

610 Baylor St.  
Austin, Texas 78703  
January 27, 2004

City Council Members  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

Re: C14-03-0168; Zoning Change Request by Nokonah Partners Limited

Dear Mayor Wynn, Mayor Pro Tem Goodman and Council Members,

I write to express my opposition to the above referenced zoning change request which would allow office use in the street level frontage of the Nokonah property. My opposition is based on several factors and as a member of the Old West Austin Neighborhood Association (OWANA) and as an Old West Austin resident and property owner, I agree with each of the points of opposition made in the letter to you on this topic from the OWANA Chair, Linda MacNeilage.

In particular I would like to discuss my concern over the \$375,000 that the Nokonah received in fee waivers based on their Smart Growth matrix evaluation. If the zoning is modified to allow office on the 1st floor of the building, the basis of the \$375,000 fee waiver loses its foundation. I believe that the city should, in that case, recoup the \$375,000 from the Nokonah. Otherwise, we, the citizens of Austin, as taxpayers, are subsidizing the Nokonah development inappropriately, outside and beyond the Smart Growth program.

A detailed review of the Smart Growth Criteria Matrix for the Nokonah project reveals that the appropriate fee waiver decreases to \$0 if the Nokonah zoning is changed as requested. In the criteria matrix evaluation, the total number of points came to 304, narrowly exceeding the threshold level of 301, which allows a 100% fee waiver. However, these points were based on the presumption of street level pedestrian uses and neighborhood support, and should be accordingly reduced if the requested zoning change is approved.

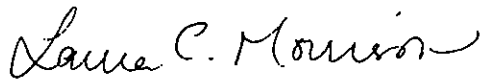
Ten points were awarded for street level pedestrian uses. A real estate office (which is the intended use of the space if the zoning is changed) does not fulfill the requirement for a pedestrian use.

Elsewhere in the criteria matrix, 75 points were awarded for dialogue and support by adjacent neighborhoods. It is reasonable to assume that the zoning change from CS to DMU-CURE would not have received OWANA's support in 1996 if the as-built (as opposed to as-proposed) project had been considered. There were 3 essential elements of OWANA's support of the zoning change in 1996. (1) The proposed project was

represented as an 8-story development. It is not. (2) Views of particular neighbors were to be preserved. Their views were not preserved as planned. (3) The first floor would be retail. A change now to first floor office would eliminate the basis of the neighborhood's original support.

Thus, approval of the zoning change would reduce the number of points in the Smart Growth Criteria Matrix for the Nokonah by 10 + 75, to 219, which allows for *no* fee waiver. In this day of serious budget cuts and challenges to the City's finances, this issue is more important than ever, and I appreciate your careful consideration.

Thank you,

A handwritten signature in cursive script that reads "Laura C. Morrison".

Laura C. Morrison

Attachment: Final Smart Growth Criteria Matrix for the Nokonah Condominiums, Date of Review July 10, 2000

# SMART GROWTH CRITERIA MATRIX

City of Austin Planning, Environmental & Conservation Services Department

DEVELOPMENT: Neighborhoods

DATE OF REVIEW: July 19, 2000

REVIEWER: GA, MK, RH, SS  
 MARK ONE: ☐ SELF SCORE  
☐ COA STAFF PRELIMINARY SCORE  
☐ COA FORMAL SCORE

GOALS	ELEMENTS	CRITERIA	POINT SYSTEM			SCORE	
CATEGORY		Criteria based on information that is not complete or available for scoring	WEIGHT	VALUE	MAX. POINTS AVAILABLE	SCORE	COMMENTS
						TOTAL Possible	TOTAL SCORE
SMART GROWTH GOAL I: Determine How and Where Development Occurs 330 pts = 52%	Eligibility	1. Neighborhood Plans Project must not conflict with Neighborhood Plan adopted by the City of Austin for the area of the project.					
	2. Incentive Package Project may not receive Smart Growth Zone Specific Incentives.						
	1. Smart Growth Zones (Eligible for only one zone - A, B, or C for a maximum possible 45 points)	1. Anywhere 2. Within a 1 block radius of a CMTA bus stop 3. Consistent with transit station area plan	5 5 5	5 4 20	25 0 0	25	25
	or B. Urban Core	1. Anywhere 2. Within one lot deep of a Smart Growth Corridor 3. Consistent with transit station area plan	4 4 4	3 4 16	0 0 0	0	0
	or C. Desired Development Zone (DDZ) inside City Limits	1. Anywhere 2. Within one lot deep of a Smart Growth Corridor/park & ride 3. Consistent with transit station area plan	3 3 3	3 9 9	0 0 0	0	0
	2. Location Risk	A. Focus on area of economic need B. A "Trail Blazer" in an untested market A. Requires dialogue and support by adjacent neighborhoods	4 4 4	12 30 75	13 13 75	42 13 75	13
	1. Neighborhood Planning	A. Presentation & endorsement of plans without conditions	5	2	10	10	10
	2. Design Commission	1. Meets minimum threshold to support transit (7 to 12 bus average w/in one lot deep of Smart Growth Corridors) (12 to 25 bus average in Downtown) (Consistent with transit station area plan)	3	4	12	12	12
	A. Population (DUA)	2. Meets minimum threshold to support transit (35 to .5 FAR w/in one lot deep of Smart Growth Corridors) (5 to 10 min FAR in Downtown) (Consistent with transit station area plan)	3	4	12	0	0
	B. Employment (FAR)	1. Regional draw - retail (anchor retail), entertainment, or cultural center 2. Greater than 200 new housing units	5 5	3 4	15 20	0 13	13
Land Use (110 points)	1. Land Use Contribution (Eligible for only one - A, B, or C for a maximum possible 35 points)	1. Regional draw - retail (anchor retail), entertainment, or cultural center 2. Greater than 200 new housing units	5 5	3 4	15 20	0 13	13
	or B. Urban Core Projects	1. Regional draw - retail (anchor retail), entertainment, or cultural center 2. Variety of housing types (apartments, rowhouses, SF) 3. Greater than 200 new housing units	4 4 4	3 3 1	12 12 4	0	0
	or C. Traditional Neighborhood Projects	1. Meets TND codes and ordinances 2. Variety of housing types (rowhouses, gar. apts, sf) 3. Town Center with neighborhood retail	3 3 3	3 3 9	9 9 9	0	0
			3	3	9	35	0



GOALS	ELEMENTS	CRITERIA	POINT SYSTEM			SCORE				
	CATEGORY	Criteria based on information that is not complete or available for scoring	WEIGHT	VALUE	MAX. POINTS AVAILABLE	SCORE	COMMENTS	TOTAL Possible	TOTAL SCORE	
SMART GROWTH GOAL II: Improve Our Quality of Life 305 pts = 48%	Land Use Continued (110 points)	2. Land Use Compatibility						0	0	
		3. Mixed Use per Building (Min. 20% for each use - residential, retail, office)	5	4	20	20				
		1. Support of other Agencies	5	3	15	10				
	Support (24 pts)		A. Meets ALSD 60/40 Tax Base Enhancement Goal	5	3	15	0		75	30
			B. Includes CMTA participation	5	5	25	0			
			1. Building Facade Treatment	3	4	12	0		24	0
	Urban Design (44 pts)		A. Division of facade into traditional 30' increments	3	4	12	0			
			B. Variety of treatment and human scale details	2	2	4	4			
			C. 50% or more of facade in glass at street level	2	2	4	4			
			D. Well-defined entrances every 50' on street frontages	2	2	4	1		16	13
			A. Appropriate and compatible massing	2	2	4	4			
			B. Integration of height with abutting facades	2	2	4	0			
			C. Rear building treatment	2	1	2	2			
		D. Mechanical equipment screened where visible	2	1	2	2		12	8	
		A. Area greater than 500 ft <sup>2</sup>	2	2	4					
		B. Provides table and chairs	2	1	2					
Multi-modal Transportation Elements (123 pts)		C. Landscape, including trees	2	1	2					
		D. Pedestrian scaled lighting, min. 3 footcandles	2	1	2					
		E. Located adjacent to Greenway or Street	2	1	2					
		F. Provision of outdoor public art	2	2	4			16	0	
	1. Transit	A. Provides facilities associated w/ bus to rail transfers	3	1	3					
		2. Provides bus turn out lanes within the project	3	1	3					
		1. Within 50 ft of transit stop	3	1	3			9	0	
		2. Greater than 300 ft <sup>2</sup> and no dimension less than 10 ft.	3	1	3					
	2. Building Location on Site	A. Oriented to pedestrian network	3	1	3	3				
		B. No drive through facilities	3	1	3	3				
	C. Buildings built up to right of way	3	4	12	12		24	18		
	D. Parking in rear of lot behind building	3	2	6	0					
3. Streetscape Treatment for Maximum Pedestrian Comfort	A. Street trees min. 4" caliper, 30' o.c. on all frontages	3	3	9	9					
	B. Use of smaller scale pavement (pavers or scoring)	3	1	3	3					
	C. Rain protection (awnings, arcades)	3	1	3	1					
	D. Maintain or extend walkable street grid and alley plan	3	3	9	9					
	E. First floor level at street level or within 18"	3	1	3	0					
	F. On street parking along street frontages	3	1	3	0					
	G. Min. 12' wide clear sidewalk along street frontage	3	3	9	3					
	H. Provision of pedestrian scale street lighting	3	1	3	3					
	I. Continuation of existing sidewalk networks	3	2	6	6					
	J. Crossing treatment at street corners (bulb outs, crossings)	3	4	12	0		60	34		

GOALS	ELEMENTS	CRITERIA	POINT SYSTEM				SCORE	
	CATEGORY	Criteria based on information that is not complete or available for scoring	WEIGHT	VALUE	MAX. POINTS AVAILABLE	SCORE	COMMENTS	TOTAL Possible
								TOTAL SCORE
	4. Alternative Pedestrian and Bicycle Access	A. Greenways 1. Access to and no interruption of greenbelt trails 2. Office, retail, or residential uses facing creek B. Internal Sidewalk Network 1. Pedestrian network linking buildings on site and to streetscape sidewalks 2. Internal network contains at least 3 of the following: Trees, min. 4" cal, 30' oc; small scale pavement (pavers, scoring); rain protection (awnings, arcades); pedestrian scale lighting	2	2	4	1		
	5. Bicycle Friendly	A. Bike racks (1:10), Bike Lockers (1:50) available B. Locker room facilities, showers and dressing room C. Bicycle linkages	2	3	6	6		16
	Multi-modal Transportation Elements Continued (123 pts)							5
	1. Structured Parking	A. Structured and/or underground parking B. Ground floor of structured parking retail C. Provides for shared parking for adjacent businesses D. Division of facade into 30'± increments & detailing	3	4	12	12		
	2. Driveway	A. Minimizes curb cuts along front property line B. Minimum turning radii and 90° intersections at drives	2	2	4	4		30
	Parking (38 pts)							24
	1. Reasonably Priced Housing	A. 20% of units for 80% (4 person) AMFI households B. 20% of units for 60% (4 person) AMFI households	4	2	8			8
	Housing (20 pts)							20
	1. Building construction	A. Adaptive reuse of existing building B. Preservation of historic structure C. Green builder participation	2	2	4			0
	Con- struction (16 pts)							16
	1. Neighborhood Stabilization	A. Food Market/Green Grocer B. Traditional neighborhood retail uses C. Neighborhood supported uses	3	2	6			0
	Local Economy (34 pts)	A. Use of local contractors and architects B. Use of local materials	2	3	6	6		24
	2. Promote local business		2	2	4	4		10
	1. Water Conservation	Use of at least 3 of the following: native plant materials; submersers on office, multifamily, & retail; low flow fixtures; rainwater harvesting; other water conservation measures	2	3	6	0		6
	2. Remediation	A. Hazardous materials cleanup B. Underground Storage Tank (UST) removal C. Asbestos removal D. Demolition of unsafe and illegal buildings	2	2	4			0
	Environmental (30 pts)							16
	3. Energy	A. Long Term Austin Energy Customer (proof of contract) B. Participation in AES program (proof of contract)	2	2	4			0
								8

GOALS	ELEMENTS	CRITERIA	POINT SYSTEM			SCORE			
	CATEGORY	Criteria based on information that is not complete or available for scoring	WEIGHT	VALUE	MAX. POINTS AVAILABLE	SCORE	COMMENTS	TOTAL Possible	TOTAL SCORE
SMART GROWTH GOAL III: Enhance Our Tax Base		The business case analysis for proposed developments seeking financial incentives is handled separately.							
						Check: 304			
							% of Total Points		
						52%	53.9	330	178
						48%	41.3	305	126

### MATRIX THRESHOLD LEVELS

**0 to 225 points = No Additional Consideration**

**226 to 300 points = 50% of All Applicable COA Fees Waived (GF & Enterprise)**

A business case calculation of the present value of the incremental property tax increase over 5 & 10 years sets a not to exceed (NTE) value for the incentive package. The amount of the incentive package can include up to 100% of applicable COA fees, utility charges (at a 10 year break even level) and the cost of planned infrastructure accelerated in time for the project.

**301 to 375 points = 5 Year Incremental Tax Value NTE**

376 to 635 points = 10 Year Incremental Tax Value NTE

715 West Avenue  
Austin, TX 78701

January 16, 2004

Mayor Wynn, Mayor Pro Tem Goodman, and City Council Members  
City of Austin  
124 West 8<sup>th</sup> Street  
Austin, TX 78701

Dear Mayor Wynn, Mayor Pro Tem Goodman and Members of the City Council:

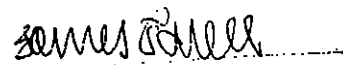
I am writing to you as an owner of two properties in the 700 block of West Avenue, and as a life-long resident of Austin's historic and original residential neighborhood. I want you to know that I oppose the request for a zoning ordinance change to the ground floor, or any other floor, of the Nokonah Condominium project at 901 West 9<sup>th</sup> Street at Lamar Boulevard.

The Nokonah Partners Condominium project was developed with zoning that explicitly required retail use on the ground floor. It is my understanding that the agreement for this zoning arrangement was negotiated with the adjacent neighborhood association, OWANA, and I agree with OWANA's position that ground floor retail contributes vitality to the neighborhood, whereas office use makes the address a mere destination, and is not pedestrian-friendly.

It may be an old-fashioned concept, but I strongly believe that people should live up to their word, and I believe that zoning ordinances should have meaning. You are the authority charged with upholding the zoning ordinances that are designed to protect the quality of life of our city. I request that you use your authority to preserve the existing zoning because I believe that the proposed change substantially violates the intent and spirit of the original zoning agreement. Market forces should not govern zoning. Perhaps the Nokonah Partners can do something to make their property more desirable to retail tenants, but that is their challenge.

Please use your authority to uphold the zoning ordinances that make our city a desirable one in which to live and work.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James Powell", followed by a horizontal line.

James Powell

Greg H. Leitich  
Cynthia L. Smith  
804 Baylor St.  
Austin, TX 78703

January 27, 2004

Dear Mayor and Commissioners:

We are writing to express our opposition to any additional change in zoning for the Nokonah luxury condominium building.

We're fairly recent residents of Baylor Street, so we have not been privy to the entire history. However, it's our understanding that the owners of the building were allowed to build their massive structure (under relaxed zoning) subject to the condition that the ground floor be restricted to retail. Such retail would be a great benefit to both the neighborhood and the city because it would contribute to the livability of the residential core.

We do not believe it is in any way beneficial to allow the owners of the Nokonah to change the zoning to office use for only their own profit. While we recognize that economic conditions may make renting difficult at times, the remedy in such cases is simply for the landlord to lower the price. As you know, due to unparalleled rent increases in recent years, many locally owned businesses have had to close their doors. Many Austinites would welcome more moderate rents.

In addition, it is, at least, a bad precedent to allow any landlord to tear asunder existing zoning, upon which citizens heavily rely, simply for his financial gain at the expense of the city and the neighborhood.

We thank you for your considerations.

Sincerely,



Greg H. Leitich



Cynthia L. Smith

To: Mr. Glenn Rhoades  
City of Austin  
From: Robert T. Renfro  
1117 W. 9<sup>th</sup> Street  
Austin, Texas, 78703  
472-8561  
Re: Nokonah Rezoning—C1403-0618

Dear Mr. Rhoades:

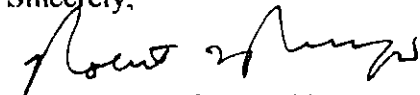
As a long time resident of Austin, and for the past twenty-six years a homeowner of a house built in 1915 on W. 9<sup>th</sup> Street, I've seen considerable pressures exerted to rezone for so called "higher and best" use. These higher and best uses would have significantly changed the way we live in Old West Austin. We've fought rezoning over and over again through the years. As a result this inner city neighborhood, and one of the precious few left in Austin, with some homes built in the 19<sup>th</sup> century, has remained mostly intact.

When I first heard of the plans for the Nokonah some years ago I was overjoyed that "proper" development was being planned for Lamar, that is, residential use on upper floors and retail on the ground floor. As the building emerged out of the ground and got taller and taller, blocking views for residents in Old West Austin, old fears returned quickly. Had we been told that the building was going to reach the height and bulk it did? I'm told not.

I remained somewhat hopeful that at least retail use would maintain and enhance pedestrian dynamics already happening between 5<sup>th</sup> and 12<sup>th</sup> Streets. What makes great villages, towns and cities? Simple. The primary and essential ingredient is people--lots of people walking and bringing life to the sidewalks of their community. Empty lots, parking garages, vacant buildings and activities generating few pedestrians work to the detriment of great communities. The current Whole Foods Market made a fundamental planning error in not providing access on both 6<sup>th</sup> Street and Lamar, thus creating "dead" sidewalks.

I fear that rezoning the Nokonah's ground floor to permit office use would work in opposition to the goal mentioned above. I oppose that rezoning change.

Sincerely,



Robert T. Renfro, Architect  
Senior Lecturer Retired  
School of Architecture  
The University of Texas at Austin

Allen & Susan Doss  
10007 West 9<sup>th</sup> Street  
Austin, TX 78703  
512.472.9836

January 26, 2004

Mayor Wynn, Mayor Pro Tem Goodman, and City Council Members  
City of Austin  
124 West 8<sup>th</sup> Street  
Austin, TX 78701

Dear Mayor Wynn, Mayor Pro Tem Goodman and Members of the City Council:

We are owners of the residential homestead directly across Lamar Boulevard from the Nokonah Condominium project at 901 West 9<sup>th</sup> Street, and we are hereby retracting and resending our earlier letter of support for a change of zoning from Retail to Office on the ground floor of that commercial project. Since our earlier letter, we have obtained additional information that leads us to oppose any request for a zoning ordinance change to the ground floor, or any other floor, of the Nokonah Condominium. **Our earlier letter of support is hereby null and void and is replaced by this letter of objection.**

We bought our lot in 1997 but waited to build our retirement home until 2002 when we were sure what was going to happen across Lamar. We have invested well over \$600,000.00 in our home based on the developer's and the city's recorded plans for "retail at street level to support the residences in the Nokonah and the surrounding neighborhood." **We demand the ground floor of the Nokonah remain zoned for and occupied by retail businesses.**

You, each of you, are charged with upholding the zoning ordinances that are designed to protect the quality of life of our neighborhoods and our city. **I demand that you use your authority to preserve the existing zoning because the proposed zoning change substantially violates the intent and spirit of the original zoning agreement.** Please use your authority to uphold the zoning ordinances that make our city and our neighborhood a desirable one in which to live, to work, to shop and to attract pedestrian traffic.

We are members of the Old West Austin Neighborhood Association (OWANA), and **we agree with OWANA's position that ground floor retail contributes vitality to the neighborhood,** whereas office use makes the address a mere destination, and is not pedestrian-friendly. As a real estate investor and developer myself, I can imagine that the Nokonah Partners can find other ways to make their ground floor retail space desirable for retail tenants, rather than asking the City to change the zoning to office use at the expense of the needs of the neighborhood, including the residential condo dwellers above. Perhaps the use of the \$375,000.00 the city gave the developer as an incentive to include retail might be used as an incentive to attract tenants. **Sometimes what is best for the total project, the surrounding neighborhood and the community at large requires a developer to simply live by the agreement he signed.**

Sincerely yours,



Allen and Susan Doss

**Old West Austin Neighborhood Association**  
**OWANA**  
P. O. Box 2724  
Austin, TX 78768-2724

January 26, 2004

Mayor Wynn, Mayor Pro Tem Goodman, and City Council Members  
City of Austin  
124 West 8<sup>th</sup> Street  
Austin, TX 78701

Re: C14-03-0168

Nokonah Partners Request for Rezoning of 1<sup>st</sup> Floor from Retail to Office and Pedestrian-Oriented Uses

Dear Mayor Wynn, Mayor Pro Tem Goodman and Members of the City Council:

I am writing to you as Chair of the Old West Austin Neighborhood Association (OWANA) to let you know that at our last General Membership meeting on December 2<sup>nd</sup>, 2003 the membership voted unanimously to oppose any zoning change to the ground floor, or any other floor, of the Nokonah Condominium project at 901 West 9<sup>th</sup> Street at Lamar Boulevard.

OWANA made considerable effort to work with the representatives of Nokonah Partners regarding their request for their zoning change in 1996. OWANA supported rezoning from CS to DMU-CURE based, in part, on ground floor retail zoning. While I do not want to digress about other points which were central to OWANA's agreeing to support Nokonah Partners original zoning change, suffice it to say that since obtaining their zoning designation of DMU-CURE, the project as built does not fulfill important aspects of what was proposed by the developers to OWANA in 1996 in garnering the association's support.

We believe that a change in zoning that would allow office use on the first floor does not satisfy the intent and spirit of the Nokonah zoning ordinance. This assessment seems to be echoed by some of the views expressed at the Zoning & Platting Commission hearing on 12/16/03 when Commissioner Cortez stated explicitly that "pedestrian uses, not office, was the intent of the original agreement", and by Commission Chair, Betty Baker, at the same hearing, making the point that "Office" is "a destination", and as such does not add the vitality to the neighborhood that retail provides. The Commission did *not* vote to approve the requested zoning change.

The Nokonah Partners Condominium project was one of the first projects to be developed with Smart Growth money - an incentive plan that resulted in them a fee waiver in the amount of \$375,000, partially on the grounds that their zoning explicitly required retail

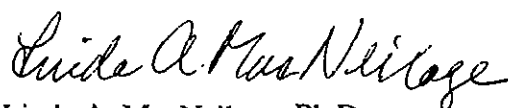
use on the ground floor. Ground floor retail is the only component of those which were pivotal to OWANA's original support for Nokonah which can be complied with in the project as built. OWANA's support provided them with the points required to qualify for those Smart Growth monies. OWANA members feel that a rezoning that would remove retail, now gets us, together with the other abrogations of the original agreements, to a total undermining of the original basis for our support of the project, and hence, all basis for the Nokonah Partners having received this substantial Smart Growth incentive.

Mr. Whalen, the Nokonah Partners' representative, has recently (12/16/03) declared that they are providing an opportunity for leasing their space (the preferred option for retailers). However, curiously, the sign which advertises this space says, instead, "This Retail/Office Space For Sale." (See attachment.) The "For Sale" option is hardly enticing to retailers, nor is it consistent with Mr. Whalen's stated intent to lease. The fact that they are advertising it as "office space" when they do not yet have zoning for "Office" seems, at best, premature. We believe that if Nokonah Partners chose to direct their creative and adaptable skills to the problem of coming up with ways to make this space desirable to retailers for lease, rather than coming back to the City to request another zoning change, they might well be successful, even though the solution might not be as profitable as they anticipate the selling, or even leasing, of the space for "Office" use to be.

An alternative solution would be to require that they return their \$375,000 Smart Growth money to the City, as it was awarded, in part, on the condition of having retail zoning on the ground floor. It does not seem reasonable that they should keep the Smart Growth money, while getting a zoning change that voids one of the stipulations governing the award in the first place. It is not clear how such a zoning change would benefit anyone but the developers, and it would seem to set a dangerous precedent in the form of abrogation of zoning agreements and ordinances.

The membership of OWANA looks to you to uphold the zoning ordinances that are designed to provide careful and thoughtful planned development for our city, and to provide protection for the quality of life of its residents. We rely upon you to represent the interests of the many, and by your decision to oppose this zoning change request, send an important message that integrity and justice are values of this City administration.

Sincerely yours,

A handwritten signature in cursive script, reading "Linda A. MacNeilage".

Linda A. MacNeilage, Ph.D.  
Chair of OWANA

Attachment: Photo of advertisement

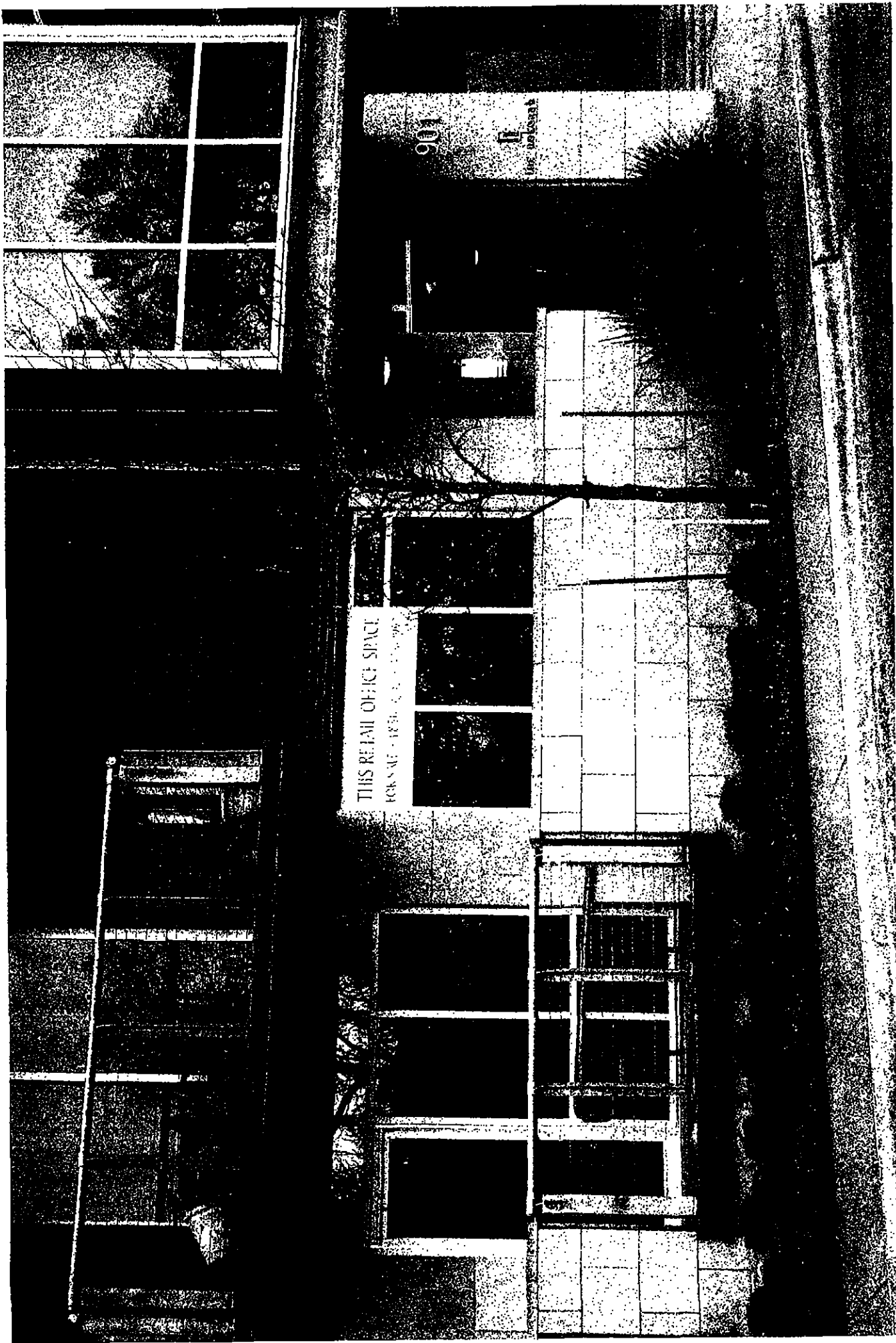


Photo Taken January 2004