

ZONING CHANGE REVIEW SHEET

CASE: C14-2013-0147
707 West Avenue Rezoning

P.C. DATE: February 25, 2014
January 28, 2014

ADDRESS: 705, 707, & 709 West Avenue

AREA: 0.44 Acres

APPLICANT: Cirrus Logic, Inc.
(Thurman Case)

AGENT: Armbrust & Brown, P.L.L.C.
(Richard Suttle)

NEIGHBORHOOD PLAN AREA: Downtown

CAPITOL VIEW: Yes

T.I.A. Not Required

HILL COUNTRY ROADWAY: No

DESIRED DEVELOPMENT ZONE: Yes

WATERSHED: Shoal Creek

ZONING FROM: CS-CO, General commercial services-conditional overlay combining district zoning

ZONING TO: DMU, Downtown mixed use district zoning

SUMMARY STAFF RECOMMENDATION:

Staff recommends DMU-CO, Downtown Mixed Use-conditional overlay combining district zoning. The Conditional Overlay would limit building height to 60 feet, and vehicular traffic to less than 2,000 trips per day.

PLANNING COMMISSION RECOMMENDATION:

February 25, 2014: *GRANTED DMU-CO AS RECOMMENDED BY STAFF, ON CONSENT, (9-0) [D. CHIMENTI - 1ST, J. STEVENS - 2ND]*

ISSUES:

This rezoning request was presented at the January 28, 2014, Planning Commission meeting but a notification error was discovered after that date. Consequently, the case was renotified for the February 25th meeting.

The rezoning is proposed by the Applicant to comply with the terms of a private Restrictive Covenant (RC) recorded in 2001 in coordination with the rezoning of the property under City File # C14-2011-0058. The RC states that the property owner should make a good effort to rezone the property to DMU as soon as the proposed land uses of Electronic Prototype Assembly and Electronic Testing are allowed in DMU. These land use changes required a change in City Code, which was completed in 2013. (See Attachment A- Restrictive Covenant).

DEPARTMENT COMMENTS:

The subject property is located on the northeast corner of 7th Street and West Avenue and is in the Northwest District of the Downtown Austin Plan. The property is also partially located in the Capitol View Corridor. (See Attachments B & C- Zoning Map and Capitol View Corridor Exhibit).

At the time of the previous rezoning, the Downtown Austin Plan was still in process for this area, and DMU zoning did not permit the proposed land uses. The land uses fall into the categories of Electronic

prototype assembly, and Electronic testing & research services, and the first category allowing that use in 2011 was CS, General commercial services.

The subject RC was recorded in conjunction with the CS-CO zoning of the property in 2011 called for this property to convert to Downtown Mixed Use with a sixty foot height limit (DMU-60). This RC was developed through extensive work between the Applicant and the neighborhood, the Original Austin Neighborhood Association.

In 2013, the Land Development Code was modified to allow these uses in DMU, with the following conditions on Electronic prototype assembly land use. Electronic prototype assembly is a conditional land use in DMU and CBD, unless the following requirements are met, in which case it permitted:

1. The building in which the electronic prototype assembly use is located is a single-tenant building and does not include any pedestrian-oriented uses on the ground floor.
2. The building in which the electronic prototype assembly use is located is less than 90 feet in height.
3. The building in which the electronic prototype assembly use is located does not contain residential uses; and,
4. The proposed electronic prototype assembly use does not require Group H occupancy, as defined by the Building Code (Hazardous materials).

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
SITE	GO	Office
NORTH	GO/MF-4	Office
SOUTH	GO/GR	Office building
EAST	GO	Office
WEST	GO	Retail/services

CASE HISTORIES:

CASE NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-05-0040	From GO to DMU-CURE-CO	Approved DMU-CURE-CO [Vote: 7-0]	Approved DMU-CURE CO [Vote: 7-0]
C14-06-0007	From CS to CBD-CO	Approved CBD-CO [Vote: 7-0]	Approved CBD-CO [Vote: 5-0]
C14-06-0183	From GR to CBD-CURE-CO	Approved CBD-CO-CURE [Vote: 7-0]	Approved CBD-CO-CURE [Vote: 7-0]
C14-2011-0058	From GO to CS	Approve staff rec. with the addition of MU overlay (CS-MU-CO) zoning; (5-1-1); Chimenti –opposed, Hatfield- abstained; - Dealey- absent, 1 vacancy. Staff rec. of CS-CO. Prohibit the following uses: Agricultural sale and services, Automotive rentals, Automotive repair services, Automotive sales, Blood plasma service, Building maintenance services, Campground, Commercial off street parking, Construction sales and services, Convenience storage Drop off recycling collection facility, Equipment repair services, Equipment sales, Funeral services, Kennels, Monument retail sales, Plant nursery, Pawn shop services, Service station, Stables, Vehicle storage, and Veterinary services. Conditional Uses: Cocktail lounge, liquor sales and Bail bond services; < 2,000 vpd.	8/18/2011: Approve 1 st reading CS-MU-CO as recommended 10/6/2011: Approve 2 nd & 3 rd reading

NEIGHBORHOOD ORGANIZATION:

- Downtown Austin Neighborhood Coalition
- Pecan Street Owner's Association
- Downtown Austin Alliance
- Austin Warehouse District Association
- Old Pecan Street Association
- Sentral Plus East Austin Koalition
- Austin Neighborhood Council
- Downtown Austin Neighborhood Association
- Austin City Lofts HOA
- West End Austin Alliance
- Original Austin Neighborhood Assoc.

SCHOOLS:

Matthews Elementary School

O' Henry Middle School

Austin High School

STAFF RECOMMENDATION:

Staff recommends DMU-CO, Downtown Mixed Use-conditional overlay combining district zoning. The Conditional Overlay would limit building height to 60 feet, and vehicular traffic to less than 2,000 trips per day. This would maintain the elements of the existing conditional overlay that affect the tract, while meeting the Applicant and Neighborhood's mutual goal of rezoning the property to DMU. This goal was identified through extensive work between the Applicant and the neighborhood. City staff agrees that DMU is an appropriate zoning category for the property and the proposed land use.

BASIS FOR RECOMMENDATION:

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

The Land Development Code was specifically modified in 2003 to allow Electronic prototype assembly and Electronic testing & research services in DMU zoning. This land use is appropriate for the employment center nature of DMU and CBD zoning located downtown and in the central city area.

SITE PLAN:

- SP 1. This site is within the Capitol View Corridor, and the maximum height allowed within the view corridor is strictly enforced. For any new development, an application for a Capitol View Corridor Height Determination must be submitted to Intake and demonstrate compliance prior to site plan review. For more information, contact the Development Assistance Center at 974-6370.
- SP 2. This tract is also located within the Criminal Justice Center Overlay District (§ 25-2-650), and the following uses are prohibited:
- (1) bail bond services uses, cocktail lounge uses, or liquor sales uses that would otherwise be a permitted use as a conditional use; and
 - (2) pawn shop services uses is a prohibited use.
- SP 3. Any new construction may require compliance with Subchapter E, Commercial Design Guidelines for Urban Roadways. Additional comments will be made during the site plan review.
- SP 4. Site plans will be required for any new development other than single-family or duplex residential.

ENVIRONMENTAL:

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Shoal 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.

2. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.
3. 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.
4. According to flood plain maps, there is no flood plain within the project area.
5. At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.
6. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

TRANSPORTATION:

TR1: Existing Street Characteristics:

Name	ROW	Pavement	Classification	Daily Traffic
West Avenue	80'	36'	Collector	Not Available
West 7 th Street	80'	36'	Collector	Not Available

TR2: No additional right-of-way is needed at this time.

TR3: A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day [LDC, 25-6-117].

TR4: There are existing sidewalks along West 7th Street. There are no existing sidewalks along West Avenue.

TR5: According to the Austin 2009 Bicycle Plan Update approved by Austin City Council in June, 2009, bicycle facilities are existing and/or recommended along the adjoining streets as follows:

Street Name	Existing Bicycle Facilities	Recommended Bicycle Facilities
West Avenue	Wide Curb	Wide Curb
West 7 th Street	Shared Lane	Shared Lane

TR6: Capital Metro bus service (route nos. [4](#), [21](#), & [103](#)) is available along [West 6th Street at West Avenue](#).

CITY COUNCIL DATE/ACTION: March 20, 2014: *GRANTED POSTPONEMENT TO MARCH 27, 2014, AS REQUESTED BY STAFF, ON CONSENT (7-0) [L. MORRISON- 1ST, M. MARTINEZ, 2ND]*

MARCH 27, 2014: *GRANTED POSTPONEMENT TO APRIL 10, 2014 AS REQUESTED BY STAFF, ON CONSENT (7-0) [M. MARTINEZ- 1ST, B. SPELMAN, 2ND]*

APRIL 10, 2014:

ORDINANCE READINGS: 1ST 2ND 3RD

ORDINANCE NUMBER:

CASE MANAGER: Heather Chaffin
heather.chaffin@austintexas.gov

PHONE: 974-2122

ORIGINAL
FILED FOR RECORD

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (the "Restrictive Covenant"), is executed by the Cirrus Logic, Inc., a Delaware corporation ("Owner") and is as follows:

EXHIBIT A-
RESTRICTIVE
COVENANT

RECITALS:

OWNER: Cirrus Logic, Inc., a Delaware corporation

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

PROPERTY: 0.444 of an acre of land, more or less, and being all of Lots 1 and 2, a portion of Lot 3, and a portion of a 20 foot vacated alley in Block 77, ORIGINAL CITY OF AUSTIN, according to the map or plat thereof recorded in the General Land Office of the State of Texas, as more fully described by metes and bounds on Exhibit A attached hereto and made a part hereof.

A. Definitions.

1. Association. The term "Association" means the Original Austin Neighborhood Association.
2. City. The term "City" means the City of Austin, Texas.
3. Code. The term "Code" means the Land Development Code of the City of Austin.
4. Owner. The term "Owner" means Cirrus Logic, Inc. ("Cirrus") and, subject to Section 4 hereof, its successors and assigns as owners of the fee interest of the Property.

B. General Recitals.

1. Owner owns the Property.
2. The Association was formed to represent the neighborhood which official Association boundaries extend from Lady Bird Lake to West 15th Street, and from Lamar Boulevard to Guadalupe, in Austin, Texas.
3. The Property is located within the boundaries of the Association.
4. The Property is presently zoned under the Code as General Office (GO).
5. Owner is currently processing an Application ("Rezoning Application") with the City for the purpose of rezoning the Property from GO to General Commercial Services (CS).

6. The Association has agreed to support the Rezoning Application for the Property on the condition that Owner adopt and impose this Restrictive Covenant on the Property.

7. Owner and the Association desire to evidence their agreement in the form of this Restrictive Covenant.

C. **Declaration.**

Each deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in the deed or conveyance. Owner declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to the Property or any part, their respective heirs, successors, and assigns.

AGREEMENTS:

1. Uses. As long as the Property is zoned CS, the Property is and will remain subject to the requirements and limitations of Zoning District CS of the Code as it exists on the effective date of this Restrictive Covenant. Uses permitted in Zoning District CS are permitted uses of the Property; provided, however, uses of the Property listed on Exhibit B are prohibited uses (collectively, the "Prohibited Uses").
2. Rezoning. In the event that the Code is amended to allow "Electronic Testing" and "Electronic Prototype Assembly", as such uses are defined by the Code, within the Downtown Mixed Use (DMU) Zoning District, and Owner is using the Property for either of such purposes, Owner will exercise reasonable efforts to cause the Property to be rezoned from Zoning District CS to Zoning District DMU, and the Association agrees to support such Code amendment and rezoning of the Property. In the event that the Code is amended to include the above uses within Zoning District DMU, and Owner is subsequently successful in rezoning the Property to Zoning District DMU, this Restrictive Covenant will automatically terminate. Although it is intended that the foregoing provision for the termination of this Restrictive Covenant is self-operating, Owner is entitled, but not required, to record an affidavit in the Official Public Records of Travis County, Texas certifying that such zoning change has occurred and that this Restrictive Covenant is terminated.
3. Building Height. Improvements on the Property will be limited to a maximum building height of sixty feet (60').
4. Change in Ownership or Use.
 - A. In the event that Cirrus conveys the Property to (i) a subsidiary or affiliated entity of Cirrus, or (ii) an entity acquiring all or substantially all of the capital stock or assets of Cirrus (a "Permitted Assignee"), this Restrictive Covenant will remain

in full force and effect and continue to be binding on the Property and the Permitted Assignee.

- B. In the event Cirrus conveys the Property to other than a Permitted Assignee then this Restrictive Covenant will be deemed to be automatically amended to include "Research Services", "Electronic Testing" and "Electronic Prototype Assembly" as Prohibited Uses.

5. General Provisions.

- A. Permits and Approvals. As consideration for Owner's execution of this Restrictive Covenant, the Association agrees to support any and all rezoning applications, permits and/or approvals sought for the development and use of the Property including, without limitation, an amendment to the Code pursuant to Section 2 above, that are consistent with this Restrictive Covenant, and will evidence its support as reasonably requested by Owner. The Association agrees and understands that Owner would not have entered into this Restrictive Covenant but for the agreement by the Association to this provision. This Restrictive Covenant will automatically terminate and be of no further effect if the Austin City Council fails to approve a rezoning of the Property to Zoning District CS. Although it is intended that the foregoing provision for the termination of this Restrictive Covenant is self-operating, Owner is entitled, but not required, to record an affidavit in the Official Public Records of Travis County, Texas certifying that such zoning change did not occur and that this Restrictive Covenant is terminated.
- B. Enforcement. If any person or entity violates or attempts to violate this Restrictive Covenant, it will be lawful for the Association to bring an action for specific performance against the person or entity violating or attempting to violate such covenant and to prevent the person or entity from violating or attempting to violate such covenant. No other person or entity will be entitled to enforce this Restrictive Covenant. No action for damages will be permitted. Upon request by Owner, from time to time, the Association will confirm, in writing, within twenty one (21) days following receipt of written request, that Owner and the Property are in compliance with this Restrictive Covenant. If the Association declares that Owner and the Property are not in compliance, the Association will provide a detailed written description of each area of non-compliance within twenty one (21) days of the request by Owner. If no response is given within twenty one (21) days following the request by Owner, it will be deemed that Owner and the Property are in compliance with this Restrictive Covenant.
- C. Modification and Amendment. Subject to Sections 2 and 5A above, this Restrictive Covenant may only be modified, amended or terminated upon the filing of a modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (a) the Association; (b) the Owner of the Property; and (c) any mortgagees holding first lien security interests on any portion of the Property. Such joint action only

becomes effective after it is reduced to writing, signed by Owner and its respective mortgagees, if any, and the Association and filed in the Official Public Records of Travis County, Texas.

- D. Duration. This Restrictive Covenant will be effective in perpetuity, unless modified, amended, or terminated in accordance with Sections 2 or 4C.
- E. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations will be governed by the laws of the State of Texas. This Restrictive Covenant is performable in Travis County, Texas.
- F. Notices. Any Notice to Owner or the Association must 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 certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Any change in ownership or address requires notice to Owner and the Association.

Owner:

Cirrus Logic, Inc.
Attn: General Counsel
2901 Via Fortuna
Austin, Texas 78746

Association:

Original Austin Neighborhood Association
Attn: President
Post Office Box 1282
Austin, Texas 78767

- G. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among Owner or the Association in their respective businesses or otherwise; nor will it cause them to be considered joint venturers or members of any joint enterprise.
- H. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind the Owner, and its heirs, successors and assigns. When an Owner conveys all or any portion of the Property, the former Owner will 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 conveyance releases that Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.

- I. Severability. The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion does not affect the validity or enforceability of any other provision.
- J. Entire Agreement. This Restrictive Covenant, and the exhibits, contains all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits.
- K. Counterparts. This Restrictive Covenant may be executed in any number of counterparts which will, together, be deemed to constitute one document.

Executed to be effective on August 17th, 2011.

**COUNTERPART SIGNATURE PAGE TO DECLARATION OF RESTRICTIVE
COVENANT**

Owner:

Cirrus Logic, Inc.,
a Delaware corporation

By: YLC

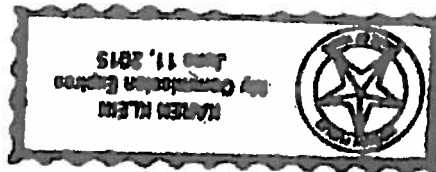
Name: Thurman Case

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 17th day of August,
2011, by Kate Thurman Case, CFO, of Cirrus Logic, Inc., a
Delaware corporation, on behalf of said corporation.

Kate Thurman Case
Notary Public Signature



**COUNTERPART SIGNATURE PAGE TO DECLARATION OF RESTRICTIVE
COVENANT**

Association:

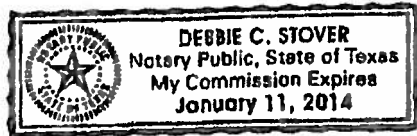
Original Austin Neighborhood Association

By: Ted Siff
Name: Ted Siff
Title: President

THE STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 17th day of August,
2011, by Ted Siff, president of the Original Austin Neighborhood Association, on behalf of said
Original Austin Neighborhood Association.



Debbie C. Stover
Notary Public Signature

AFTER RECORDING, RETURN TO:

Amanda Morrow
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701

EXHIBIT A
PROPERTY

EXHIBIT B

PROHIBITED USES

The following uses of the Property are prohibited (based on the definitions from the Code as of the effective date of this Restrictive Covenant):

Agricultural Sales and Services
Automotive Rental
Automotive Repair Services
Automotive Sales
Blood Plasma Services
Building Maintenance Services
Campground
Commercial Off-Street Parking
Construction Sales and Services
Convenience Storage
Drop-Off Recycling Collection Facility
Equipment Repair Service
Equipment Sales
Funeral Services
Kennels
Monument Retail Sales
Plant Nursery
Service Station
Stables
Vehicle Storage
Veterinary Services

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Aug 18, 2011 11:37 AM

2011120656

RECHADOP: \$56.00

Dana DeBeauvoir, County Clerk

Travis County TEXAS

"Exhibit

A

FIELD NOTE DESCRIPTION OF 0.444 ACRE OF LAND, BEING ALL OF LOTS 1 AND 2, A PORTION OF LOT 3, AND A PORTION OF THE ADJOINING 20 FT. WIDE VACATED ALLEY, BLOCK 77 OF THE ORIGINAL CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE WITH THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, AND BEING ALL OF THAT SAME PROPERTY CONVEYED TO CHARLES E. BROWN ET AL. BY DEED RECORDED IN VOLUME 12422 PAGE 958 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a spindle found at the Northeast corner of that certain tract conveyed to Charles E. Brown et al. by deed recorded in Volume 12422 Page 958 of the Real Property Records of Travis County, Texas, and being the Northeast corner and **PLACE OF BEGINNING** of the herein described tract of land,

THENCE with the east line of said Brown tract, S 19 deg. 02' 59" W at 6 ft. pass the record Northwest corner of Lot 3, Block 77, Original City of Austin, according to the map or plat thereof on file with the General Land Office of the State of Texas, and continuing on the same course with the west line of said Lot 3, 72.02 ft. more for a total distance on this course of 78.02 ft., to a 60 D nail found at an ELL corner of said Brown tract, and being an ELL corner of this tract;

THENCE crossing the interior of said Lot 3 with the east line of said Brown tract, the following two courses:

- 1) S 71 deg. 15' 00" E 14.80 ft. to a chiseled "X" found in concrete;
- 2) S 18 deg. 44' 57" W 55.96 ft. to a spindle set in the north right-of-way line of West 7th Street at the Southeast corner of said Brown tract, and being the Southeast corner of this tract;

THENCE with the north right-of-way line of West 7th street and the south line of said Brown tract, N 70 deg. 56' 00" W at 15.09 ft. pass the record Southeast corner of Lot 2 of said Block 77, and continuing on the same course 69.00 ft. more, pass the record Southeast corner of Lot 1 of said Block 77, and continuing on 69.00 ft. more, for a total distance on this course of 153.09 ft. to a point on the face of a 2 story stucco building in the east right-of-way line of West Avenue at the Southwest corner of said Lot 1, and being the Southwest corner of this tract, and from which a concrete nail found bears S 70 deg. 56' 0" E 1.82 ft.;

THENCE with the east right-of-way line of West Avenue and the west line of said Lot 1, N 19 deg. 02' 59" E at 127.98 ft pass the record northwest corner of said Lot, and continuing on the same course 6 00 ft., more for a total distance on this course of 133.98 ft., to a capped iron rod set at the Northwest corner of this tract,

THENCE with the north line of said Brown tract, S 70 deg. 54' 05" E 138.00 ft. to the Place of Beginning, containing 0.44 Acre of land.

