin)

AGENT: Alice Glasco Consulting (Alice Glasco)

ZONING FROM: CS-MU-V-CO-NP

TO: CS-MU-V-CO-NP

AREA: 1.54 acres (67,082 ft²)

SUMMARY STAFF RECOMMENDATION: Staff recommends approval of the rezoning request to CS-MU-CO-NP (General Commercial Services – Mixed Use – Conditional Overlay – Neighborhood Plan) district zoning to amend certain provisions of the conditional overlay.

PLANNING COMMISSION RECOMMENDATION: 7/12/11 – The Planning Commission approved the staff recommendation of CS-MU-V-CO-NP (7-0; Chimenti absent; 1 vacancy).

DEPARTMENT COMMENTS: This 1.54 acre site was zoned for commercial services in 2006 intended for a condominium residential use (ord. 20060831-053) and is currently developed with a church. The applicant is proposing a commercial development that will repurpose the existing church building for commercial uses. The applicant seeks to amend the following to the existing conditional overlay on the property:

1. Increase the allowable commercial use to 20,000 square feet. An underground parking structure shall not be included in the calculation of building coverage.
2. On-site surface parking is prohibited, except as parking for the existing improvements and to provide parking for the structures built on lot 19.
3. Allow personal improvement service, personal service use, financial services, food preparation, food sales, general retail sales (convenience) and general retail sales (general) as a permitted use on the property.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-V-CO-NP	Church
<i>North</i>	CS-MU-V-CO-NP, SF-3, SF-4A	Motel, Single Family
<i>South</i>	CS-MU-V-CO-NP, CS-MU-CO-NP	Condominium, Retail
<i>East</i>	CS-MU-V-CO-NP, CS-MU-CO-NP	Restaurant, Motel, Parking
<i>West</i>	SF-3-NP	Single Family

NEIGHBORHOOD PLAN: Bouldin Creek Neighborhood Plan

TIA: Waived

WATERSHED: East Bouldin Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

Austin Neighborhoods Council

South Central Coalition

Bouldin Creek Neighborhood Association

Greater South River City Combined Neighborhood Association

CASE HISTORIES

NUMBER	REQUEST	COMMISSION	COUNCIL
C14-02-0031	Bouldin Creek Neighborhood Plan	Approved 3/27/02; (6-0)	Approved 5/23/2002; (7-0)
C14-06-0080	MF-4-NP to CS-MU- CO-NP	Approved 5/23/2006; (7-0)	Approved 8/31/2006; (6-0)

BASIS FOR RECOMMENDATION

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The requested rezoning will not change the base zoning of the property. The applicant seeks to amend the existing conditional overlay on the property and will provide for uses allowed under general commercial services district zoning.

2. *Zoning should allow for reasonable use of the property.*

The proposed development will utilize and repurpose an existing structure for commercial uses.

EXISTING CONDITIONS

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the East Bouldin Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

Water and Wastewater

If the landowner intends to serve the site with City of Austin water and wastewater utilities, the landowner, at own expense will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocations and or abandonments required. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Stormwater Detention

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

Transportation:

No additional right-of-way is needed at this time.

The Transportation Review Section has no objections to the proposed rezoning amendment.

A traffic impact analysis was not required for this case because the traffic generated by the proposal does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

Capital Metro bus service (Routes No. 9, 1L, 1M, 101, 483, and 486) is available along South Congress Avenue.

South Congress Ave. is classified in the Bicycle Plan as Bike Route No. 47. Newton Street is classified in the Bicycle Plan as Bike Route No. 347.

There are existing sidewalks along both sides of South Congress Ave., Gibson St., James St., and Newton St.

Existing Street Characteristics:

Name	ROW	Pavement	Classification	ADT	Bike Route	Capital Metro
Congress Avenue	114'	MAD-6	Major Arterial	25,465	Yes	Yes
Gibson Street	64'	30"	Local Street	N/A	No	No
James Street	70'	30'	Local Street Local	487	No	No
Newton Street	82'	30'	Street	426	Yes	No

Site Plan:

Should the applicant need a site plan application for future development, any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

The site is subject to compatibility standards. Along all property lines adjacent to single family, the following standards will apply with any future development:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- A landscape area is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted

CITY COUNCIL DATE: August 4, 2011

ORDINANCE READINGS: 1st

ORDINANCE NUMBER:

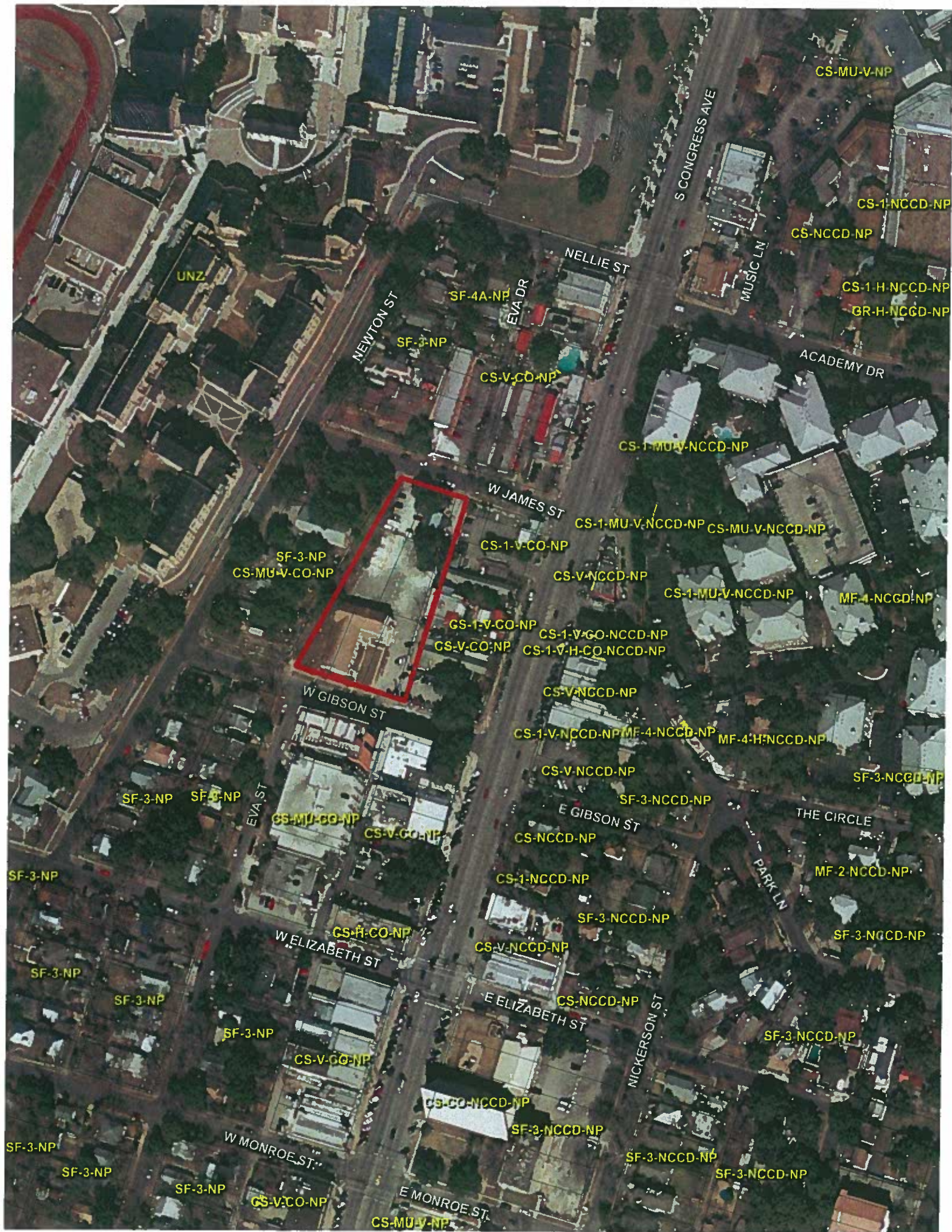
CASE MANAGER: Stephen Rye

ACTION:

2nd

3rd

PHONE: 974-7604
stephen.rye@ci.austin.tx.us



Alice Glasco Consulting

5117 Valburn Court, Suite A
Austin, TX 78731
aliceglasco@mindspring.com
512-231-8110 • 512-857-0187 Fax

June 9, 2011

Greg Guernsey, Director
Planning and Development Review Department
505 Barton Spring Road, Suite 500
Austin, Texas 78704

RE: Rezoning of 108 West Gibson Street

Dear Greg:

I represent SC Investors LLC, the owner of 108 West Gibson Street. The site is currently zoned CS-MU-CO-NP and was intended to be redeveloped as condos. My client intends to keep the old church building and remodel it for commercial uses as agreed to by the Bouldin Neighborhood Association. The purpose of the rezoning request is modify the conditional overlay (**ordinance # 20060831-053 - Case C14-06-0080**) as follows:

1. Part 3, paragraph 2 should read: A commercial use may not exceed 4,000 square feet of gross building coverage, except of the existing improvements.
2. Part 3, paragraph 3 should read: A personal improvement service use and a personal services use are not permitted in the area beyond 100 feet of the east property line, except for the existing improvements.
3. Part 3, paragraph 4 should read: On-site surface parking is prohibited, except as parking for the existing improvements and to provide parking for the structures built on lot 19.
4. Part 3, paragraph 5 should be amended to delete the following prohibited uses:
General retail sales, Agricultural sales and services, Monument retail sales, and plant Nursery.

Greg Guernsey
Rezoning of 108 West Gibson Street
Page 2 of 2

5. Part 3, paragraph 6 should be amended as follows:

- A. The maximum building coverage is 80%
- B. The maximum impervious cover is 85%
- C. The maximum building height is 60 feet within 50 feet of the eastern property line.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Alice Glasco". The signature is fluid and cursive, with the first name "Alice" and last name "Glasco" clearly distinguishable.

Alice Glasco, President
AG Consulting

1

The purpose of the rezoning request is modify the conditional overlay (**ordinance # 20060831-053 - Case C14-06-0080**) as follows:

- 11

Alice Glasco, President
AG Consulting

From: Guernsey, Greg
Sent: Friday, June 17, 2011 6:39 PM
To: Rusthoven, Jerry; Rye, Stephen
Subject: Fwd: Neighborhood Petition Relating to 108 W. Gibson Street

Attachments: 108 West Gibson St Petition and Signatures.pdf; ATT2553702.htm; Amended Restrictive Covenant June 16.pdf; ATT2553703.htm
FYI

Sent from my iPhone

Begin forwarded message:

From: "Dorsey, John" <[REDACTED]>
To: "greg.guernsey@ci.austin.tx.us" <greg.guernsey@ci.austin.tx.us>
Cc: "Cameron, Jim" <[REDACTED]>
Subject: Neighborhood Petition Relating to 108 W. Gibson Street

Dear Mr. Guernsey:

Our law firm represents Ryan Allen and Caleb Kramer, the owners of Unit 406 of the condominiums located at 1401 Eva Street, Austin, TX 78704. 1401 Eva Street is directly across the street from 108 W. Gibson Street.

We understand that an application for rezoning has been filed with the City by the owner of 108 W. Gibson Street, SC Investors, LLC, and that SC Investors is also seeking to amend a restrictive covenant affecting that property, as shown in the attached draft Amended Restrictive Covenant.

I am writing to respectfully inform you that as of today approximately 22 neighbors of 108 West Gibson Street (including our clients) have signed a petition, a copy of which is attached and available here <http://www.ipetitions.com/petition/108westgibsonstreetpetition/> <<http://www.ipetitions.com/petition/108westgibsonstreetpetition/>>, expressing their concerns regarding the changes sought by SC Investors and the Bouldin Creek Neighborhood Association (BCNA) in the Amended Restrictive Covenant and the manner in which it has been drafted. The signatures and comments of those neighbors are available here <http://www.ipetitions.com/petition/108westgibsonstreetpetition/signatures> (and also attached).

If you require any further information or would like to discuss this matter, please feel free to contact us.

Thank you for your courtesies.

Best regards,

John

John M. Dorsey • Strasburger & Price, LLP

600 Congress, Suite 1600, Austin, TX 78701
Tel 512.499.3646 • Cell [REDACTED] Fax 512.536.5733
[Strasburger.com](http://www.strasburger.com) <blocked::http://www.strasburger.com/>

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Strasburger & Price, LLP immediately -- by replying to this message or by sending an email to postmaster@strasburger.com -- and destroy all copies of this message and any attachments. Thank you.

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108 West Gibson Street Petition

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The Petition

To: City of Austin, Planning and Review Department
Residents of the Bouldin Creek Neighborhood
Bouldin Creek Neighborhood Association (BCNA)
Brad Patterson, BCNA Zoning Committee Chair
Nikelle Meade, Attorney for the BCNA
AG Consulting/Alice Glasco, Agent for Peter Barlin/SC Investors, LLC

We, the undersigned residents of the Bouldin Creek Neighborhood and concerned members of the community, oppose the proposal put forth by the BCNA and Peter Barlin/SC Investors, LLC to amend the Restrictive Covenant dated August 31, 2006, covering the property located at 108 West Gibson Street, Austin, Texas 78704 for the following reasons:

- **Lack of Neighborhood Input.** The proposed amendment appears to have been negotiated exclusively between the BCNA Zoning Committee (acting through Brad Patterson and the BCNA attorney, Nikelle Meade of Brown McCarroll, LLP) and Mr. Barlin/SC Investors, LLC (and/or his agent) without the input of the other affected Bouldin Creek Neighborhood property owners.
- **Excessive Commercial Development.** The proposed amendment increases the permitted commercial use of the property to 20,000 square feet (from 4,000 square feet under the existing Restrictive Covenant) and also allows up to 10,000 square feet of retail use on the property. We believe that the increase in permitted commercial and retail use should be capped at a much lesser amount of square feet.
- **Excessive Commercial Uses.** The proposed amendment allows general retail sales and food sales, and we are concerned that this may permit restaurant and bar establishments to be located on the property.
- **Excessive Height of Buildings.** The proposed amendment allows any new or replacement structure to be as tall as the existing church building. This height standard is vague because it does not specify the height of the existing church building. We believe that the height should be specified and that the permitted height of structures on the property should be no greater than the height of the existing church building and that this maximum height restriction should apply to the property in its entirety.
- **Excessive Size of Buildings.** The proposed amendment allows additions to be constructed to the north or east of the existing church building or any replacement structure. The provisions regarding additions are vague and need to be clarified.
- **Excessive Height of New Parking Structure.** The proposed amendment allows a new parking structure to be built "one level above grade". The phrase "one level above grade" is vague and needs to be rewritten to include a specific maximum height limitation, which is 12 vertical feet above grade in the existing Restrictive Covenant.
- **Surface Parking.** The proposed amendment allows surface parking on the property. We believe that surface parking should be limited to a certain number of square feet of the property or should not be permitted, as provided in the existing Restrictive Covenant.
- **Noise Pollution.** The amendment permits "outdoor amplified sound" with the written approval of the "Neighboring Owners" whose properties are "adjacent to" the property and the BCNA. The phrase "adjacent to" the property is vague and should be defined to specify all neighboring properties and the term "outdoor amplified sound" should be defined by reference to a specific decibel level.
- **Mobile Food Sales.** The amendment permits mobile food sales, seasonal food sales and temporary food sales as long as the owners of the properties to the West of the property consent. No such food sales should be permitted unless the owners of all neighboring properties consent.
- **General.** The draft amendment contains numerous vague terms and inconsistencies and

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needs further review and revision by legal counsel to make it a logical and comprehensible document.

We, the undersigned, categorically reject and refuse to consent to the proposed amendment to the Restrictive Covenant dated August 31, 2006 prepared by the BCNA and Peter Barlin/SC Investors, LLC.

The proposed amendment has not been drafted with input from all affected Bouldin Creek Neighborhood property owners entitled to vote on the amendment⁽¹⁾. The terms of the Restrictive Covenant specifically state that the instrument may only be amended by the joint action of (a) 75% percent of the real property owners within 300 feet of 108 Gibson Street, (b) the BCNA and (c) the owner of 108 West Gibson Street.

We will not consent to any amendment to the Restrictive Covenant unless we have had the opportunity to negotiate, review and revise the instrument and until it is drafted in a form that is satisfactory to us.

The undersigned further object to any proposed rezoning of 108 West Gibson Street that has not been negotiated, reviewed and approved by the undersigned.

⁽¹⁾ These include but are not limited to the individual owners of condominiums at 1401 Eva Street, Austin, Texas 78704 and other neighboring property owners on Eva Street, Newton Street and Congress Avenue.

Sign petition

Fields marked with * are required

Name *

Email *

Comments

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108 West Gibson Street Petition

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Signatures

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Page: 1

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Name: Ralph Brocato And Kathy Harris on Jun 14, 2011
Comments: We are owner of Unit 105 at 1401 Eva Street

1

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Name: Ryan Allen on Jun 14, 2011
Comments: 1401 Eva Street, Unit 406, Austin, Tx 78704

2

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Name: Caleb Kramer on Jun 14, 2011
Comments: 1401 Eva St, Unit 406, Austin, TX 78704

3

[The Official Petition to Congress To Repeal Obamacare Now!](#)
[www.repealhealthcare...](#)

Name: Peter Roy on Jun 14, 2011
Comments: I am a resident of the 04 Lofts, Unit 405

4

Name: Susan J. Holland on Jun 14, 2011
Comments: 1401 Eva St. #101 and #201

5

Name: Gillian Roy on Jun 15, 2011
Comments: 1401 Eva St. #405 Austin, TX 78704 Living in the "04" condo complex across the street and voicing strong objections to any proposed rezoning of 108 Gibson St. Gillian Roy

6

Name: Anna Martin on Jun 15, 2011
Comments: I completely agree with this petition with a few exceptions: Parking needs to be a major emphasis of any growth item in this area and should not be limited, and I have no problem with restaurant and bar establishments as well as mobile food sales or outdoor amplified sound (restricted to 10 pm) in the area.

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Name: Melody Snow on Jun 15, 2011
Comments: 1401 Eva Street #403 Austin

8

Name: Emma Roy on Jun 15, 2011
Comments:

9

Name: Bebe E. Olufsen on Jun 15, 2011
Comments: I live @1401 Eva Street #401

10

Name: Jim Snow on Jun 15, 2011
Comments: My wife and I own apartment #403 at 04 Lofts, 1401 Eva Street.

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12

Name: Kathy Harris on Jun 15, 2011
Comments: We live in the t401 Eva Street Complex.

Name: AUDREY BERGEER on Jun 15, 2011
Comments:

13

Name: AUDREY & GREG BERGEER on Jun 15, 2011
Comments:

14

Name: Molly Manewal on Jun 16, 2011
Comments: I live at 1303 Newton Street. I back up to the alley running from Gibson to James and am concerned about the change in my back yard experience.

15

Name: Renee Weller on Jun 16, 2011
Comments: I oppose the proposal put forth by the BCNA and Peter Barin/SC Investors, LLC

16

Name: Craig Weller on Jun 16, 2011
Comments: I oppose the proposal put forth by the BCNA and Peter Barin/SC Investors, LLC

17

Name: Ylon Schwartz on Jun 16, 2011
Comments:

18

Name: Ylon Schwartz on Jun 16, 2011
Comments:

19

Name: Andy Wigginton on Jun 16, 2011
Comments: Our address is: 1401 Eva St #306 Austin Tx 78704 There are a number of specific mentions we disagree with, both in the amended covenant and in the specifics of the petition. But I agree with the main assertion that we have not been included in the ongoing conversations, and the wording is too vague.

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Name: Sara E Moore on Jun 16, 2011
Comments:

21

Name: Molly Roy on Jun 17, 2011
Comments:

22

Page: 1

AMENDED RESTRICTIVE COVENANT

This Restrictive Covenant (the "Restrictive Covenant"), is executed this 31st day of August, 2006, (the "Effective Date") by ~~The Southside Church of Christ~~ SC Investors, LLC, Austin, Texas, a Texas ~~non-profit~~ limited liability company ~~corporation~~ (hereinafter referred to as the "Owner") and is as follows:

GENERAL RECITALS:

- A. Owner is the owner of those certain tracts of land (hereinafter, the "Property") described in Exhibit "A" attached hereto and made a part hereof for all purposes.
- B. The term "Owner" means, individually, and the term "Owners" means, collectively, The Southside Church of Christ, Austin, Texas, a Texas non-profit corporation and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Owner or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- C. The term "Neighboring Properties" means any and all real property any portion of which lies within three hundred feet (300') of the Property.
- D. The term "Neighboring Owners" means any and all owners of Neighboring Properties and their heirs, successors and assigns.
- E. The term "Neighborhood Association" means the Bouldin Creek Neighborhood Association, a Texas unincorporated neighborhood association in Austin, Travis County, Texas.
- F. Owner has filed a rezoning application (the "Rezoning") with the City of Austin for the purpose of rezoning the Property to CS-MU-CO-NP General Commercial Services Mixed Use Conditional Overlay zoning district.
- G. Owner has sought the support of the Neighboring Owners and the Neighborhood Association for the Rezoning.
- H. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, the Neighboring Owners, the Neighborhood Association, and the Neighboring Properties.
- I. In reliance on Owner's Agreement to impose these covenants and conditions, the Neighborhood Association and certain Neighboring Owners have agreed to not object to Rezoning of the Property.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the land and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs,

successors, and assigns and shall inure to the benefit of the Owner and Neighboring Owners, deed or conveyance of any kind conveying any portion of the Property, but any such conveyance shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are not mere recitals but are terms of and incorporated into this Restrictive Covenant for all purposes.
2. Definition of Uses. Definitions for all uses named in this Restrictive Covenant shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date.
3. Limitation on Off-Site Accessory Parking Use. Off-site accessory parking use shall only be permitted in connection with and as an accessory use for the development upon that certain portion of the Property comprised of those certain tracts of land legally described as Lots 12, 13, 14, 15, 16, 17, 18, and 19, Block 13, Newning Resubdivision of blocks 13 and 2A, Swishers Addition, City of Austin, Volume 1, Page 44C, P.R.T.C.T.
4. ~~Limitation Concerning Personal Improvement Services Use and Personal Services Use.~~ ~~No personal improvement services use or personal services use shall be permitted on any part of the Property beyond one hundred feet (100') from the eastern boundary line of the Property.~~
5. ~~No Above Ground Parking Facilities Structures.~~ No above-ground parking structures or surface parking lots shall be permitted on the Property except as follows:
 - a. ~~four, one-car residential garages (the "Permitted Garages") shall be permitted in the general location shown in Exhibit "B" if and only if said garages are accessory to residential units on the same lot as that on which the garage is located~~ Surface parking shown on the as-built survey of the Property attached hereto as Exhibit "B" (the "Survey") is the only surface parking permitted on the Property, and such parking is permitted if, and only if, the existing church building shown on the Survey (the "Existing Church Building") remains on the property in the location and same footprint as that shown in the Survey. If the Existing Church Building is ever partially or fully demolished or destroyed, Owner shall cease the use of all surface parking on the Property. If Owner reconstructs the Existing Church Building in the same footprint as and of the same height as the Existing Church Building, Owner shall be permitted to construct or resume use of surface parking on the Property.

- b. ~~a parking structure may extend for a maximum distance of twelve feet (12') vertical along the eastern boundary line of the Property; a parking structure one level above grade level is permitted north of Lot 24, Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas, so long as it does not exceed an elevation of five hundred twenty-seven (527) feet above sea level at any point.~~

6. Permitted Uses. Development and use of the Property shall be limited to the following uses:

- a. Administrative and Business Office
- b. Art Gallery
- c. Art Workshop
- d. Condominium Residential
- e. Counseling Services
- f. Hotel/Motel
- g. Off-site Accessory Parking restricted in accordance with Paragraph 3 above
- h. Personal Improvement Services ~~restricted in accordance with Paragraph 4 above~~
- i. Personal Services ~~restricted in accordance with Paragraph 4 above~~
- j. Professional Offices
- k. Religious Assembly
- l. Software Development
- m. Townhouse Residential; ~~and~~
- n. Single-Family Residential, excluding Duplexes;
- o. financial services;
- p. general retail sales (convenience);
- q. general retail sales;
- r. food sales; and
- s. food preparation.-

- 6.a. In addition to those uses listed in Paragraph 6 above, Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use is a permitted use on the Property if, and only if, the owners of Lots 21, 22, 23, 24, 25, and 26 of the Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas (the "Adjacent Property Owners") approve each such use in writing signed by all such Adjacent Property Owners. Notwithstanding the provisions set forth in this Paragraph 6.a. and regardless of approval by the Adjacent Property Owners, no individual Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use may exist on the Property for a period longer than 3 consecutive days, and the property may not be used for Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales more than 15 days annually. Further, notwithstanding the provisions set forth in this Paragraph 6.a., at no time shall there be more than five (5) of such uses (including Mobile Vendor, Mobile Food Sales, Seasonal Food Sales, and Temporary Food Sales) on the Property.
- 6.b. No more than ten thousand (10,000) square feet of Retail use is permitted on the Property.

Definitions for the above uses shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date of this Amendment.

7. Maximum Vehicle Trips. No use or combination of uses shall be permitted on the Property if such use or combination of uses generates more than one thousand four hundred (1400) vehicle trips per day.
8. Restriction on Site Development Regulations. The site shall be developed and used in compliance with the following site development regulations:
- a. minimum lot width shall be fifty feet (50');
 - b. minimum street side yard setback shall be ten feet (10');
 - c. maximum building coverage shall not exceed sixty percent (60%) of the total square footage of the Property;
 - d. maximum impervious cover shall not exceed seventy-five percent (75%) of the total square footage of the Property;
 - e. floor to area ratio, as defined in the City Code of the City of Austin, shall not exceed 1.25:1;
 - f. no lot on the Property shall be smaller than five thousand seven hundred fifty (5,750) square feet in size;

- g. no structure on the Property shall be taller in height than the lesser of either fifty feet (50') or the height allowed according to the applicable compatibility standards as set for in the City code of the City of Austin in height;
- h. minimum front yard setback shall be ten feet (10'); and
- i. no structure of any kind, including but not limited to balconies, is permitted within nine feet (9') (the "Buffer Area") of the western boundary line of the Property, except as set forth in Paragraph 9 below.

9. Vegetative Buffer and Retaining Wall Required. Within the Buffer Area, Owner shall construct and maintain a vegetative landscape buffer (the "Landscape Buffer") with an average of five feet (5') in width with a minimum of no less than three feet (3') along the western boundary line of the Property. Owner shall also construct and maintain a retaining wall (the "Retaining Wall") along the western boundary line of the Property sufficient to minimize erosion along said western boundary line of the Property and along the boundary line of all tracts of land adjacent to the Property along the western boundary line of the Property. The Landscape Buffer shall consist of native vegetation and shall be sufficient to screen the Project from view by all Neighboring Properties zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. The Retaining Wall shall be no taller than forty-four inches (44") above the grade of the alley adjacent to the Property to the west. Both the Landscape Buffer and the Retaining Wall are permitted within the Buffer Area.

Further, no vehicular access ways, including but not limited to drives, loading docks, parking spaces, and emergency access drives.

10. Non-residential Development. No more than ~~four~~ twenty thousand (20,000) gross square feet ~~(4,000)~~ of non-residential use and development may ~~take place~~ exist on ~~and or~~ be constructed on the Property, excluding off-site parking, ~~which square feet is inclusive of the Existing Church Building and all other buildings (the "Other Existing Buildings" shown on the Survey.~~

10.a. No additions to the Other Existing Buildings.

10.b. Additions to the Existing Church Building are permitted on the Property if and only if such additions are attached to and extend either north or east of the Existing Church Building.

10.c. Maximum height of buildings on the property is the height of the Existing Church Building as such building exists on the Effective Date hereof.

10.d. No new freestanding building may be constructed. All new constructed must be additions attached to the Existing Church Building. No additions are permitted to the Other Existing Buildings.

11. Mechanical Equipment. No exterior mechanical equipment, including but not limited to HVAC equipment, ventilation fans, and fresh air intake and exhaust equipment, shall be within fifty feet (50') of any property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. Further, all exterior mechanical equipment installed within one hundred feet (100') of property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation shall be screened with masonry or another method to buffer sound generated by the equipment as of the Effective Date. Roof parapets, masonry housing, or other acoustic buffers shall be designed to provide acoustic dampening of the rooftop mechanical equipment. Excluding, but not limited to, surrounding development and traffic on Congress Avenue, the combined running of any mechanical equipment on the Property shall not exceed fifty-five (55) decibels, measured at the boundary line of any Neighboring Property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date.
12. Ventilation. No ventilation or exhaust from the parking garage shall be directed in any manner toward any property or structure zoned or used as a residence.
13. Waste Disposal and Pick-Up. Trash and recycling pick-up between the hours of 10:00 o'clock p.m. central standard time and 7:00 o'clock a.m. central standard time is strictly prohibited. No waste receptacle shall be within fifty feet (50') of the western boundary line of the Property or within fifty feet (50') of the boundary line of the Property adjacent to James Street. Further, any waste receptacle within one hundred feet (100') of the boundary line of the Property shall be screened with a masonry wall at least the height of the receptacle.
14. Rooftop Terraces. Any rooftop terraces along the western side of the Property to which occupants of the Property have access shall be designed with walls, vegetation or other methods (the "Terrace Barriers") to prevent persons from directly overlooking the Neighboring Properties located to the west of the Property. Such Terrace Barriers shall be constructed such that they leave no accessible space within ten feet (10') of the edge of the building on which the terrace is located.
15. Restricted Second-Floor Balconies. There shall be no balconies facing the western boundary line of the Property on any second floor living space.
16. Existing Church Building Permitted. Notwithstanding the provisions set forth in Paragraph 8 of this Restrictive Covenant, the Existing Church Building buildings that constitute the Southside Church of Christ as of the Effective Date hereof shall not be deemed to be in violation of Paragraph 8 (Restrictions on Site Development Regulations) above.
17. Additional Height Restriction on Building. Notwithstanding the provisions set forth in this Restrictive Covenant, no structure on the Property shall be taller

than two (2) stories and twenty-five feet (25') which shall include the parapet wall above the average grade adjacent to the building, within fifty feet (50') directly East of the Eastern boundaries of the Southern most thirty feet (30') of Lot 24 and Lots 25, 26 & 27 of the Nora Eck Resubdivision.

18. Tree Guarantee. Owner guarantees the life of all trees larger than twenty-five (25) caliper inches in diameter ("Protected Trees"). The Protected Trees shall be insured by a Letter of Credit or Surety Bond in the amount of thirty thousand dollars (\$30,000.00) per tree that is over forty (40) caliper inches and fifteen thousand dollars (\$15,000.00) per tree that is between twenty-five (25) and forty (40) caliper inches. The Protected Trees shall be monitored by a tree expert approved by the Neighborhood Association during the construction and/or relocation phase outlined in Paragraph 19. Should any Protected Tree fail to survive for the first three (3) years after the certificate of occupancy is granted, if the tree is not relocated as set forth in Paragraph 19, or for the first three (3) years after relocation, as set forth in Paragraph 19, then Owner shall pay to the Neighborhood Association the applicable amount(s) as stated in the Letter of Credit or Surety Bond for the affected tree(s) and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
19. No tree larger than twenty-five (25) caliper inches in diameter may be removed from the Property, with the exception of the live oak tree located on the northern boundary of the Property line which may be removed only under the following conditions:
 - a. the tree is relocated to another site (the "Tree Relocation Site") by a company approved by the Neighborhood Association within the boundaries of the Bouldin Creek Neighborhood Association (as such boundaries are set forth in the records of the City Clerk of the City of Austin); and
 - b. the Tree Relocation Site is a site approved by the Neighborhood Association; and
 - c. the success of the relocation and subsequent life of the relocated tree is guaranteed or insured as set forth in Paragraph 18.
 - d. the conditions above are contingent upon the physical ability to relocate the tree. If the City of Austin and a certified Arborist determines the tree cannot be relocated, then Owner is permitted to remove the tree and Owner shall pay to the Neighborhood Association the applicable amount as stated in the Letter of Credit or Surety Bond for the affected tree(s), referenced in Paragraph 18, and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
20. Great Streets. A twelve foot (12') wide sidewalk along Gibson Street and an eight foot (8') sidewalk along James Street shall be provided and include trees planted

every forty feet (40') on center.

20.a. Outdoor Amplified Sound Prohibited. All outdoor amplified sound is prohibited unless Owner secures written approval from all of those Neighboring Owners whose properties are adjacent to the Property and of the Neighborhood Association expressly approving the use of outdoor amplified sound.

20.b. Notwithstanding the other provisions set forth in this Restrictive Covenant, any newly-constructed building or portion of a building constructed in the same footprint and of the same height as either the Existing Church Building or the Other Existing Buildings shall be deemed to be the Existing Church Building and the Other Existing Buildings, respectively, for purposes of the restrictions, obligations, and covenants set forth herein.

21. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant shall entitle the Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations shall not affect in any manner any other rights or remedies which the Owner may have hereunder by reason of any breach of this Restrictive Covenant.

22. General Provisions.

A. Inurement. This Restrictive Covenant and the restrictions created hereby shall inure to the benefit of the Owner and Neighboring Owners, and shall be binding upon the Owner, and its successors and assigns. If Owner conveys all or any portion of the Property so long as the terms of this Restrictive Covenant are included in any documents of conveyance, Owner shall thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.

B. Duration. Unless terminated in accordance with Paragraph 22(I) below, this Restrictive Covenant shall remain in effect in perpetuity.

C. Non-Merger. This Restrictive Covenant shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.

D. Severability. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

E. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be

disregarded in the construction and interpretation of this Restrictive Covenant.

- F. Governing Law: Place of Performance. This Restrictive Covenant and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- G. Notices. Any Notice to the Owner shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- H. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Restrictive Covenant, the Neighborhood Association, any of the Neighboring Owners, or an organization representing such Neighboring Owners may prosecute proceedings at law, or in equity, and recover reasonable attorney's fees, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by any of those persons entitled to enforce it or their heirs, successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
- I. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; (b) the Neighborhood Association; and (c) the Owner. Should the Neighborhood Association not be in existence, as evidenced by a resolution so stating filed with the Texas Secretary of State, such modification, amendment, or termination shall be effective if executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; and (b) the Owner.

Executed to be effective this 31st day of August, 2006.

DECLARANT:

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on this 31st day of August, 2006, by Josue Villa, President of Southside Church of Christ, a Texas non-profit corporation.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

Nikelle Meade
Brown McCarroll, L.L.P.
111 Congress Avenue, Suite 1400 Austin, Texas 78701

Exhibit "A"

LOTS 28-32 NORA ECK RESUBDIVISION, WEST PORTION OF BLOCK 13 AND BLOCK 2A, SWISHER ADDITION TO THE CITY OF AUSTIN, PLUS THE VACATED ALLEY OUT OF THE NEWNING RESUBDIVISION OF BLOCK 13, AND 2A, AS SHOWN ON THE PAT OF RECORD IN VOLUME 3, PAGE 228.

JAMES STREET
(60' ROA)

PERMITTED RESIDENTIAL
GARAGES

108 GIBSON

108 GIBSON

16' ALLEY - VACATED BY
ORDINANCE NO. 77003-1
VOL. 523 PG. 78
D.R.T.C.
16' ALLEY - VACATED BY
ORDINANCE NO. 77003-1
VOL. 523 PG. 78
D.R.T.C.
16' ALLEY - VACATED BY
ORDINANCE NO. 77003-1
VOL. 523 PG. 78
D.R.T.C.

314.61'

NEWTRON'S RESUBDIVISION OF BLOCKS 11
SWISHERS ADDITION TO THE CITY OF AUSTIN
VOL. 1, PG. 44, P.R.T.C.

BOUNDARY LINE AGREEMENT
VOL. 522, PG. 124

140.00'

342.87'

GIBSON STREET
(90' 5.0.5.)

Carter::Burgess

Consultants In Engineering, Architecture,
Construction Management and Related
Services

Carter and Burgess, Inc.

1705 Bee Cave Road, Suite 300

Austin, Texas 78746

TEL: 512.336.1100 FAX: 512.336.1106

108 GIBSON

WINSTON CAPITAL

EXHIBIT B

DATE: Aug. 29, 2006 SCALE: 1"=50'

DRAWN BY: kandola

PROJECT No.: 050729

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Sep 01 03:39 PM 2006170549

FERGUSONLL \$56.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

INFORMACIÓN DE AUDIENCIA PÚBLICA

Esta petición de zonificación / rezonificación será repasada y acción será tomada de acuerdo a dos audiencias públicas: ante la Comisión de Usos Urbanos y el cabildo municipal. Aunque solicitantes y/o su(s) agente(s) se les requiere atender la audiencia pública, usted no esta bajo requisito de atender. De todos modos, si usted atiende la audiencia pública, tendrá la oportunidad de hablar a FAVOR o EN CONTRA al presupuesto desarrollo urbano o cambio de zonificación. Usted también puede contactar a una organización de protección al medio ambiente u organización de vecinos que haya expresado interés en la aplicación teniendo implicaciones a su propiedad.

Durante la audiencia pública, la comisión podría postergar o continuar audiencia del caso en una fecha futura, o puede evaluar la recomendación de los oficiales municipales y las del público al mismo tiempo mandando su recomendación al cabildo municipal. Si la comisión anuncia una fecha y hora específica para postergar o continuar discusión, y no se extiende más de 60 días, no tendrá obligación de otra notificación pública.

El cabildo municipal, durante su audiencia pública, puede otorgar o negar una petición de zonificación, rezonificar el terreno a una clasificación de zonificación menos intensiva que lo que es pedida. En ningún caso se otorgara una clasificación de zonificación más intensiva de la petición.

Para otorgar un desarrollo de usos urbanos mixtos, el cabildo municipal puede agregar la designación USO MIXTO (MU) DISTRITO COMBINADO, *Mixed-use (MU) Combining District*, a ciertos usos urbanos de comercio. La designación MU- Distrito Combinado simplemente permite usos urbanos residenciales en adición a los usos ya permitidos el los siete distritos con zonificación para comercio. Como resultado, la designación MU- Distrito Combinado, otorga la combinación de oficinas, comercio, y usos urbanos residenciales en el mismo sitio.

Para más información acerca del proceso de desarrollo urbano de la ciudad de Austin, por favor visite nuestra página de la Internet:

www.ci.austin.tx.us/development

Comentarios escritos deberán ser sometidos a la comisión (o a la persona designada en la noticia oficial) antes o durante la audiencia pública. Sus comentarios deben incluir el nombre de la comisión, la fecha de la audiencia pública, y el número de caso de la persona designada en la noticia oficial.

Número de caso: C14-2011-0060

Persona designada: Stephen Rye, (512)974-7604

Audiencia Publica: July 12, 2011, Planning Commission

Aug. 4, 2011, City Council

ROB LIPPINOTT

Su nombre (en letra de molde)

Su domicilio(s) afectado(s) por esta solicitud

Firma

Fecha

Daytime Telephone:

Comments:

FOR ADDRESS ES:

1412 S CONGRESS
AUSTIN, TX 78704

1400 S CONGRESS
AUSTIN, TX 78704

1400 S CONGRESS STE
AUSTIN, TX 78704

Si usted usa esta forma para proveer comentarios, puede retornarlos a:

City of Austin

Planning & Development Review Department

Stephen Rye

P. O. Box 1088

Austin, TX 78767-8810

☒ I am in favor
☐ I object

C12

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0060

Contact: Stephen Rye, (512)974-7604

Public Hearing: July 12, 2011, Planning Commission
Aug. 4, 2011, City Council

C12

Your Name (please print)

YOLANDA PEREZ

☐ I am in favor
☒ I object

Your address(es) affected by this application

Yolanda Perez

Signature

Date

Daytime Telephone:

Comments:

My elderly father is
severely handicapped and has
difficulty finding a parking
space next to his car. I
would like to see the parking
for dogs at a time. I think
he is because some residents
are more due to parking of
pet dogs of various breeds.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Stephen Rye

P. O. Box 1088

Austin, TX 78767-8810

Rye, Stephen

From: Ryan Allen [redacted]
Sent: Tuesday, July 12, 2011 10:36 AM
To: Rye, Stephen
Subject: Case Number C14-2011-0060

To Whom It May Concern,

We are residents of 1401 Eva Street and strongly oppose the rezoning changes submitted by Alice Glasco on behalf of Peter Barlin (SC Investors, LLC). Information about the developer's true intentions for the property has been withheld from neighbors and what has been shared is confusing and contradictory. On the one hand the developer claims to only need 5,800 additional square feet of commercial use for his immediate purposes yet he applies for an additional 16,000 sf, an increase to the height limit and above-ground parking (which will not be included in the 20,000 sf). We have attempted to make our concerns known to Mr Barlin and Bouldin Creek Neighborhood Association with little or no response.

Furthermore, we feel that there are obvious conflicts of interest at play:

1. Mr Barlin is a majority owner at 1401 Eva Street and therefore has supervoting rights that have rendered the complex's HOA useless in dealing with this matter. Information has not been disseminated to the other residents as would normally be the case. More importantly, Barlin has more votes on his proposed changes than any of the other neighbors in the area (a total of 7) and his interests as developer appear to far outshine those of a concerned resident.

2. Mr Barlin is paying for the attorney who is representing the BCNA in this transaction.

A petition has been circulated and signed by over 30 concerned neighbors, which I believe was submitted to you in June. Although this initiated a response from Barlin, he has yet to incorporate our concerns into his plans. Therefore, we hope that the city will refrain from approving any of his requested changes to the zoning laws until everyone who will be affected by the development at 108 W Gibson is given fair consideration.

Sincerely,
Ryan Allen & Caleb Kramer
1401 Eva Street, Unit 406
Austin, TX 78704

C 12
Rye, Stephen

From: Anna Martin [REDACTED]
Sent: Tuesday, July 12, 2011 2:52 PM
To: Rye, Stephen
Subject: Case Number C14-2011-0060

>> To Whom It May Concern,
>>

>> We are residents of 1401 Eva Street and strongly oppose the rezoning changes submitted by Alice Glasco on behalf of Peter Barlin (SC Investors, LLC). Information about the developer's true intentions for the property has been withheld from neighbors and what has been shared is confusing and contradictory. On the one hand the developer claims to only need 5,800 additional square feet of commercial use for his immediate purposes yet he applies for an additional 16,000 sf, an increase to the height limit and above-ground parking (which will not be included in the 20,000 sf). We have attempted to make our concerns known to Mr Barlin and Bouldin Creek Neighborhood Association with little or no response.

>>
>> Furthermore, we feel that there are obvious conflicts of interest at play:
>>

>> 1. Mr Barlin is a majority owner at 1401 Eva Street and therefore has supervoting rights that have rendered the complex's HOA useless in dealing with this matter. Information has not been disseminated to the other residents as would normally be the case. More importantly, Barlin has more votes on his proposed changes than any of the other neighbors in the area (a total of 7) and his interests as developer appear to far outshine those of a concerned resident.

>>
>> 2. Mr Barlin is paying for the attorney who is representing the BCNA in this transaction.

>>
>> A petition has been circulated and signed by over 30 concerned neighbors, which I believe was submitted to you in June. Although this initiated a response from Barlin, he has yet to incorporate our concerns into his plans. Therefore, we hope that the city will refrain from approving any of his requested changes to the zoning laws until everyone who will be affected by the development at 108 W Gibson is given fair consideration.

Anna Martin
[REDACTED]@aol.com
1401 Eva St., #301
Austin, TX 78704
cell: [REDACTED]
home: [REDACTED]

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

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Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2011-0060

Contact: Stephen Rye, (512)974-7604

Public Hearing: July 12, 2011, Planning Commission

Aug. 4, 2011, City Council

ROB LIPPINCOTT

Your Name (please print)

1400 S CONGRESS *

Your address(es) affected by this application

[Signature]

Signature

Date

Daytime Telephone: (512) 851-1090

Comments:

* ALSO FOR ADDRESSES:

1412 S CONGRESS

1400 S CONGRESS STE B300

If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Stephen Rye

P. O. Box 1088

Austin, TX 78767-8810

108 W. GIBSON PETITION GROUP

July 20, 2011

RE: 108 West Gibson Street Development

Dear Neighbors:

As you may know, the property located at 108 W. Gibson, Austin, Texas 78704 was recently acquired by a real estate developer who is seeking to amend a Restrictive Covenant dated August 31, 2006, covering the property. The developer's proposed changes seek to maximize the property's economic potential by allowing greater flexibility for development, including additional and increased commercial uses of the property. *See Attachment #1.* (The original Restrictive Covenant was negotiated with the neighborhood and the Bouldin Creek Neighborhood Association in 2006 in anticipation of a residential condominium development.)

We, the undersigned, and certain other neighbors have signed a petition opposing the developer's proposed changes to the Restrictive Covenant. A copy of the petition, which has been signed by 33 neighbors, is attached. *See Attachment #2.*

During the last several weeks, we have been engaged in negotiations with the developer in an effort to agree on acceptable modifications to the Restrictive Covenant. Specifically, we are seeking modifications that would limit potential negative impacts on the neighborhood, including modifications relating to permissible uses of the property, traffic, noise, the height of structures, and parking.

We believe that we are in the final stages of negotiation with the developer. Although we hope that we will soon reach an agreement with the developer on an acceptable amendment to the Restrictive Covenant, we have not achieved this. **We therefore respectfully urge you not to sign any amendment to the Restrictive Covenant dated August 31, 2006, until we notify you that these negotiations have successfully concluded.**

We support the development of our South Congress neighborhood in a manner that will enhance the neighborhood, but we believe that the developer's originally proposed changes to the Restrictive Covenant do not meet this standard.

For additional information regarding this matter and to be included in our email distribution list, please contact Ryan Allen at ryaneallen@mac.com.

Sincerely,

/s/ Ryan Allen
/s/ Audrey and Greg Bergee
/s/ Ralph Brocato
/s/ Kathy Harris
/s/ Malee and Monroe Helm
/s/ Susan Holland
/s/ Caleb Kramer
/s/ Molly Manewel
/s/ Anna Martin
/s/ Macy McBeth

/s/ Sara Moore
/s/ Gillian Roy
/s/ Molly Roy
/s/ Peter Roy
/s/ Susan Russell
/s/ Riccardo Silini
/s/ Jim Snow
/s/ Melody L. Snow
/s/ Elizabeth T. Tigar
/s/ Andrew Wigginton

Attachments:

#1 Draft amendment to the Restrictive Covenant originally approved by the developer showing proposed changes. This document is currently being negotiated by the signatories to this letter.

#2 Neighborhood petition opposing the amendment to the Restrictive Covenant.

Attachment #1

AMENDED RESTRICTIVE COVENANT

This Restrictive Covenant (the "Restrictive Covenant"), is executed this 31st day of August, 2006, (the "Effective Date") by ~~The Southside Church of Christ~~ SC Investors, LLC, Austin, Texas, a Texas ~~non-profit~~ limited liability company corporation (hereinafter referred to as the "Owner") and is as follows:

GENERAL RECITALS:

- A. Owner is the owner of those certain tracts of land (hereinafter, the "Property") described in Exhibit "A" attached hereto and made a part hereof for all purposes.
- B. The term "Owner" means, individually, and the term "Owners" means, collectively, The Southside Church of Christ, Austin, Texas, a Texas non-profit corporation and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Owner or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- C. The term "Neighboring Properties" means any and all real property any portion of which lies within three hundred feet (300') of the Property.
- D. The term "Neighboring Owners" means any and all owners of Neighboring Properties and their heirs, successors and assigns.
- E. The term "Neighborhood Association" means the Bouldin Creek Neighborhood Association, a Texas unincorporated neighborhood association in Austin, Travis County, Texas.
- F. Owner has filed a rezoning application (the "Rezoning") with the City of Austin for the purpose of rezoning the Property to CS-MU-CO-NP General Commercial Services Mixed Use Conditional Overlay zoning district.
- G. Owner has sought the support of the Neighboring Owners and the Neighborhood Association for the Rezoning.
- H. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, the Neighboring Owners, the Neighborhood Association, and the Neighboring Properties.
- I. In reliance on Owner's Agreement to impose these covenants and conditions, the Neighborhood Association and certain Neighboring Owners have agreed to not object to Rezoning of the Property.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the land and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs,

successors, and assigns and shall inure to the benefit of the Owner and Neighboring Owners, deed or conveyance of any kind conveying any portion of the Property, but any such conveyance shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are not mere recitals but are terms of and incorporated into this Restrictive Covenant for all purposes.
2. Definition of Uses. Definitions for all uses named in this Restrictive Covenant shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date.
3. Limitation on Off-Site Accessory Parking Use. Off-site accessory parking use shall only be permitted in connection with and as an accessory use for the development upon that certain portion of the Property comprised of those certain tracts of land legally described as Lots 12, 13, 14, 15, 16, 17, 18, and 19, Block 13, Newning Resubdivision of blocks 13 and 2A, Swishers Addition, City of Austin, Volume 1, Page 44C, P.R.T.C.T.
4. ~~Limitation Concerning Personal Improvement Services Use and Personal Services Use.~~ ~~No personal improvement services use or personal services use shall be permitted on any part of the Property beyond one hundred feet (100') from the eastern boundary line of the Property.~~
5. ~~No Above Ground Parking Facilities Structures.~~ No above-ground parking structures or surface parking lots shall be permitted on the Property except as follows:
 - a. ~~four, one-car residential garages (the "Permitted Garages") shall be permitted in the general location shown in Exhibit "B" if and only if said garages are accessory to residential units on the same lot as that on which the garage is located~~ Surface parking shown on the as-built survey of the Property attached hereto as Exhibit "B" (the "Survey") is the only surface parking permitted on the Property, and such parking is permitted if, and only if, the existing church building shown on the Survey (the "Existing Church Building") remains on the property in the location and same footprint as that shown in the Survey. If the Existing Church Building is ever partially or fully demolished or destroyed, Owner shall cease the use of all surface parking on the Property. If Owner reconstructs the Existing Church Building in the same footprint as and of the same height as the Existing Church Building. Owner shall be permitted to construct or resume use of surface parking on the Property;

- b. ~~a parking structure may extend for a maximum distance of twelve feet (12') vertical along the eastern boundary line of the Property~~ a parking structure one level above grade level is permitted north of Lot 24, Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas, so long as it does not exceed an elevation of five hundred twenty-seven (527) feet above sea level at any point.

6. Permitted Uses. Development and use of the Property shall be limited to the following uses:

- a. Administrative and Business Office
- b. Art Gallery
- c. Art Workshop
- d. Condominium Residential
- e. Counseling Services
- f. Hotel/Motel
- g. Off-site Accessory Parking restricted in accordance with Paragraph 3 above
- h. Personal Improvement Services ~~restricted in accordance with Paragraph 4 above~~
- i. Personal Services ~~restricted in accordance with Paragraph 4 above~~
- j. Professional Offices
- k. Religious Assembly
- l. Software Development
- m. Townhouse Residential; and
- n. Single-Family Residential, excluding Duplexes;
- o. financial services;
- p. general retail sales (convenience);
- q. general retail sales;
- r. food sales; and
- s. food preparation;

- 6.a. In addition to those uses listed in Paragraph 6 above, Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use is a permitted use on the Property if, and only if, the owners of Lots 21, 22, 23, 24, 25, and 26 of the Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas (the "Adjacent Property Owners") approve each such use in writing signed by all such Adjacent Property Owners. Notwithstanding the provisions set forth in this Paragraph 6.a. and regardless of approval by the Adjacent Property Owners, no individual Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use may exist on the Property for a period longer than 3 consecutive days, and the property may not be used for Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales more than 15 days annually. Further, notwithstanding the provisions set forth in this Paragraph 6.a., at no time shall there be more than five (5) of such uses (including Mobile Vendor, Mobile Food Sales, Seasonal Food Sales, and Temporary Food Sales) on the Property.
- 6.b. No more than ten thousand (10,000) square feet of Retail use is permitted on the Property.

Definitions for the above uses shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date of this Amendment.

7. Maximum Vehicle Trips. No use or combination of uses shall be permitted on the Property if such use or combination of uses generates more than one thousand four hundred (1400) vehicle trips per day.
8. Restriction on Site Development Regulations. The site shall be developed and used in compliance with the following site development regulations:
- a. minimum lot width shall be fifty feet (50');
 - b. minimum street side yard setback shall be ten feet (10');
 - c. maximum building coverage shall not exceed sixty percent (60%) of the total square footage of the Property;
 - d. maximum impervious cover shall not exceed seventy-five percent (75%) of the total square footage of the Property;
 - e. floor to area ratio, as defined in the City Code of the City of Austin, shall not exceed 1.25:1;
 - f. no lot on the Property shall be smaller than five thousand seven hundred fifty (5,750) square feet in size;

- g. no structure on the Property shall be taller in height than the lesser of either fifty feet (50') or the height allowed according to the applicable compatibility standards as set for in the City code of the City of Austin in height;
 - h. minimum front yard setback shall be ten feet (10'); and
 - i. no structure of any kind, including but not limited to balconies, is permitted within nine feet (9') (the "Buffer Area") of the western boundary line of the Property, except as set forth in Paragraph 9 below.
9. Vegetative Buffer and Retaining Wall Required. Within the Buffer Area, Owner shall construct and maintain a vegetative landscape buffer (the "Landscape Buffer") with an average of five feet (5') in width with a minimum of no less than three feet (3') along the western boundary line of the Property. Owner shall also construct and maintain a retaining wall (the "Retaining Wall") along the western boundary line of the Property sufficient to minimize erosion along said western boundary line of the Property and along the boundary line of all tracts of land adjacent to the Property along the western boundary line of the Property. The Landscape Buffer shall consist of native vegetation and shall be sufficient to screen the Project from view by all Neighboring Properties zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. The Retaining Wall shall be no taller than forty-four inches (44") above the grade of the alley adjacent to the Property to the west. Both the Landscape Buffer and the Retaining Wall are permitted within the Buffer Area.
- Further, no vehicular access ways, including but not limited to drives, loading docks, parking spaces, and emergency access drives.
10. Non-residential Development. No more than ~~four~~ twenty thousand (20,000) gross square feet (4,000') of non-residential use and development may ~~take place~~ exist on and ~~or~~ be constructed on the Property, excluding off-site parking, which square feet is inclusive of the Existing Church Building and all other buildings (the "Other Existing Buildings" shown on the Survey).
- 10.a. No additions to the Other Existing Buildings.
 - 10.b. Additions to the Existing Church Building are permitted on the Property if and only if such additions are attached to and extend either north or east of the Existing Church Building.
 - 10.c. Maximum height of buildings on the property is the height of the Existing Church Building as such building exists on the Effective Date hereof.
 - 10.d. No new freestanding building may be constructed. All new constructed must be additions attached to the Existing Church Building. No additions are permitted to the Other Existing Buildings.

11. Mechanical Equipment. No exterior mechanical equipment, including but not limited to HVAC equipment, ventilation fans, and fresh air intake and exhaust equipment, shall be within fifty feet (50') of any property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. Further, all exterior mechanical equipment installed within one hundred feet (100') of property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation shall be screened with masonry or another method to buffer sound generated by the equipment as of the Effective Date. Roof parapets, masonry housing, or other acoustic buffers shall be designed to provide acoustic dampening of the rooftop mechanical equipment. Excluding, but not limited to, surrounding development and traffic on Congress Avenue, the combined running of any mechanical equipment on the Property shall not exceed fifty-five (55) decibels, measured at the boundary line of any Neighboring Property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date.
12. Ventilation. No ventilation or exhaust from the parking garage shall be directed in any manner toward any property or structure zoned or used as a residence.
13. Waste Disposal and Pick-Up. Trash and recycling pick-up between the hours of 10:00 o'clock p.m. central standard time and 7:00 o'clock a.m. central standard time is strictly prohibited. No waste receptacle shall be within fifty feet (50') of the western boundary line of the Property or within fifty feet (50') of the boundary line of the Property adjacent to James Street. Further, any waste receptacle within one hundred feet (100') of the boundary line of the Property shall be screened with a masonry wall at least the height of the receptacle.
14. Rooftop Terraces. Any rooftop terraces along the western side of the Property to which occupants of the Property have access shall be designed with walls, vegetation or other methods (the "Terrace Barriers") to prevent persons from directly overlooking the Neighboring Properties located to the west of the Property. Such Terrace Barriers shall be constructed such that they leave no accessible space within ten feet (10') of the edge of the building on which the terrace is located.
15. Restricted Second-Floor Balconies. There shall be no balconies facing the western boundary line of the Property on any second floor living space.
16. Existing Church Building Permitted. Notwithstanding the provisions set forth in Paragraph 8 of this Restrictive Covenant, the Existing Church Building buildings that constitute the Southside Church of Christ as of the Effective Date hereof shall not be deemed to be in violation of Paragraph 8 (Restrictions on Site Development Regulations) above.
17. Additional Height Restriction on Building. Notwithstanding the provisions set forth in this Restrictive Covenant, ~~no~~ No structure on the Property shall be taller

than two (2) stories and twenty-five feet (25') which shall include the parapet wall above the average grade adjacent to the building, within fifty feet (50') directly East of the Eastern boundaries of the Southern most thirty feet (30') of Lot 24 and Lots 25, 26 & 27 of the Nora Eck Resubdivision.

18. Tree Guarantee. Owner guarantees the life of all trees larger than twenty-five (25) caliper inches in diameter ("Protected Trees"). The Protected Trees shall be insured by a Letter of Credit or Surety Bond in the amount of thirty thousand dollars (\$30,000.00) per tree that is over forty (40) caliper inches and fifteen thousand dollars (\$15,000.00) per tree that is between twenty-five (25) and forty (40) caliper inches. The Protected Trees shall be monitored by a tree expert approved by the Neighborhood Association during the construction and/or relocation phase outlined in Paragraph 19. Should any Protected Tree fail to survive for the first three (3) years after the certificate of occupancy is granted, if the tree is not relocated as set forth in Paragraph 19, or for the first three (3) years after relocation, as set forth in Paragraph 19, then Owner shall pay to the Neighborhood Association the applicable amount(s) as stated in the Letter of Credit or Surety Bond for the affected tree(s) and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
19. No tree larger than twenty-five (25) caliper inches in diameter may be removed from the Property, with the exception of the live oak tree located on the northern boundary of the Property line which may be removed only under the following conditions:
 - a. the tree is relocated to another site (the "Tree Relocation Site") by a company approved by the Neighborhood Association within the boundaries of the Bouldin Creek Neighborhood Association (as such boundaries are set forth in the records of the City Clerk of the City of Austin); and
 - b. the Tree Relocation Site is a site approved by the Neighborhood Association; and
 - c. the success of the relocation and subsequent life of the relocated tree is guaranteed or insured as set forth in Paragraph 18.
 - d. the conditions above are contingent upon the physical ability to relocate the tree. If the City of Austin and a certified Arborist determines the tree cannot be relocated, then Owner is permitted to remove the tree and Owner shall pay to the Neighborhood Association the applicable amount as stated in the Letter of Credit or Surety Bond for the affected tree(s), referenced in Paragraph 18, and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
20. Great Streets. A twelve foot (12') wide sidewalk along Gibson Street and an eight foot (8') sidewalk along James Street shall be provided and include trees planted

every forty feet (40') on center.

- 20.a. Outdoor Amplified Sound Prohibited. All outdoor amplified sound is prohibited unless Owner secures written approval from all of those Neighboring Owners whose properties are adjacent to the Property and of the Neighborhood Association expressly approving the use of outdoor amplified sound.
- 20.b. Notwithstanding the other provisions set forth in this Restrictive Covenant, any newly-constructed building or portion of a building constructed in the same footprint and of the same height as either the Existing Church Building or the Other Existing Buildings shall be deemed to be the Existing Church Building and the Other Existing Buildings, respectively, for purposes of the restrictions, obligations, and covenants set forth herein.
21. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant shall entitle the Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations shall not affect in any manner any other rights or remedies which the Owner may have hereunder by reason of any breach of this Restrictive Covenant.
22. General Provisions.
- A. Inurement. This Restrictive Covenant and the restrictions created hereby shall inure to the benefit of the Owner and Neighboring Owners, and shall be binding upon the Owner, and its successors and assigns. If Owner conveys all or any portion of the Property so long as the terms of this Restrictive Covenant are included in any documents of conveyance, Owner shall thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- B. Duration. Unless terminated in accordance with Paragraph 22(I) below, this Restrictive Covenant shall remain in effect in perpetuity.
- C. Non-Merger. This Restrictive Covenant shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.
- E. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be

disregarded in the construction and interpretation of this Restrictive Covenant.

- F. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- G. Notices. Any Notice to the Owner shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- H. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Restrictive Covenant, the Neighborhood Association, any of the Neighboring Owners, or an organization representing such Neighboring Owners may prosecute proceedings at law, or in equity, and recover reasonable attorney's fees, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by any of those persons entitled to enforce it or their heirs, successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
- I. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; (b) the Neighborhood Association; and (c) the Owner. Should the Neighborhood Association not be in existence, as evidenced by a resolution so stating filed with the Texas Secretary of State, such modification, amendment, or termination shall be effective if executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; and (b) the Owner.

Executed to be effective this 31st day of August, 2006.

DECLARANT:

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

This instrument was acknowledged before me on this 31st day of August, 2006, by Josue Villa, President of Southside Church of Christ, a Texas non-profit corporation.

Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

Nikelle Meade
Brown McCarroll, L.L.P.
111 Congress Avenue, Suite 1400 Austin, Texas 78701

Exhibit "A"

**LOTS 28-32 NORA ECK RESUBDIVISION, WEST PORTION OF BLOCK 13 AND
BLOCK 2A, SWISHER ADDITION TO THE CITY OF AUSTIN, PLUS THE VACATED
ALLEY OUT OF THE NEWNING RESUBDIVISION OF BLOCK 13, AND 2A, AS
SHOWN ON THE PAT OF RECORD IN VOLUME 3, PAGE 228.**

JAMES STREET
(60' ROAD)

PERMITTED RESIDENTIAL
GARAGES

NORA ECK SUBDIVISION OF
WEST PORTION OF BLOCKS 13 & 29
SWISHERS ADDITION TO THE CITY OF AUSTIN
VOL. 3, PG. 228
P.R.T.C.

108 GIBSON

RENEWING'S SUBDIVISION OF BLOCKS 11
SWISHERS ADDITION TO THE CITY OF AUSTIN
VOL. 1, PG. 44, P.R.T.C.

16' ALLEY

GIBSON STREET
(90' 5.0.5.)

Carter::Burgess

Consultants In Engineering, Architecture,
Construction Management and Related
Services
Carter and Burgess, Inc.
Nine Vails
2705 Bee Cave Road, Suite 300
Austin, Texas 78746
512.914.4141 Fax 512.914.4142

108 GIBSON

WINSTON CAPITAL

EXHIBIT B

DATE: Aug. 29, 2006 SCALE: 1"=50'

DRAWN BY: handola

PROJECT No.: 050729

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Sep 01 03:39 PM 2006170549

FERGUSONLL \$56.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Attachment # 2

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108 West Gibson Street Petition

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The Petition

To: City of Austin, Planning and Review Department
 Residents of the Bouldin Creek Neighborhood
 Bouldin Creek Neighborhood Association (BCNA)
 Brad Patterson, BCNA Zoning Committee Chair
 Nikelle Meade, Attorney for the BCNA
 AG Consulting/Alice Glasco, Agent for Peter Barlin/SC Investors, LLC

We, the undersigned residents of the Bouldin Creek Neighborhood and concerned members of the community, oppose the proposal put forth by the BCNA and Peter Barlin/SC investors, LLC to amend the Restrictive Covenant dated August 31, 2006, covering the property located at 108 West Gibson Street, Austin, Texas 78704 for the following reasons:

- **Lack of Neighborhood Input.** The proposed amendment appears to have been negotiated exclusively between the BCNA Zoning Committee (acting through Brad Patterson and the BCNA attorney, Nikelle Meade of Browne McCarroll, LLP) and Mr. Barlin/SC Investors, LLC (and/or his agent) without the input of the other affected Bouldin Creek Neighborhood property owners.
- **Excessive Commercial Development.** The proposed amendment increases the permitted commercial use of the property to 20,000 square feet (from 4,000 square feet under the existing Restrictive Covenant) and also allows up to 10,000 square feet of retail use on the property. We believe that the increase in permitted commercial and retail use should be capped at a much lesser amount of square feet.
- **Excessive Commercial Uses.** The proposed amendment allows general retail sales and food sales, and we are concerned that this may permit restaurant and bar establishments to be located on the property.
- **Excessive Height of Buildings.** The proposed amendment allows any new or replacement structure to be as tall as the existing church building. This height standard is vague because it does not specify the height of the existing church building. We believe that the height should be specified and that the permitted height of structures on the property should be no greater than the height of the existing church building and that this maximum height restriction should apply to the property in its entirety.
- **Excessive Size of Buildings.** The proposed amendment allows additions to be constructed to the north or east of the existing church building or any replacement structure. The provisions regarding additions are vague and need to be clarified.
- **Excessive Height of New Parking Structure.** The proposed amendment allows a new parking structure to be built "one level above grade". The phrase "one level above grade" is vague and needs to be rewritten to include a specific maximum height limitation, which is 12 vertical feet above grade in the existing Restrictive Covenant.
- **Surface Parking.** The proposed amendment allows surface parking on the property. We believe that surface parking should be limited to a certain number of square feet of the property or should not be permitted, as provided in the existing Restrictive Covenant.
- **Noise Pollution.** The amendment permits "outdoor amplified sound" with the written approval of the "Neighboring Owners" whose properties are "adjacent to" the property and the BCNA. The phrase "adjacent to" the property is vague and should be defined to specify all neighboring properties and the term "outdoor amplified sound" should be defined by reference to a specific decibel level.
- **Mobile Food Sales.** The amendment permits mobile food sales, seasonal food sales and temporary food sales as long as the owners of the properties to the West of the property consent. No such food sales should be permitted unless the owners of all neighboring properties consent.
- **General.** The draft amendment contains numerous vague terms and inconsistencies and

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 our petition to
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needs further review and revision by legal counsel to make it a logical and comprehensible document.

We, the undersigned, categorically reject and refuse to consent to the proposed amendment to the Restrictive Covenant dated August 31, 2006 prepared by the BCNA and Peter Barlin/SC Investors, LLC.

The proposed amendment has not been drafted with input from all affected Bouldin Creek Neighborhood property owners entitled to vote on the amendment⁽¹⁾. The terms of the Restrictive Covenant specifically state that the instrument may only be amended by the joint action of (a) 75% percent of the real property owners within 300 feet of 108 Gibson Street, (b) the BCNA and (c) the owner of 108 West Gibson Street.

We will not consent to any amendment to the Restrictive Covenant unless we have had the opportunity to negotiate, review and revise the instrument and until it is drafted in a form that is satisfactory to us.

The undersigned further object to any proposed rezoning of 108 West Gibson Street that has not been negotiated, reviewed and approved by the undersigned.

(1) These include but are not limited to the individual owners of condominiums at 1401 Eva Street, Austin, Texas 78704 and other neighboring property owners on Eva Street, Newton Street and Congress Avenue.

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Fields marked with * are required

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Comments

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108 West Gibson Street Petition

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Page: 1

Now!

Name: Ralph Brocato And Kathy Harris on Jun 14, 2011
Comments: We are owner of Unit 105 at 1401 Eva Street

1

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Name: Ryan Allen on Jun 14, 2011
Comments: 1401 Eva Street, Unit 406, Austin, Tx 78704

2

Obama in 2012?
Should Obama be re-elected? Share your opinion here.
www.newsmax.com/su...

Name: Caleb Kramer on Jun 14, 2011
Comments: 1401 Eva St, Unit 406, Austin, TX 78704

3

Name: Peter Roy on Jun 14, 2011
Comments: i am a resident of the 04 Lofts, Unit 405

4

Name: Susan J. Holland on Jun 14, 2011
Comments: 1401 Eva St. #101 and #201

5

Name: Gillian Roy on Jun 15, 2011
Comments: 1401 Eva St. #405 Austin, TX 78704 Living in the "04" condo complex across the street and voicing strong objections to any proposed rezoning of 108 Gibson St. Gillian Roy

6

Name: Anna Martin on Jun 15, 2011
Comments: I completely agree with this petition with a few exceptions: Parking needs to be a major emphasis of any growth item in this area and should not be limited, and I have no problem with restaurant and bar establishments as well as mobile food sales or outdoor amplified sound (restricted to 10 pm) in the area.

7

Name: Melody Snow on Jun 15, 2011
Comments: 1401 Eva Street #403 Austin

8

Name: Emma Roy on Jun 15, 2011
Comments:

9

Name: Bebe E. Olufsen on Jun 15, 2011
Comments: I live @1401 Eva Street #401

10

Name: Jim Snow on Jun 15, 2011
Comments: My wife and I own apartment #403 at 04 Lofts, 1401 Eva Street.

11

12

Name: Kathy Harris on Jun 15, 2011
Comments: We live in the 1401 Eva Street Complex.

Name: AUDREY BERGEER on Jun 15, 2011
Comments:

13

Name: AUDREY & GREG BERGEER on Jun 15, 2011
Comments:

14

Name: Molly Manewal on Jun 16, 2011
Comments: I live at 1303 Newton Street. I back up to the alley running from Gibson to James and am concerned about the change in my back yard experience.

15

Name: Renee Weller on Jun 16, 2011
Comments: I oppose the proposal put forth by the BCNA and Peter Barlin/SC Investors, LLC

16

Name: Craig Weller on Jun 16, 2011
Comments: I oppose the proposal put forth by the BCNA and Peter Barlin/SC Investors, LLC

17

Name: Ylon Schwartz on Jun 16, 2011
Comments:

18

Name: Andy Wigginton on Jun 16, 2011
Comments: Our address is: 1401 Eva St #306 Austin Tx 78704 There are a number of specific mentions we disagree with, both in the amended covenant and in the specifics of the petition. But I agree with the main assertion that we have not been included in the ongoing conversations, and the wording is too vague.

19

Name: Sara E Moore on Jun 16, 2011
Comments:

20

Name: Molly Roy on Jun 17, 2011
Comments:

21

Name: Susan Russell on Jun 17, 2011
Comments: I thank mr. allen for his hard work on this situation... i have no objection to music until 10pm, restaurants/bars, or mobile food or vendors

22

Name: RICK RUSSELL on Jun 17, 2011
Comments: 1401 EVA ST. #102

23

Name: Malee Helm on Jun 24, 2011
Comments: My address is 1401 Eva Street, #104, Austin, Texas.

24

Name: Monroe Helm on Jun 25, 2011
Comments: 1401 Eva, #104, Austin, Texas

25

Name: Candace Christopher Rudmose on Jun 25, 2011
Comments:

26

Name: Ralph Brocato on Jun 26, 2011

27

Comments:

Name: Kathy Harris on Jun 26, 2011
Comments:

28

Name: *Anonymous* on Jun 26, 2011
Comments:

29

Name: Elizabeth T Tigar on Jun 26, 2011
Comments:

30

Name: Susan Russell on Jun 28, 2011
Comments:

31

Name: Macy McBeth on Jun 28, 2011
Comments:

32

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