

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, April 9, 2012

**CASE NUMBER:** C15-2012-0041

☒ Y \_\_\_\_\_ Jeff Jack  
☒ Y \_\_\_\_\_ Michael Von Ohlen 2<sup>ND</sup> the motion  
☒ Y \_\_\_\_\_ Nora Salinas  
☒ Y \_\_\_\_\_ Bryan King **Motion to PP to May 14, 2012**  
☒ Y \_\_\_\_\_ Susan Morrison  
☒ Y \_\_\_\_\_ Melissa Hawthorne  
☒ Y \_\_\_\_\_ Heidi Goebel  
☐ - \_\_\_\_\_ Cathy French (SRB only)  
☐ - \_\_\_\_\_ Dan Graham (SRB only)

**APPLICANT:** Charles Nohra

**OWNER:** Rosemary Follis

**ADDRESS:** 2201 BEN WHITE BLVD EB

**VARIANCE REQUESTED:** The applicant has requested a variance to decrease the minimum separation distance from an adult-oriented business and a public park requirement of Section 25-2-801 (D) (2) from 1,000 feet to 863.65 feet in order to create an adult-oriented business in a "CS-1-NP", Commercial-Liquor Sales – Neighborhood Plan zoning district. The Land Development Code states that an adult-oriented business may not be located on a lot that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day-care center is located.

**BOARD'S DECISION:** Board Member Bryan King motion to Postpone to May 14, 2012, Board Member Michael Von Ohlen second on a 7-0 vote; POSTPONED TO MAY 14, 2012.

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

  
Susan Walker  
Executive Liaison

  
Jeff Jack  
Chairman

## Walker, Susan

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**From:** Kathy Setzer [kathysetzer@yahoo.com]  
**Sent:** Monday, April 23, 2012 3:28 PM  
**To:** Walker, Susan; kathysetzer@yahoo.com  
**Subject:** Email from austintexas.gov: C15-2012-0041 -- opposing variance

This message is from Kathy Setzer. Dear Ms. Walker,

I understand that the applicant in the above-referenced case is requesting a variance in order to pave the way for opening a strip club at 2201 Ben White Boulevard.

I live at 3400 Santa Monica Dr. and Mabel Davis is my neighborhood park. My husband and I have owned our home here for 12 years come June. We purchased when the park was still closed while being treated for soil contamination. We purchased on the hope and expectation that one day we would have a beautiful park just three blocks from our home where our family could visit and play.

This afternoon, my dog and I walked the hiking path around Mabel Davis. We commonly do this around the time Linder Elementary lets out and we watch the young kids and their parents stop to play on the jungle gym at Mabel Davis. We have an ever-growing set of teenagers and young skaters (some tiny!) who make use of our skate park -- the City's first! Our Mabel Davis pool is quite the scene in the summer with kids and families of all shapes, sizes and ethnicities. And though our neighborhood is divided on the issue, I understand that there is to be an off-leash dog park going in at Mable Davis as well.

I am encouraged by how the park has developed over the 12 years that I have lived in the Santa Monica Hills neighborhood. It has been a great asset for bringing our multicultural community together, giving our young people an outlet for diversion, and giving those of us who are not so young any more, an outlet for exercise!

Who is this club owner to claim that my park is not a real park?

I am opposed to this business in my neighborhood and being in close proximity to our neighborhood park. I think the City's Land Development Code is clear on this issue -- the strip club will be less than 1000 feet from a public park, and therefore it is not a legitimate business for its location. The reasons behind this Land Development Code are important, and should not be overlooked in this case.

I am also concerned that if the Board of Adjustment allows this business to violate our established Land Development Code, what future services will our park and neighborhood be denied because of the proximity to an adult-oriented business? The yardstick measures both directions.

The City needs more park services; the City doesn't need more strip clubs. The policy on this seems extremely clear cut. I ask on behalf of concerned neighbors that the Board of Adjustment deny the request for variance on C15-2012-0041.

I may be reached at kathysetzer@yahoo.com or (512) 775-6436 for questions.

Thank you very much for your concern and for your service to the City of Austin.

---  
Kathy Setzer  
3400 Santa Monica Dr  
Austin, TX 78741  
(512) 775-6436

## Walker, Susan

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**From:** Lee Anne Landry [llandry541865@gmail.com]  
**Sent:** Monday, April 23, 2012 3:02 PM  
**To:** Walker, Susan  
**Subject:** Email from austin texas.gov: C15-2012-0041

This message is from Lee Anne Landry. I live in 78741 zip code near the proposed site of this strip club. Please do not let this go forward. Our neighborhood has challenges as it is, and the owner of this property is not a good steward of anything she owns. See this link:  
<http://www.kxan.com/dpp/news/local/city-says-faulty-furnace-led-to-deaths>

## Walker, Susan

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**From:** Mike Banks [spankyvw@yahoo.com]  
**Sent:** Tuesday, April 24, 2012 7:44 AM  
**To:** Walker, Susan  
**Subject:** Email from austintexas.gov: Regarding case #C15-2012-0041

This message is from Mike Banks. Please do not allow a variance for this strip club. There are several children living in the neighborhood just across the highway and the crime rate in 78741 is already the highest in Austin proper. Allowing this place to convert to a strip club would be defeating the Riverside renewal effort which will eventually spill into the Santa Monica area. We have been working hard and vigilant to clean up our area.

## Walker, Susan

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**From:** Camala Jones [cuatrojones@aol.com]  
**Sent:** Monday, April 23, 2012 7:09 PM  
**To:** Walker, Susan; cuatrojones@aol.com  
**Subject:** Email from austintexas.gov: C15-2012-0041

This message is from Camala Jones. Hello Ms. Walker,

I am sending this message to voice my opposition to the request to allow a strip club at the Midnight Cowboy location. As others have pointed out on our neighborhood watch there are plenty of strip clubs nearby in the form of Palazzo's is at 501 E. Ben White Blvd., 1.8 miles west of Midnight Cowboy, and was the site of a shooting death in early April. Expose is on South Congress, just north of Ben White, 1.7 miles away.

And if it's still around, Hot Bodies is on Felter Lane off Burleson Road, 3 miles east of Midnight Cowboy. A dancer and customer at Hot Bodies were involved in a robbery-turned-murder in 2010.

Additionally, the American Youth Works is located to the west probably within 2,000 or at most 3,000 feet and has day care and kids trying to get GED's and work experience and for me too close to for a strip club establishment.

Thank you for your time.

Sincerely Camala Jones - in solid opposition to the requested change for the Midnight Cowboy to be a strip club.

I am a nearby home owner at 3017 Burleson Road.

**GRAVES DOUGHERTY HEARON & MOODY**

A PROFESSIONAL CORPORATION

Wm. Terry Bray  
512.480.5635  
512.480.5835 (fax)  
tbray@gdhm.com

MAILING ADDRESS:  
P.O. Box 98  
Austin, TX 78767-9998

April 9, 2012

Ms. Susan Walker, City Planning  
City of Austin  
301 W. Second St.  
Austin, TX 78701

VIA EMAIL -susan.walker@austin.texas.gov

Re: Case Number: Board of Adjustment C15-2012-0041 - Application for Variance

Dear Ms. Walker:

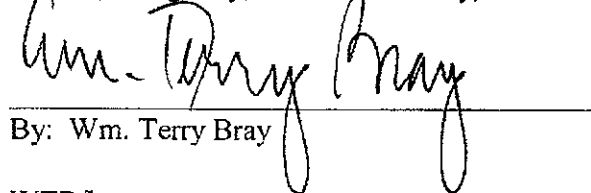
We represent Home Ground Corporation, the owner of Ben White Business Park Section 1A. The property owned by our client is located directly across Ben White from the project that is the subject of the referenced case.

Our client strongly opposes the granting of the requested variance. The proposed project is out of character with, and will be very detrimental to, other development in the area, including hotels, business parks, banks, residential neighborhoods and parks. The Applicant is characterizing the area as mostly industrial development which is simply not true. Our client anticipates that its property will be redeveloped in the near future, in all likelihood, as a hotel development.

Please provide a copy of this letter to the Board.

Sincerely,

Graves, Dougherty, Hearon & Moody, P.C.

  
By: Wm. Terry Bray

WTB/lc

cc: Mr. Randy Kemper (via email)

1667632.1 4/9/2012



GRAVES DOUGHERTY HEARON &amp; MOODY

401 Congress, Suite 2200  
Austin, Texas 78701  
Main Voice: 512.480.5600**FAX TRANSMITTAL**TO: **'Diana Ramierz (RightFax)'**  
City of Austin Voice #:

FAX #: 512-974-2934

FROM: Lisa Couvillon  
Direct Voice: 512.480.5628  
Direct Fax: 512.480.5885

DATE: 4/9/2012 1:55:22 PM

TOTAL PAGES INCLUDING COVER: 2

GDHM File #:

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**Notes, comments, special instructions:**

Case C15-2012-0041

**PLEASE NOTE**

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OTHER THAN BY THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

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If there are problems concerning this fax, please call Lisa Couvillon at 512-480-5600.

## PUBLIC HEARING INFORMATION

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 a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. 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.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing;

and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: [www.ci.austin.tx.us/development](http://www.ci.austin.tx.us/development).

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

Case Number: C15-2012-0041 – 2201 E Ben White Blvd  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, April 9th, 2012

**RANCHO TEXAS 408 RANCHO TEXAS20**

Your Name (please print) JUNEASTMENTS L.P.

☐ I am in favor  
☒ I object

Your address(es) affected by this application

2100 S 2028 E BEN WHITE BLVD. 4/4/2012

Signature Austin TX

Date

Daytime Telephone: 4692331097

Comments: REGASTIAN STRAZEN

WE OWN THE OFFICE BUILDING AT 2028 E BEN WHITE BLVD. AUSTIN TX. IT IS THE BUILDING THAT IS ANCHORED BY WEDGES & FARO. WE AND ALL OF OUR TENANTS ARE COMPLETELY OPPOSED TO THIS PROPOSAL OR VARIANCE. PLEASE CALL US AT 4692331097.

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

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088



(Amended)

C15-2012-0041

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The existing ordinance for a adult oriented business prohibits being located (2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day care center is located; -section 25-2-801 of land use and development code-zoning.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

The property is located within from 936.62' to 863.65' of Mabel Davis Park. The encroached area (63.38' to 136.35') of parkland is a creek bed located adjacent to a covered landfill. It is not used as parkland, nor can be developed for park use.

Highway 71 separates the park from the property and the walking distance to the property is well over 1,000'.

The zoning ordinance as applied to this particular property is unduly oppressive, arbitrary and/or confiscatory since the literary application of the ordinance would be unreasonable in light of the general statutory purpose derived from the 1986 study in which the ordinance was created.

- (b) The hardship is not general to the area in which the property is located because:

The surrounding area where the property is located is primarily industrial. The area which surrounds the parkland is residential. The areas are divided by Highway 71-a major highway also known as Ben White Blvd. There is no pedestrian traffic allowed to cross the road save and except the intersections. The property is not located at an intersection.

A hardship is defined as used in zoning ordinances as grounds for a variance; it refers to the fact that the restrictions applied to a particular property is unduly oppressive, arbitrary or confiscatory:

It is oppressive because the 1000' feet requirement in this instance is an excessive use of authority, as the intended use of the ordinance based on the 1986 study used to create the 1,000' restriction was to dissuade foot traffic. The distance to travel by foot is

well in excess of 1,000'. It is arbitrary in this instance because it is without consideration and regard for the particular topography and the facts and circumstances present, such as the encroachment area of the parkland is a creek bed and adjacent covered landfill. The intended use of the ordinance was to dissuade foot traffic and the distance to travel by foot is well in excess of 1,000'. It is confiscatory because it is condemning the property owner's right to use the property as a sexually oriented business. Denial of the use of the property is the hardship, especially considering the aforementioned facts, and ultimately it will not harm the public interest.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The property is abutted by commercial buildings and commercial property. Applicant is also the owner of the property to the west; highway 71 abuts to the north; storage units are to the east and railroad tracks lie to the south.

PARKING:

DOES NOT APPLY

APPLICANT CERTIFICATE —I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_ Mail address: 4213 Ave G Austin, TX 78751

Printed Name: Charlie Nohra Phone: (512) 659-0973 Date: 2/14/12

OWNERS CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed: \_\_\_\_\_ Mail address: 28 Reese Drive, Austin, Texas 78745

Printed name: Rosemary Follis Phone: (512) 659-0973 Date: 2/14/12

THIS IS FROM THE PROPERTY OWNER AND IS AN EXTENSION OF THE APPLICATION EXPLAINING THIS UNIQUE HARDSHIP – VERY IMPORTANT

Unique is defined in Websters Collegiate Dictionary as “Very unusual. Notable.”

Hardship is defined as “Something that causes a suffering or privation.” Privation is defined as “Deprivation, the act of depriving.”

I represent the property located at 2201 East Ben White. This property is zoned CS-1 and is the location of a western themed night club. What is unique about the property is that we are unable to acquire a conditional use permit due to very unique circumstances. The subject property needs to be at least 1,000 feet from a school, church, day care, another conditional use property, and from a park. When drawing an imaginary circle around 2201 East Ben White with a radius outward of 1,000 feet a problem arises. The circle encroaches at the very most 140 feet to the north a covered landfill that is erroneously designated as Mabel Davis Park. The encroached area of the park appears to be a dried creek-bed but in actuality is a covered wasteland that has been known to emit toxic gases from large amounts of pesticides and lead case batteries dumped there decades ago. The discovered emission of poisonous gasses lead to the removal of all of the park equipment nearest that south area of the park. The encroached area (confirmed by Parks Department officials D'Anne Williams and Ricardo Soliz) has never, is not, and will never be used as public park land. That area due to the potential safety risks to citizens can never be used as public parkland. For that reason we should be exempt and excluded from the distance requirement as it pertains to the park. Even after a \$10 million, 5½-year environmental cleanup of the contaminated site placing a clay cap over the old landfill did nothing more than cover the problem. The cap is not allowed to be irrigated, disturbed or penetrated with fence posts or any other structures. The softball fields, basketball courts, playground, picnic tables and other amenities were permanently removed. No athletic fields or any other playground amenities are allowed to ever be built on the contaminated area of the “park”. Again, we only encroach an area at the most 140 feet of the toxic creek bed that is mislabeled as a public park. It should also be pointed out that eight lanes of highway 71, ~~four~~ <sup>6</sup> lanes of access road, and 4.63 acres of private property separate us from that toxic area. Walking (or driving) across ~~12~~ <sup>14</sup> lanes of traffic on a major highway is illegal and deadly, and traversing the 4.63 acres of private property is trespassing. I would like to note that the actual shortest distance to travel from 2201 East Ben White to the park is over 3,300 feet to the closest entrance, and over 4,700 feet to the next closest entrance.

The hardship is we have no reasonable adequate remedy at law under the zoning ordinances. There is no allowance for a variance so the Board of Adjustments is our only legal recourse. There is no provision to ask the planning commission or city council for a variance from the 1,000 foot requirement. It would be time consuming and very improbable to successfully lobby for the enactment of a new ordinance. Another

possibility, but again time consuming and improbable, would be to ask a court of law if the ordinance as applied to this unique hardship is overreaching of authority. Time is of the essence as the current tenants lease has expired and if the property lays dormant for 90 days the zoning reverts backwards further limiting the property uses, expanding the hardship created by this unique situation to the property. As the owner of this property I hope reasonable property rights will ultimately prevail.

I respectfully request a Conditional Use Permit, as I can and will meet all other requirements. If for any reason the board will not or can not issue me the Conditional Use Permit then at the very least I ask for a variance. This variance would enable and empower us to legally apply through the proper channels for a Conditional Use Permit, not holding the Mabel Davis Park landfill area's proximity count against us.

FILM CODE

00004617207

Zoning Case No. C14-90-0013

DOC. NO.

90064387

RESTRICTIVE COVENANT

Owner: Rosemary Follis

Owner's Address: 788 Oakdale Drive, Austin, Texas, 78745

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


Property: Tract 2: 24,144 square feet [0.554 acre tract] of land out of Lot 1, St. Edwards Heights Subdivision, a subdivision in the City of Austin, Travis County, Texas according to the map or plat of record in Book 78, Page 39, of the Plat Records of Travis County, Texas, said 24,144 square feet of land being more particularly by metes and bounds in "Exhibit A" attached and incorporated herein for all purposes.

10:24 AM 8842

5.00 INDEX  
J 3 07/30/90  
900643.27-0006

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. If use of Tract 2 as Cocktail Lounge is discontinued for 90 consecutive days, the Owner of the Property will not object to the City of Austin rezoning the Property to "CS" ~~General~~ Commercial Services district as defined in Chapter 13-2 of the Austin City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance. *RT.*
  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 at the time of such modification, amendment or termination.

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified.

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

EXECUTED this the 13 day of July, 1990.

BY Rosemary Follis  
Rosemary Follis

THE STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§

This instrument was acknowledged before me on this the 13<sup>th</sup> day of July, 1990, by Rosemary Follis.

Betty Baker  
Notary Public Signature

BETTY BAKER  
Type or Print of Notary  
My Commission Expires: 4-5-93

NOTARY SEAL

After recording, please return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas, 78767-8828

Attention: Joe Jimenez

Building  
Tract 2

DESCRIPTION

DESCRIPTION OF 24,144 SQUARE FEET OR 0.554 ACRES OF LAND OUT OF LOT 1, ST. EDWARDS HEIGHTS, A SUBDIVISION OF RECORD IN BOOK 78, PAGE 39, PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 24,144 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING for reference at the northwest corner of Lot 1, St. Edwards Heights, a Subdivision of record in Book 78, Page 39, Plat Records of Travis County, Texas, same point being also the northeast corner of Lot 2, Monarch Addition, a subdivision of record in Book 78, Pages 16-17, Plat Records of Travis County, Texas, same point being also in the south right-of-way line of Ben White Boulevard;

THENCE, with the west line of said Lot 1, St Edwards Heights and the east line of said Lot 2, Monarch Addition, S05°25'50"W 173.06;

THENCE, through the interior of said Lot 1, St. Edwards Heights, S84°34'10"E 14.64 feet to the northwest corner of a building for the POINT OF BEGINNING of this tract;

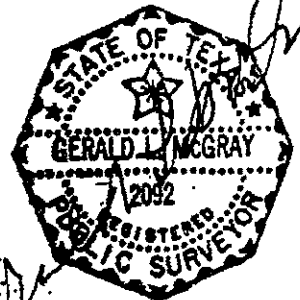
THENCE, with the perimeter of said building, the following four (4) courses:

- 1) S84°32'24"E 200.20 feet to the northeast corner of this tract and of said building;
- 2) S05°27'36"W 120.60 feet to the southeast corner of this tract and of said building;
- 3) N84°32'24"W 200.20 feet to the southwest corner of this tract and of said building;
- 4) N05°27'36"E 120.60 feet to the POINT OF BEGINNING and containing 24,144 square feet of land within these metes and bounds.

SURVEYED BY: McGRAY & McGRAY LAND SURVEYORS, INC.  
3301 Hancock Drive, Suite 6  
Austin, Texas 78731 (512)451-8591

*Gerald L. McGray*  
Gerald L. McGray, Reg. Public Surveyor No. 2092

*2/09/90*  
Date



90-130-2

RETURN TO:

CITY OF AUSTIN  
DEPT. OF LAW  
P. O. BOX 1038

AUSTIN, TEXAS 78767-8828

ATTN: JOE JIMENEZ

"EXHIBIT A"

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

11239 0050

11500 0020

11500 0020

FILED

JUL 30 10 29 AM '90

DANA 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 hereon by me; and  
was duly RECORDED, in the Volume and Page of the  
aforesaid RECORDS of Travis County, Texas, on

JUL 30 1990



*Dana Debeauvoir*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

11239 0051



(iii) female breast below a point immediately above the top of the areola; or

(b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(B) On-premises advertisements, displays, or other promotional materials for an adult-oriented business that emphasize specified sexual activities or specified anatomical areas must not be visible from public or semi-public places outside the business.

(C) Except as provided in Subsection (E), an adult-oriented business other than an adult lounge is a permitted use in a CBD, DMU, CS, CS-1, or CH zoning district.

(D) Except as provided in Subsection (E), an adult lounge is a permitted use in a CBD zoning district, and a conditional use in a DMU, CS-1, or CH zoning district.

(E) An adult-oriented business may not be located on a lot:

- (1) that is within 1,000 feet of a lot on which another adult-oriented business is located;
- (2) that is within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day-care center is located; or
- (3) where 50 percent or more of the lots within a 1,000 foot radius are zoned or used for a residential use.

(F) A radius or distance described in Subsection (E) is measured from the midpoint of a line joining the two most distant points on the boundaries of the lot.

Source: Section 13-2-265; Ord. 990225-70; Ord. 031211-11.

## **§ 25-2-802 ART GALLERY AND ART WORKSHOP USES.**

(A) For an art gallery use in a general office (GO) or more restrictive district, the sale of art supplies, equipment, or accessories is prohibited.

(B) This subsection applies to an art workshop use in a community commercial (GR) or more restrictive district.

(1) The use may not:

- (a) exceed 5,000 square feet of gross floor area; or
- (b) produce external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference, or waste runoff.

(2) The following are prohibited:

- (a) the outdoor storage of materials; and
- (b) the use of welding equipment, fiberglass, or epoxy.

Source: Ord. 040617-Z-1.

## **§ 25-2-803 COMMERCIAL BLOOD PLASMA CENTER CONDITIONAL USE REQUIREMENTS.**

A commercial blood plasma center is a conditional use if the use is within:

- (1) one-half mile of another commercial blood plasma center; or
- (2) 540 feet of a lot zoned or used for a residence, church, public or private school, public park or playground, or day-care facility.

Source: Sections 13-2-233 and 13-2-333; Ord. 990225-70; Ord. 031211-11.

AUSTIN CITY COUNCIL

**MAYOR**

Frank C. Cooksey

MAYOR PRO TEM

John Trevino, Jr.

COUNCIL MEMBERS

Mark Rose

Smoot Carl-Mitchell

Sally Shipman

George Humphrey

Charles K. Urdy

**CITY MANAGER**

Jorge Carrasco



REPORT ON ADULT ORIENTED  
BUSINESSES IN AUSTIN

Prepared By

Office of Land Development Services

May 19, 1986

In order to assess the impact of adult businesses on property values, questionnaires were mailed to 120 real estate appraisal and lending firms. Eighty-eight percent of those responding indicated a belief that an adult bookstore would decrease residential property values within one block, and 59% felt that residential property values would decrease within three blocks. Respondents based their opinions on several factors. They noted that adult businesses made homes less attractive to families, thus lowering demand and property values. Others stated that the existence of adult businesses leads mortgage underwriters to believe that the neighborhood is in decline, thus making 95% financing difficult.

### Trade Area Characteristics

In order to make appropriate recommendations for assignment of adult businesses to specific zoning districts, a study of trade area characteristics was conducted. Three adult businesses - a bookstore, theater and a topless bar - were examined to determine customer addresses by an observation of vehicle license numbers. Of the 81 observations made, only three customers had an address within one mile of an adult business. Nearly half (44%) of all customer addresses were located outside the City of Austin.

### Recommendations

Based on the findings of this study, the following recommendations are made:



1. Adult businesses should be limited to highway or regionally-oriented zone districts.
2. Adult businesses should be dispersed to avoid the over concentration of such business.
3. Conditional use permits should be required for adult businesses in certain specified zone districts.

## CHAPTER I INTRODUCTION

As is the case in many large American cities, Austin has witnessed a rapid rise in the number and type of adult entertainment businesses over the past decade. These businesses present a particular problem due, in part, to the moral implications associated with such enterprises in the minds of many members of the community. In addition, the proliferation and alleged detrimental effects of these businesses upon surrounding neighborhoods have been the focus of community attention for quite some time. This attention has resulted in numerous requests for the City to regulate adult businesses.

The regulation of adult entertainment businesses is a controversial matter. While legal and constitutional bases for municipalities to control the use of land within their jurisdictions in order to protect the "public health, safety, morals, and general welfare of their citizens" has been firmly established, the Supreme Court has upheld the right of adult entertainment businesses to operate in the community by virtue of the First and Fourteenth Amendments of the U.S. Constitution. Resolving conflicts between the legal rights of municipal governments and those of adult business operators and patrons has been a difficult task.

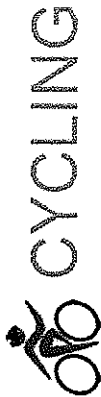
Austin enacted a "Sexually Oriented Commercial Establishments Ordinance" on May 22, 1980. This ordinance prohibits adult businesses from being closer than 1,000 feet from a residential use. On October, 25, 1983, a lawsuit was filed attacking the validity of the Ordinance. The lawsuit was filed after the Building Inspection Department issued a "Code Violation Notice" for an adult bookstore located at 8004 Research Blvd. This violation notice was filed because the bookstore was located within 1,000 feet of property zoned and used for residential purposes. The suit disputed the city's assertion of harm to areas zoned and used for residential purposes.

On January 10, 1985, a trial was held. Because the court was unable to make a factual finding on the validity of the City's assertion, it

**SPRING AWAKENING** Buy 6 months - get 12 months! TODAY LEFT



Charlie Nohra is



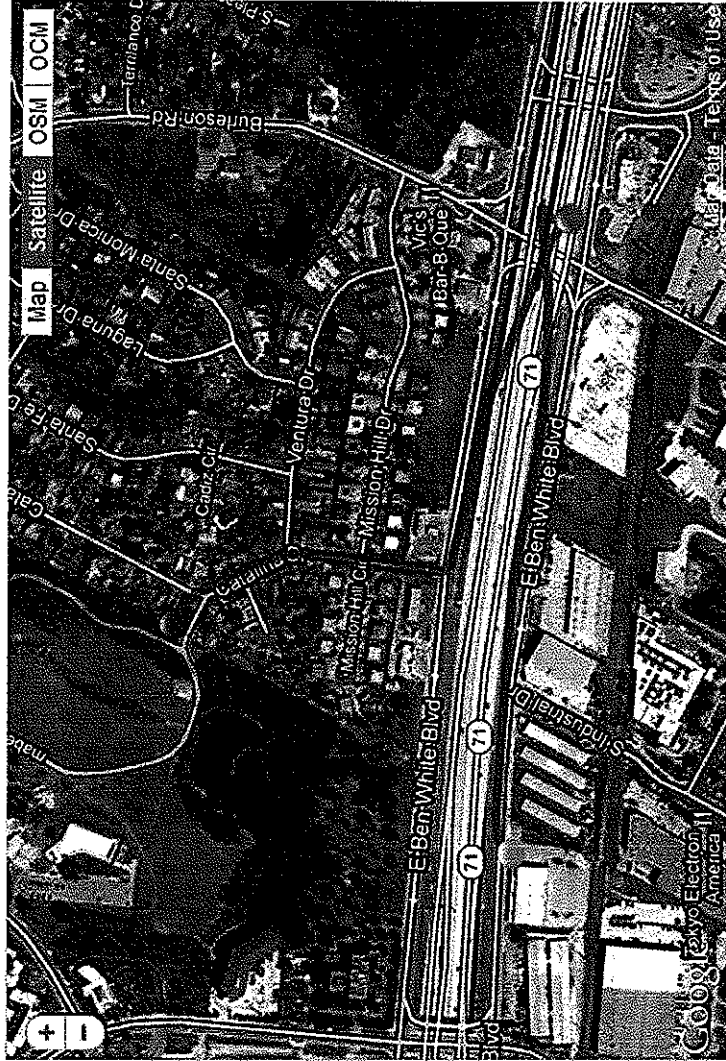
CYCLING

28 March, 2012, 15:18:56

Download Edit Activity Delete Activity

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Tweet



Distance	0.91 mi
Duration	00:02:27
Average Pace	02:41 min/mi
Average Speed	22.31 mph
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ACTIVITIES

FRIENDS

PHOTOS

TRAINING PLANS

**SPRING AWAKENING**
**Buy 6 months - get 12 months! TODAY LEFT**

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[Edit Activity](#)
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ACTIVITIES

FRIENDS

PHOTOS

TRAINING PLANS

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# Mabel Davis Park Cap Boundaries



## Legend

### Mabel Davis Cap Boundaries

#### Type

- Landfill
- Pesticide
- Mabel Davis Park
- Creeks

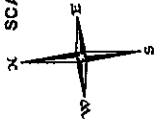
0 100 200 400  
Feet



The City of Austin is responsible for the safe use of water as a public resource. The City of Austin does not warrant the map and information regarding it without permission from the City of Austin Watershed Protection Department.

Date: 06.23.2011

SCALE: 1" = 60'



CITY OF AUSTIN  
VOLUME 2301 PAGE 40

CITY OF AUSTIN  
VOLUME 1581 PAGE 40

LOT 1  
PARKER AT WOODWARD INTERSECTION  
DOCUMENT NO. 1007028

LOT 1  
PARKER AT WOODWARD INTERSECTION  
DOCUMENT NO. 1007028

LOT 2  
PARKER AT WOODWARD INTERSECTION  
DOCUMENT NO. 1007028

LOT 3  
PARKER AT WOODWARD INTERSECTION  
DOCUMENT NO. 1007028

1000' RADIUS

EAST BEN WHITE BOULEVARD

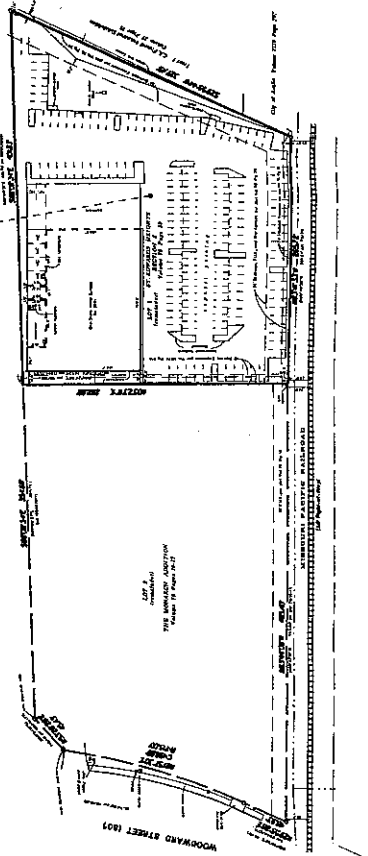
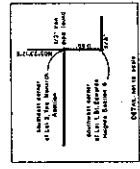
EXHIBIT MAP SHOWING THE DISTANCE BETWEEN  
LOT 1, ST. EDWARDS HEIGHTS SECTION 6, A SUBDIVISION  
IN THE CITY OF AUSTIN, TEXAS, AND THE SOUTH LINE OF  
THE TRACT OF LAND RECORDED IN VOLUME 2301, PAGE 40, OF  
THE CITY OF AUSTIN IN DEED RECORDED IN VOLUME 2301, PAGE 40, OF THE DEED RECORDS OF  
TRAVIS COUNTY, TEXAS.

PREPARED: January 19, 1912

BY:

Bill Carson  
Registered Professional Land Surveyor No. 116

LEGEND  
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DEVELOPMENT WEB MAP

Map Tools Map Images Map Layers Measure 2005 Map Color

Layers

- ☐ Layers
- ☐ Streets
- ☐ Contours
- ☐ Roads
- ☐ Building Footprints / 30'
- ☐ Review Cases
- ☐ Stormwater Information
- ☐ Information

Please Wait...

The distance of the polyline is 1062.986 feet.

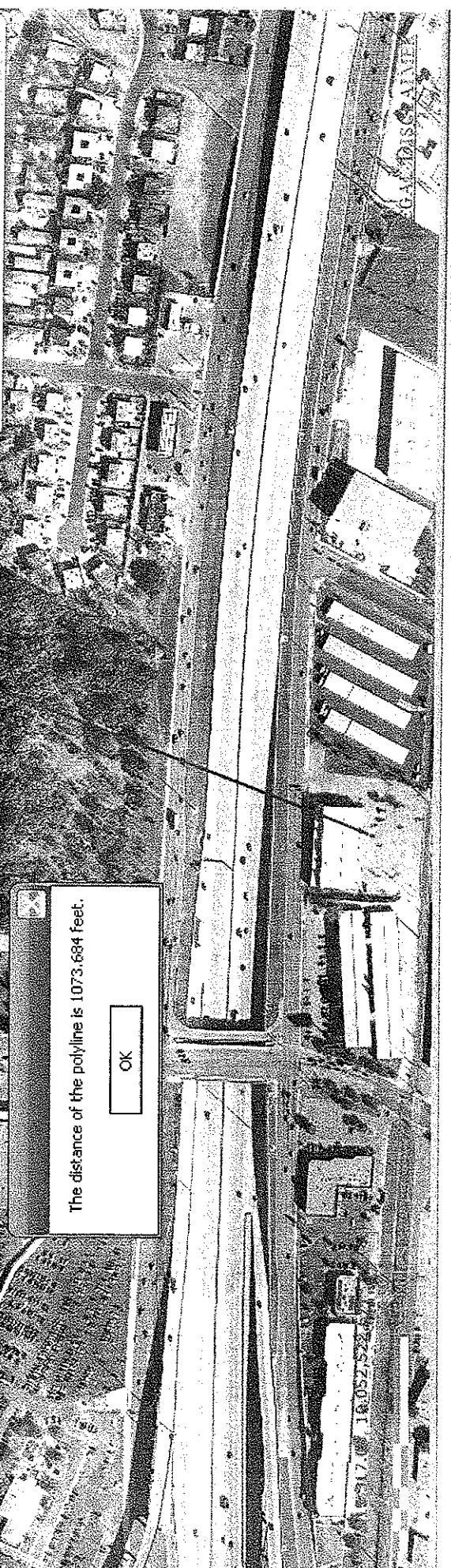
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Map Layers

- ☐ Layers
- ☐ Grids
- ☐ Contours
- ☐ Roads
- ☐ Building Footprints / PO
- ☐ Railroad Corridors
- ☐ Stormwater Infrastructure
- ☐ Transportation

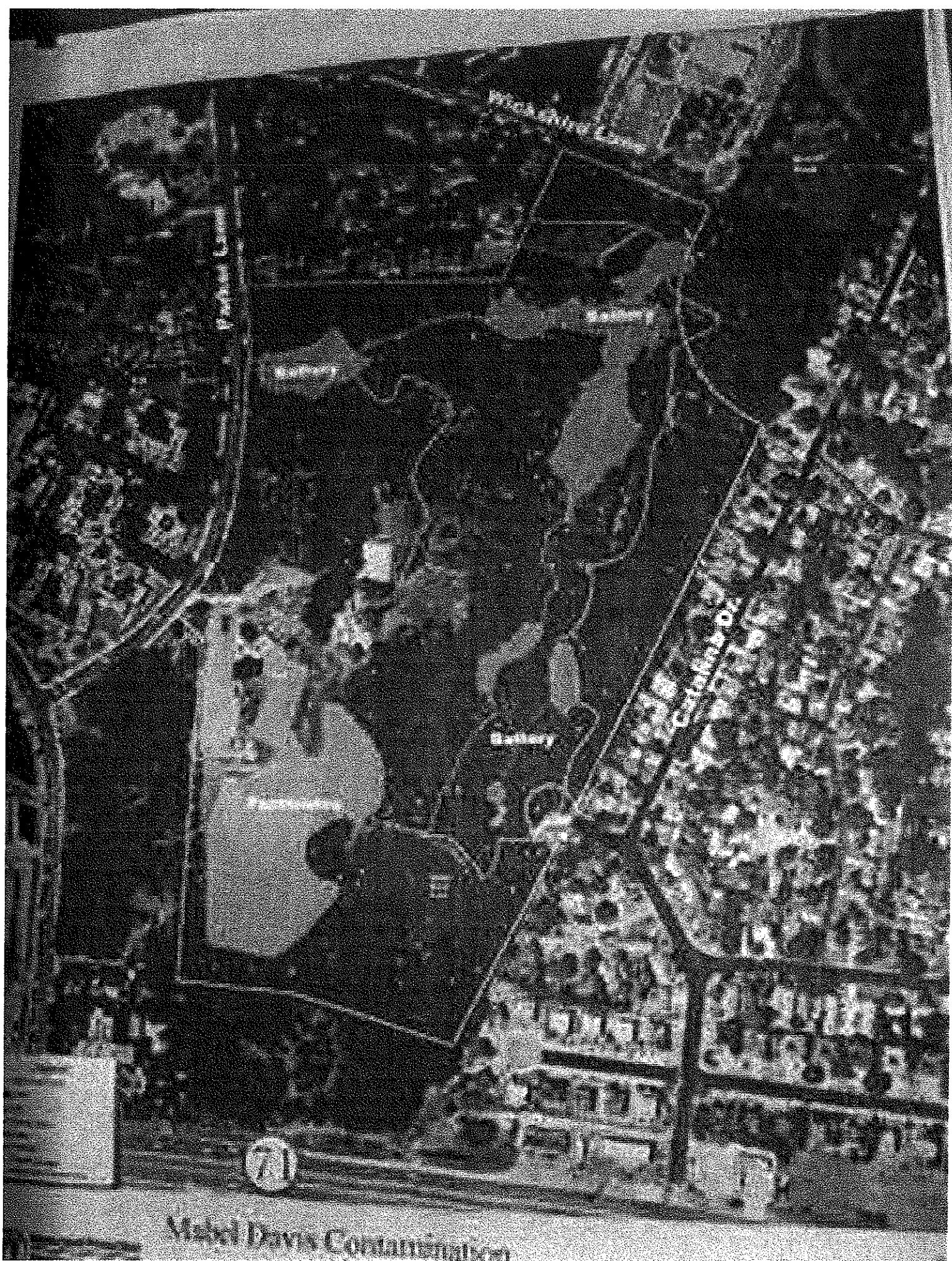


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OK





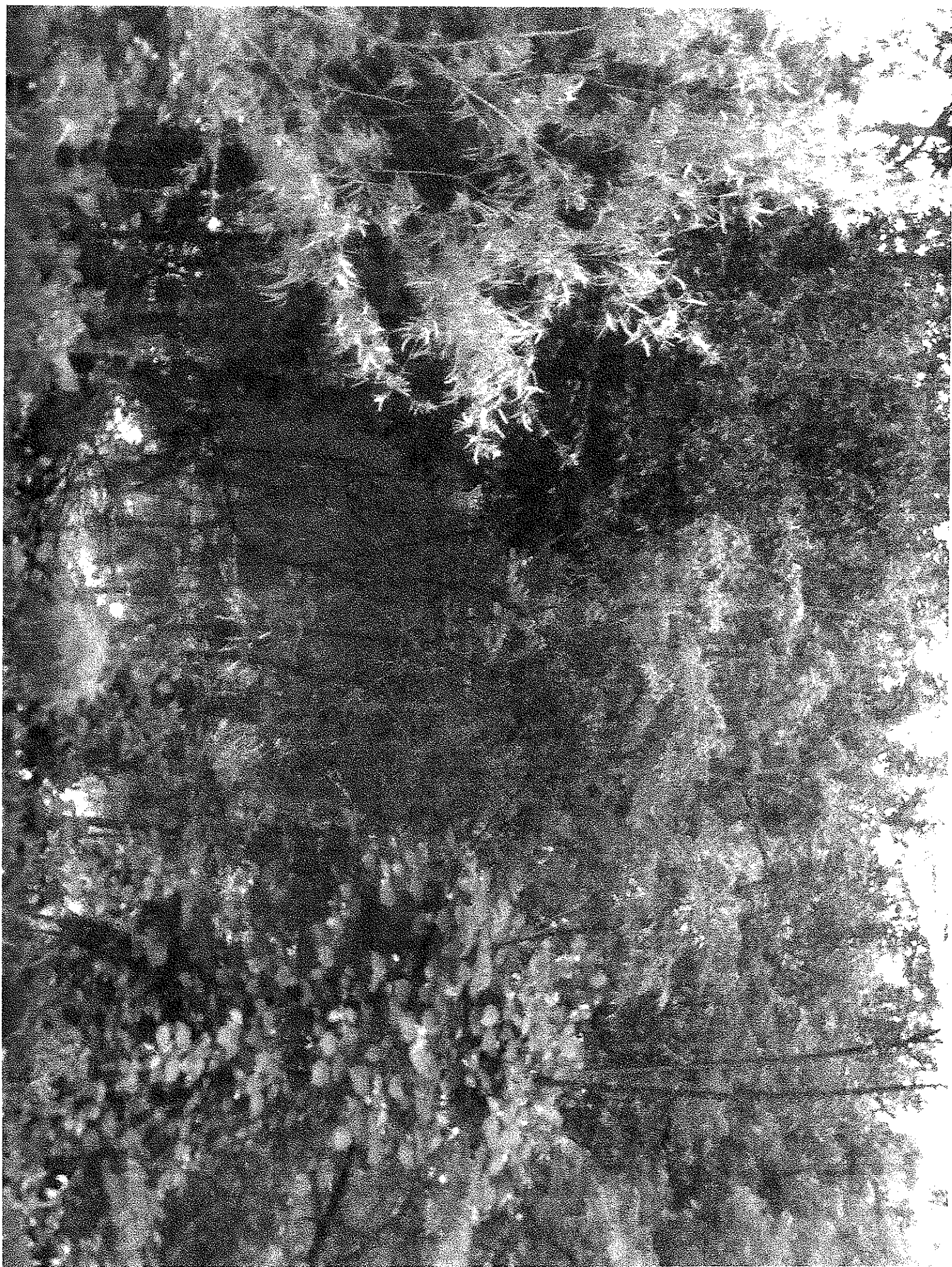












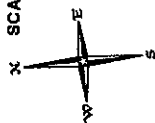








SCALE: 1" = 80'



CITY OF AUSTIN  
VOLUME 2501 PAGE 40

LOT 1  
PART OF WOODWARD REDEVELOPMENT  
DOCUMENT NO. 2001000000

LOT 2

CITY OF AUSTIN  
VOLUME 2501 PAGE 40

LOT 3

LOT 4  
ALLIED BUSINESS DEVELOPMENT  
VOLUME 2501 PAGE 40

LOT 5

LOT 6  
WHITE MOUNTAIN PARK 1A  
VOLUME 2501 PAGE 40

LOT 7

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GRAVES DOUGHERTY HEARON &amp; MOODY

401 Congress, Suite 2200  
Austin, Texas 78701  
Main Voice: 512.480.5600**FAX TRANSMITTAL**TO: 'Susan Walker (RightFax)'  
City of Austin Voice #: 512-974-2202

FAX #: 512-974-6305

'Diana Raimerez (RightFax)', 512-974-6305;

FROM: Lisa Couvillon  
Direct Voice: 512.480.5628  
Direct Fax: 512.480.5885

DATE: 4/9/2012 12:22:20 PM

TOTAL PAGES INCLUDING COVER: 2

GDHM File #:

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**Notes, comments, special instructions:**

Board of Adjustment Variance - Opposition to C15-2012-0041

**PLEASE NOTE**

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If there are problems concerning this fax, please call Lisa Couvillon at 512-480-5600.

**GRAVES DOUGHERTY HEARON & MOODY**

A PROFESSIONAL CORPORATION

Wm. Terry Bray  
512.480.5635  
512.480.5835 (fax)  
tbray@gdhm.com

MAILING ADDRESS:  
P.O. Box 98  
Austin, TX 78767-9998

April 9, 2012

Ms. Susan Walker, City Planning  
City of Austin  
301 W. Second St.  
Austin, TX 78701

VIA EMAIL -susan.walker@austin.texas.gov

Re: Case Number: Board of Adjustment C15-2012-0041 - Application for Variance

Dear Ms. Walker:

We represent Home Ground Corporation, the owner of Ben White Business Park Section 1A. The property owned by our client is located directly across Ben White from the project that is the subject of the referenced case.

Our client strongly opposes the granting of the requested variance. The proposed project is out of character with, and will be very detrimental to, other development in the area, including hotels, business parks, banks, residential neighborhoods and parks. The Applicant is characterizing the area as mostly industrial development which is simply not true. Our client anticipates that its property will be redeveloped in the near future, in all likelihood, as a hotel development.

Please provide a copy of this letter to the Board.

Sincerely,

Graves, Dougherty, Hearon & Moody, P.C.

By: Wm. Terry Bray

WTB/lc

cc: Mr. Randy Kemper (via email)

1667632.1 4/9/2012



GRAVES DOUGHERTY HEARON &amp; MOODY

401 Congress, Suite 2200  
Austin, Texas 78701  
Main Voice: 512.480.5600**FAX TRANSMITTAL**TO: 'Diana Raimerez (RightFax)'  
City of Austin Voice #:

FAX #: 512-974-6305

'Susan Walker (RightFax)', 512-974-6305;

FROM: Lisa Couvillon  
Direct Voice: 512.480.5628  
Direct Fax: 512.480.5885

DATE: 4/9/2012 12:22:20 PM

TOTAL PAGES INCLUDING COVER: 2

GDHM File #:

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**Notes, comments, special instructions:**

Board of Adjustment Variance - Opposition to C15-2012-0041

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MAILING ADDRESS:  
P.O. Box 98  
Austin, TX 78767-9998

April 9, 2012

Ms. Susan Walker, City Planning  
City of Austin  
301 W. Second St.  
Austin, TX 78701

VIA EMAIL -susan.walker@austin.texas.gov

Re: Case Number: Board of Adjustment C15-2012-0041 - Application for Variance

Dear Ms. Walker:

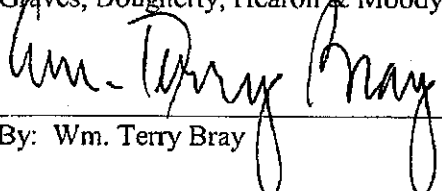
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Our client strongly opposes the granting of the requested variance. The proposed project is out of character with, and will be very detrimental to, other development in the area, including hotels, business parks, banks, residential neighborhoods and parks. The Applicant is characterizing the area as mostly industrial development which is simply not true. Our client anticipates that its property will be redeveloped in the near future, in all likelihood, as a hotel development.

Please provide a copy of this letter to the Board.

Sincerely,

Graves, Dougherty, Hearon & Moody, P.C.

  
By: Wm. Terry Bray

WTB/lc

cc: Mr. Randy Kemper (via email)

1667632.1 4/9/2012

C15-2012-004  
TR-0312020302  
ROW-10735660

**APPLICATION FOR BOARD OF ADJUSTMENT**

CASE # \_\_\_\_\_  
ROW# \_\_\_\_\_

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 2201 East Ben White Blvd.

LEGAL DESCRIPTION: Subdivision- ST. EDWARDS HEIGHTS

Lot(s): 1 section 6 Outlot Division \_\_\_\_\_

I/We Charlie Nohra on behalf of myself/ourselves as authorized agent for Rosemary Follis affirm that on February 15, 2012, hereby apply for a hearing before the Board of Adjustment for consideration to: (check appropriate items below)

     ERECT      ATTACH      COMPLETE      REMODEL X      MAINTAIN

ACQUIRE A CONDITIONAL USE PERMIT

IN A CS1 DISTRICT.  
(ZONING DISTRICT)

25-2-801 (E) (2)

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The existing ordinance for a adult oriented business prohibits being located (2) ... within 1,000 feet of a lot on which a school, church, public park or playground, or licensed day care center is located; -section 25-2-801 of land use and development code-zoning.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that: The property is located within 936.62' to 863.65' of Mabel Davis Park. The encroached area (63.38' to 136.35') of parkland is a creek bed located adjacent to a covered landfill. It has never been used as parkland, nor can ever be developed for park use.

Highway 71 separates the park from the property and the walking distance to the property is well over 1,000'.

The zoning ordinance as applied to this particular property creates a hardship since the literary application of the ordinance would be unreasonable in light of the general statutory purpose derived from the 1986 study in which the ordinance was created.

(b) The hardship is not general to the area in which the property is located because:

The surrounding area where the property is located is primarily industrial. The area which surrounds the parkland is commercial and residential. The property and the parkland are divided by Highway 71-a major highway also known as Ben White Blvd. There is no pedestrian traffic allowed to cross the road save and except the intersections. The property is not located at an intersection.

A hardship is as used in zoning ordinances as grounds for a variance;

It is a hardship because the 1000' feet requirement in this instance is an excessive use of authority, as the intended use of the ordinance based on the 1986 study used to create the 1,000' restriction was to dissuade foot traffic. The distance to travel by foot is well in excess of 1,000'. It is an arbitrary number (within 1000') in this instance because it is without consideration and regard for the particular topography and the facts and circumstances present. The encroachment area (63.38' to 136.35') of the parkland is a creek bed and adjacent covered landfill. The intended use of the ordinance was to divert and discourage foot traffic from the parkland to the site of the sexually oriented business. The distance to walk is well in excess of 1,000'. A hardship exists because it is condemning the property owner's right to acquire a conditional use permit which will not harm the public interest.

#### AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The property is located across Highway 71 from Mabel Davis Park abutted by commercial buildings and vacant commercial property. The Texas Criminal Justice System Board of Pardons and Parole are housed in the office building to the west.



Highway 71 abuts to the north; storage units are to the east and railroad tracks lie to the south.

PARKING:

DOES NOT APPLY

APPLICANT CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

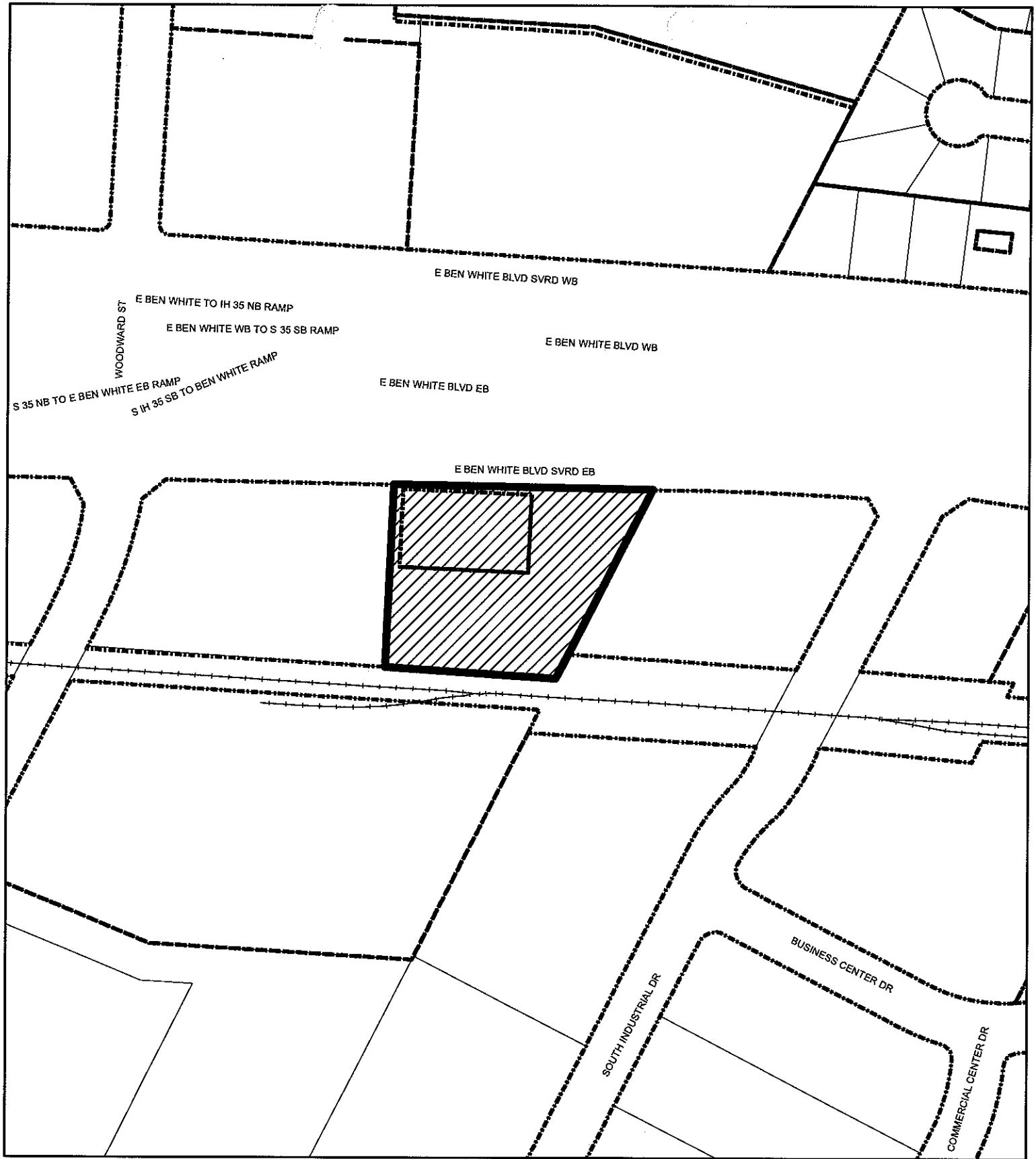
Signed: Charlie Nohra Mail address: 4213 Ave G Austin, TX 78751

Printed Name: Charlie Nohra Phone: (512) 659-0973 Date: 2/15/12

OWNERS CERTIFICATE - I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed: Rosemary Ellis Mail address: 28 Reese Drive, Austin, Texas 78745

Printed name: Rosemary Ellis Phone: (512) 659-0973 Date: 2/14/12



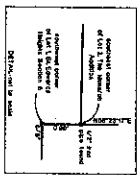
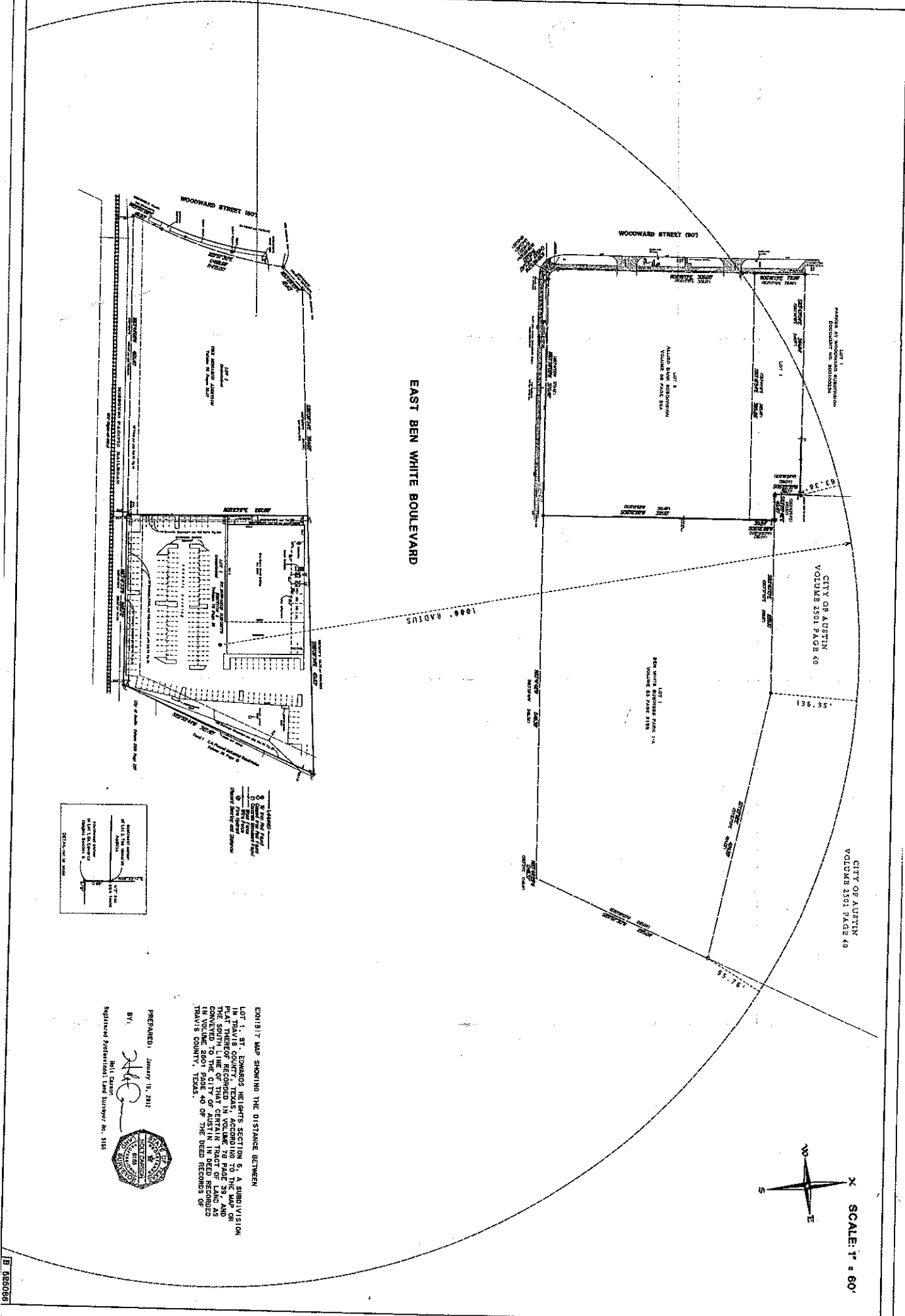
CASE#: C15-2012-0041  
LOCATION: 2201 E BEN WHITE BLVD



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

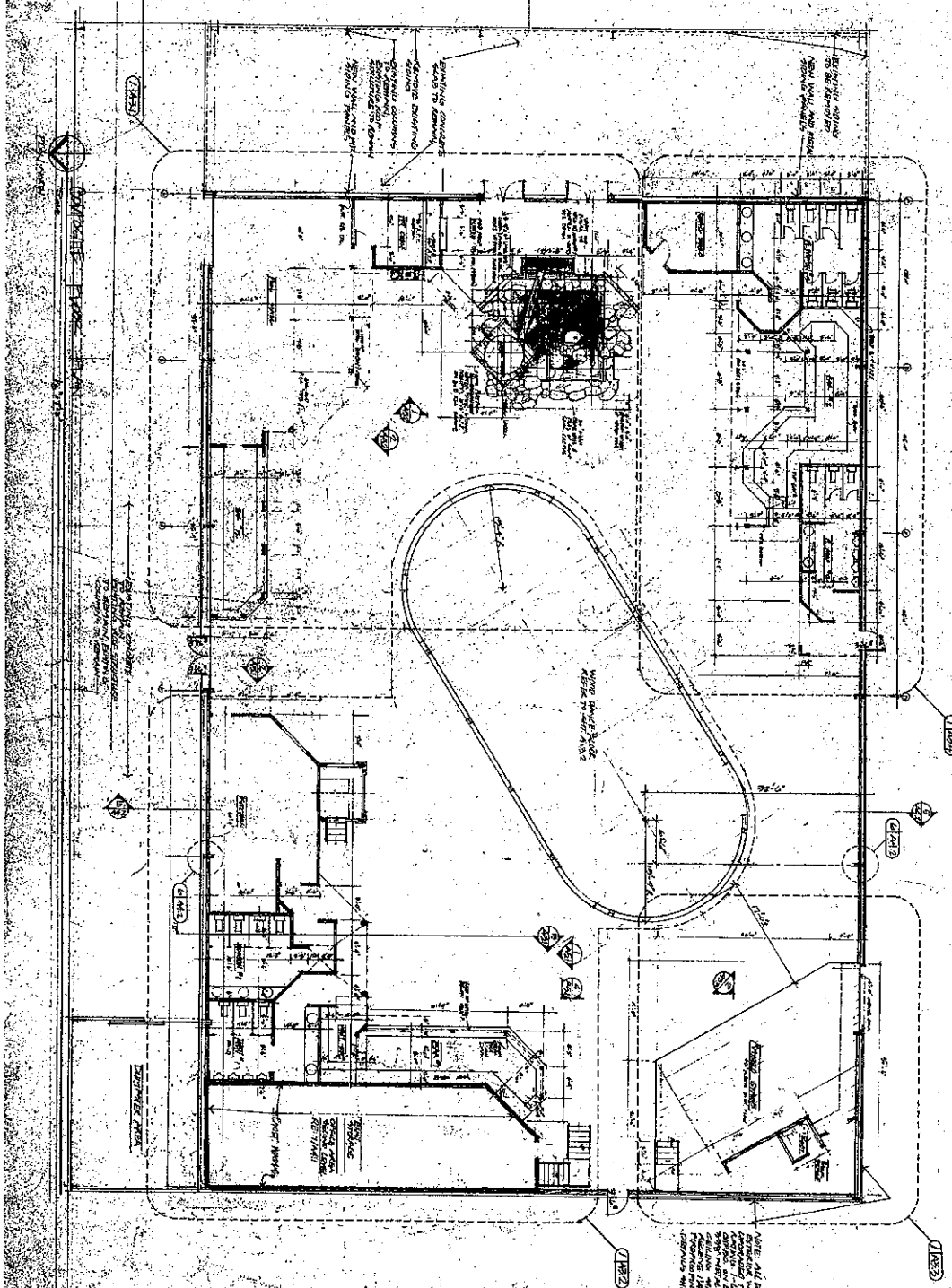




PREPARED: January 15, 2012  
 BY: [Signature]  
 Roll Call  
 Registered Professional Land Surveyor No. 3165



EXHIBIT MAP SHOWING THE DISTANCE BETWEEN LOT 1, ST. EDWARDS HEIGHTS SECTION 5, A SUBDIVISION OF THE CITY OF AUSTIN, TEXAS, AND LOT 2, A SUBDIVISION OF THE CITY OF AUSTIN, TEXAS, AND THE SOUTH LINE OF THAT CERTAIN TRACT OF LAND AS IN VOLUME 2501 PAGE 40 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS.



(US-2010-001)  
 1502 WEST AVENUE  
 AUSTIN, TEXAS 78701

SHEET  
 4-2-1

DANCE ACROSS TEXAS  
 A NEW COUNTRY WESTERN NIGHT CLUB  
 FOR ALTHIN, TEXAS 2201 EBBEN WHITE

THE AUSTIN COLLABORATIVE  
 ARCHITECTURE  
 1502 WEST AVENUE  
 AUSTIN, TEXAS 78701

THE AUSTIN COLLABORATIVE  
 ARCHITECTURE  
 1502 WEST AVENUE  
 AUSTIN, TEXAS 78701







# Mabel Davis Park Cap Boundaries



## Legend

### Mabel Davis Cap Boundaries

#### Type

- Landfill
- Pesticide
- Mabel Davis Park
- Creeks

0 100 200 300 400

Feet



Watershed Protection Department  
The City of Austin  
10000 N. Burnet Road, Suite 100  
Austin, Texas 78753  
www.austintexas.gov/department/watershed-protection  
Date: 06/23/2011