

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-97-0102(RCT) Dreyfus Rezoning

P. C. DATE: 10/11/11, 1025/11

ADDRESS: 1901 North Lamar Blvd.

AREA: 0.51 acres

APPLICANT: Dreyfus Antiques Brocante
(George Dreyfus)

AGENT: Armbrust & Brown, L.L.P.
(Lynn Ann Carley)

NEIGHBORHOOD PLAN AREA: Central Austin Combined

CAPITOL VIEW: No

T.I.A.: No

HILL COUNTRY ROADWAY: No

WATERSHED: Shoal Creek

DESIRED DEVELOPMENT ZONE: Yes

ZONING: LR-CO-NP - Neighborhood Commercial, Conditional Overlay, Neighborhood Plan

SUMMARY STAFF RECOMMENDATION:

Staff recommends termination of the restrictive covenant. If the existing restrictive covenant is terminated and the applicants zone change request to add additional permitted uses, then the applicant has agreed to enter into a new restrictive covenant. The new Restrictive Covenant will state the following:

"If a restaurant or food sales use is located on the property, then the following provisions apply:

- a. Servicing of trash dumpsters is not permitted between the hours of 10pm and 6am.
- b. Servicing of trash dumpster shall occur a minimum of once a week.
- c. Refuse, trash, and garbage, excluding recyclables, shall be kept in covered containers at all times."

PLANNING COMMISSION RECOMMENDATION:

The motion to approve staff's recommendation with additional conditions of:

- prohibit all drive thru services;
- Include in the restrictive covenant, a closing time of 10 p.m.;
- Fence on back side of property.

Was approved by Commissioner Mandy Dealey's motion, Commissioner Alfonso Hernandez seconded the motion on a vote of 5-1; Commissioner David Sullivan voted against the motion (nay); Commissioners Dave Anderson, Richard Hatfield and Jean Stevens were absent.

DEPARTMENT COMMENTS:

The property is currently developed with a one story building that is an antiques store. The zoning on the property was changed in 1997 from Limited Office (LO) to Neighborhood Commercial, Conditional Overlay (LR-CO) with ordinance number 970904-L (attached) and the owner entered into a public restrictive covenant (attached) which further defined the land use. The restrictive covenant listed the only permitted use under General Retail Sales (Convenience) is antique sales. The restrictive covenant also includes a "roll back" provision that states that if the use of the property ceases, then the zoning on the property rolls back to Limited Office (LO). The owner has now made application to change a condition of the LR-CO zoning and to terminate the restrictive covenant. The applicant requested the inclusion of the following uses into the "permitted uses" of the existing conditional overlay: Financial services, Food sales, General retail sales (General), Personal improvement services, Personal services, Restaurant (General) and Restaurant (Limited). The City's response was that they would support the inclusion of Financial services, Personal improvement services, and Personal services as permitted uses and Food Sales and Restaurant (General) as a conditional use. The City would not support the inclusion of Restaurant (Limited) and General Retail Sales (General) as permitted uses and the applicant agreed.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
SITE	LR-CO-NP	Antique Shop
NORTH	GO-NP	Office Building
SOUTH	GO	Office Building
EAST	GO-MU-CO-NP	Undeveloped
WEST	P	Park

CASE HISTORIES:

CASE NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-97-0102	From LO to LR-CO	Approved LR-CO [Vote: 7-0]	Approved LR-CO [Vote: 5-0]
C14-2010-0101	SF-3 to GO	Denied GO [Vote: 7-0]	Withdrawn by Applicant

NEIGHBORHOOD ORGANIZATION:

- Original Austin Neighborhood Assoc.
- Austin Neighborhood Council
- Caswell Heights Neighborhood Assoc.
- University Area Partners
- Original West University Neighborhood Assoc.

SCHOOLS:

Matthews Elementary School O' Henry Middle School Austin High School

CITY COUNCIL DATE: November 10th, 2011 **ACTION:**

ORDINANCE READINGS: 1ST 2ND 3RD **ORDINANCE NUMBER:**

CASE MANAGER: Clark Patterson
Clark.patterson@ci.austin.tx.us

PHONE: 974-7691

RESTRICTIVE COVENANT

00005625196

OWNER: TEXAS MEDICAL ASSOCIATION

ADDRESS: 401 W. 15th St. Austin, Texas 78701

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Lot 3, Lamar at 19th St. Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 8, Page 61, of the Plat Records of Travis County, Texas.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions as conditions of zoning for the Property;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. The only permitted use under General Retail Sales (Convenience) is antique sales. If use of the Property for sale of antiques as authorized under General Retail Sales (Convenience) is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to "LO" Limited Office district as defined in Chapter 13-2 of the City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction may not be included in calculating the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 3rd day of September, 1997.

OWNER:

TEXAS MEDICAL ASSOCIATION,
a Texas professional corporation

By: Louis J. Goodman
LEWIS GOODMAN, Ph.D.,
C.A.E. Executive Vice President

THE STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 4th day of September, 1997,
by LEWIS GOODMAN, Ph.D., C.A.E. Executive Vice President of TEXAS MEDICAL ASSOCIATION, a Texas professional corporation, on behalf of said corporation.
NON PROFIT

Linda Anne Neely
Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1546
Austin, Texas 78767-1546
Attention: Diana Minter, Legal Assistant



FILED
97 SEP 10 AM 8:08
DAN L. DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped herein by me, and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on



SEP 10 1997

Linda DeBeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Page 2 of 2
RECEIPT#: A00085632 TRANS#: A9014 DEPT: REGULAR RECORD \$11.00
CASHIER: BAWED FILE DATE: 9/10/97 TRANS DATE: 9/10/97
REAL PROPERTY RECORDS TRAVIS COUNTY, TEXAS CHECK# 5130

13016 1821

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: C14-97-0102(RCT

Contact: Clark Patterson, (512) 974-7691

Public Hearing: Oct 11, 2011, Planning Commission

Nov 10, 2011, City Council

Tressie Damron

Your Name (please print)

1114 W. 22nd

Your address(es) affected by this application

Austin, Tx 78722

Signature

Daytime Telephone: (512) 472-2333

Date

10-1-11

☐ I am in favor
☒ I object

Comments:

Caswell Heights Neighborhood
has voted against this
Change.

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

City of Austin

Planning & Development Review Department

Clark Patterson

P. O. Box 1088

Austin, TX 78767-8810

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Public Hearing: Oct 11, 2011, Planning Commission

Nov 10, 2011, City Council

BARBARA S. BRIDGES

Your Name (please print)

1106 W. 22^{1/2} St. - Austin, TX 78705

Your address(es) affected by this application

Barbara S. Bridges

Signature

10-7-11

Date

Daytime Telephone: (512) 232-3805

Comments: During the neighborhood planning process, our neighborhood trusted that the city would stand behind this restrictive covenant and, thus, did not push to change this address to L.O. Neighbors agreed to an incredibly dense East and North edge with UNO and always expressed the desire - and need - for offices up and down the Lamar / MLK corridors in order to preserve peace and quiet. The proposed LR will bring noise traffic, etc. from this property and create a bad precedent. L.O. is appropriate on this property. If you use this form to comment, it may be returned to:

City of Austin

Planning & Development Review Department

Clark Patterson

P. O. Box 1088

Austin, TX 78767-8810