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Neighborhood Planning and Zoning Department

**MOTION: POSTPONE TO APRIL 27, 2004 BY CONSENT**

**VOTE: 7-0 (DS-1<sup>st</sup>, MA-2<sup>nd</sup>; JC, CG- ABSTAIN)**

**13 Neighborhood NPA-04-0011.01 - 51st Street Mixed Use**

**Plan Amendment:**

Location: 100-104 E. 51st Street, Waller Creek Watershed, North Loop  
NPA  
Owner/Applicant: Nothfield Design Assoc. (Don Smith  
Agent: Same  
Request: To change the Future Land Use Map from single-family to  
commercial  
Staff: Kathleen Welder, 974-2856, kathleen.welder@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

**MOTION: POSTPONE TO MAY 11, 2004 (Due to agenda posting error)**

**VOTE: 7-0 (NS-1<sup>st</sup>, DS-2<sup>nd</sup>; JC, CG- ABSTAIN)**

**14. Zoning: C14-04-0015 - 51st Street Mixed Use**

Location: 100-104 E. 51st Street, Waller Creek Watershed, North Loop NPA  
Owner/Applicant: Nothfield Design Assoc. (Don Smith  
Agent: Same  
Request: SF-3-NP to LR-MU-CO-NP  
Staff Rec.: **Alternate recommendation of SF-5**  
Staff: Glenn Rhoades, 974-2775, glenn.rhoades@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

**MOTION: POSTPONE TO MAY 11, 2004 BY CONSENT (Due to agenda posting error for  
related case NPA-04-0011.01, Item 13)**

**VOTE: 7-0 (DS-1<sup>st</sup>, MA-2<sup>nd</sup>; JC, CG- ABSTAIN)**

**15. Compatibility SPC-03-0023W - Encinal Condominiums**

**Waiver:**

Location: 1106 W. 6th Street, Unit 301, Town Lake Watershed  
Owner/Applicant: Jesse and Barbara West  
Agent: Melton West  
Request: To approve a waiver to exceed compatibility height limits  
Staff Rec.: **Recommended**  
Staff: Lynda Courtney, 974-2830, lynda.courtney@ci.austin.tx.us  
Watershed Protection and Development Review

Lynda Courtney presented the staff recommendation. Ms. Courtney said that the condos were built in 1970s, probably prior to compatibility standards, so increasing height would increase non-compliance. There are conditions that the Building Official negotiated with Mr. West as listed in the staff recommendation.

Commissioner Spelman requested a timeline of events. Ms. Courtney said that since the middle of 2002, Mr. West has been working on his condo, either with planning or actual construction. There were permits obtained for removing balconies, stairs and water-damaged sheetrock, but the scope of the project was expanded without the appropriate permit. Between February 2003 and January 2004, there were discussions with the condo association, the building official and he applied for the waiver. The red tag issued was for exceeding scope of permits.

#### PUBLIC HEARING

**Brad Greenblum**, representing the applicant Melton West, said he thought it was a simple request but for a number of reasons is contested. In July of 2002 received permits, in October 2002 secured permits. He started in December 2002 and red-tagged in January 2003 and there has been no work other than to close areas to prevent water damage. Mr. West had received advice from consultants that was probably not the best advice. There were family issues that resulted in the expansion of the scope. He noted that even with the approval of the waiver, Mr. West will still comply with Code and submit building plans. He did go through the process, and he made a mistake. It does have CS zoning which allows 60 feet in height. The Fire Department is comfortable now with the issues associated with the construction. In addition, he has complying with a request to add a sprinkler system. He said the purpose of the compatibility standards is to mitigate the impacts of an intervening building.

**Melton West**, said that he would have come here to request the waiver if he had understood the process.

Commissioner Armstrong asked about the improvements. Mr. West said that he had water penetration on the fourth floor, there were structural problems with the balconies and the stairs. He said he was attempting to rebuild the fourth story to correct the problems. There was a point that he made a decision to increase the height before expanding the scope of the permit.

Mr. West said that he can meet the staff's conditions. He wants to finish the construction because of the logistics and costs to lower the height.

Commissioner Spelman asked for clarification. Mr. West said that the fourth floor would have a 20 foot ceiling, instead of a 5<sup>th</sup> floor, but the same height.

Commissioner Spelman said that there are 10 letters supporting the variance, but only one is in the immediate vicinity, and that is from the condo association. Mr. West said that there were signatures from the business owners that were supportive, but did not want to take a position. It is very much a split between the residential and business owners, just as his property is in between the commercial corridor and the residential uses. Mr. West said that he is losing square footage because of the Code requirements. His fifth floor is not allowed with part of the structure supported by wood, even though his section is supported by metal. Commissioner Cortez said it

was not his intent to have 20 foot ceilings. Mr. West said that prior to construction the ceilings were 14-16 feet at the peak, with the lowest point being about 10 feet (he had arched ceilings).

**Mike Murray**, currently Chairman of the Board of the Encinal Condominiums, said that the Board votes on alterations to the units. All of his neighbors voted in favor of, or not opposed, to Mr. West's proposal. First, the granting of the variance will not set a precedent. Second, completing the project is the best option. And lastly, the variance is granted for unique situations. There is an argument that the variance will block someone's view, however the view would not be blocked from the north. If the waiver is not granted, Mr. West would have to take down the construction, and he does not have the financial resources to do so. The better course would be to avoid foreclosing, and avoid the City having to perform the restoration. Given the possible outcomes, granting the waiver is the better outcome. Strict enforcement of the Code, and not granting a waiver that has no community impact for no other purpose than to just stop him. The purpose should not be punitive. Mr. West has already been punished. He asked the Commission to support the waiver to help eliminate an eyesore that has existed for a year.

**Charles Fortney** is in favor of the project. First, it would be prestigious for the neighborhood for it makes an impressive display of architecture. He has a business just down the street- he has been there 7 years. He said his construction is compatible with the way the neighborhood is developing.

#### FOR, DID NOT SPEAK

Dean Mattox  
Thom Washington  
Philip Powers  
Georgia Cotrell  
Jim Innes

#### AGAINST

**Tyson Tuttle**, is the owner of the triggering property that limits the height of the condo. He thinks there should be two waiver requests for two different heights. He said the unit is a substantial and imposing structure in terms of scale and mass and detracts from his property value. He objects to the measuring of the height. He mentioned there is a flower box that is a way to get around the entire situation (he handed out a letter and photo). It sets a precedent. He believes Mr. West knew about the compatibility standards because Mr. West asked him for his consent for the 4<sup>th</sup> and 5<sup>th</sup> floor additions. He mentioned that removing the structure is less than adding the sprinklers Mr. West will install throughout the whole building.

Commissioner Sullivan asked about the photos. The speaker said that the intervening building is below his structure by two feet. Commissioner Sullivan clarified that his concern is a two foot increase in height. The speaker said that before construction he could see across the river.

**Wayne Orchid**, owner of property on Harthan Street, said he does have a view of the two-story addition from his house, and the nuisance of having it there forever. They asked Mr. West many times about the height. He witnessed construction of the unit after the red-tag. He owns a

historical home on Harthan Street. Robert Refrow, an architect, said that the building addition is not appropriate for the southwest architecture building or the neighborhood.

Commissioner Moore asked if the neighborhood would approve the building if the lot was vacant now. The speaker said that it wasn't just a mistake, there was an intent to add the 5<sup>th</sup> floor. He said he would support the current building, without the addition. His house is west of 6<sup>th</sup> and Blanco. He can see downtown from his porch.

**Linda MacNeilage**, chair of the Old West Austin Neighborhood Association, said the neighborhood is under siege. There were 10 zoning issues at their last neighborhood meeting. They have met numerous times with Mr. West and his attorney, with no positive impact. Construction has continued despite the red tag, and despite a demolition request by Ron Menard. There is an action item in the neighborhood plan to rezone properties to SF. They urge denial of the waiver request. There is a valid petition of property owners and business owners within 300 feet, against this compatibility waiver request.

Commissioner Sullivan asked Ms. MacNeilage if the views are obscured by the last four feet of the structure. He pointed out that there are other factors affecting the view for owners, such as the construction of the Whole Foods building, which will also block views.

Ms. MacNeilage read from Ron Menard's letter stating that the 5<sup>th</sup> floor should be removed and a demolition pulled.

**Saralyn Stewart**, said she does not support the waiver request.

**Karen Schwitters** is an owner and resident of the Gardens condominiums. First, the screening by trees is seasonal. Even though she lives up hill, her level is lower than his. She expressed concern about precedent.

**Don Baldovin**, owns property less than one block from the unit. He sees the additions. He handed out some handouts and reviewed the timeline.

Commissioner Moore asked if public policy should protect someone else's view, and asked what is the public benefit. Mr. Baldovin said it is not about protecting views per se, but about the impact on property values.

**Robin Carter**, resident a few blocks away, said that her views are not affected, but she is concerned about the precedent of allowing an owner to violate Code, and then ask for approval afterwards. She said that the tactic used by the applicant was to convince residents that it was the least "evil" option. They had stated that AC units could be added on top of the roof.

**Laura Morrison**, a property owner and resident within 300 feet of the Encinal, handed out topo maps and photos to show her concerns about the height and the flower boxes. This situation does not legally qualify for a waiver.

Commissioner Armstrong asked staff to clarify that the intervening building has to be higher than the proposed waiver. Ms. Courtney said that the intervening building does have to have a greater

height than the structure in question. If it is not, then the Planning Commission cannot decide, it must go to the Board of Adjustment.

Commissioner Sullivan said that the reason the Planning Commission is hearing the item is because Mr. West is requesting a height less than the intervening structure.

**Margaret Stephens**, lives at 1106 West 6<sup>th</sup> Street and lives directly below Mr. West's addition. She approved his addition, but the proposal was not what was being built. Her fireplace flue was removed as part of the construction, and due to the delays, she has not had a fireplace for two years. She clarified that there is a total of 52 feet of height.

**Robert Floyd**, owns unit 103, next door to Mr. West, and is former chairman of the Public Utility Commission. He said Mr. West said that he claims there was a mistake, however he told Mr. West that the construction was illegal. When he looks through his skylight, Mr. West's unit blocks his view. The oak tree and downtown Austin view has been blocked. He is the person that pulled the permit, and found that there were no structural drawings. He shares a wall and two floors. He said Mr. West built the structure knowing that it was wrong.

**Brian Engle**, representing Mr. Floyd's condominium, said that the constructed project was not built according to the drawings. Mr. West did not follow the rules.

#### AGAINST, DID NOT SPEAK

George Arnold  
John Steinman  
Debra Day  
Liz Salaiz  
Charles Yusko

#### REBUTTAL

Mr. Greenblum said that this is not a view ordinance. The Gardens condos sit higher on the hill. It is false that the intervening building top floor was illegally constructed. Those letters by Ron McNard are superseded by his superior. The architect that indicated the building is ugly never met with the applicant, or saw renderings, and has only seen the steel structure. There were issues raised by neighbors about deceit. Mr. Tuttle made some good comments, but he bought that building with full knowledge of the intervening building. He said that he and the applicant asked to see the views, but nobody would cooperate. Mr. West has pre-fabricated panels and the steel, which are probably not re-usable. The city staff said take out the fifth floor, and his client will comply.

Commissioner Sullivan asked Mr. West about the December survey of 47 feet and the current 44.5 feet. Mr. West said that the initial survey that was done was to address building code issues. The building code required a building less than 50 feet, and he knew that the building was less than 50 feet. He said that the building code measures height differently than the zoning code. The size of the flower beds affected measurements, but the purpose of the flower beds was to pull attention away from AC units.

Commissioner Spelman clarified that permits were pulled for some of the work. Mr. West said that Mr. Floyd has been threatening to sue for everything.

**MOTION: CLOSE PUBLIC HEARING**

**VOTE: 8-0 (NS-1<sup>st</sup>, DS-2<sup>nd</sup>; CG-ABSTAIN)**

Commissioner Cortez asked if there are structural drawings for the new framed structure. Mr. West said he has structural drawings, sealed by engineer, for all the work he has had done.

Mr. West said that the height of the structure was limited by building code because of the lower rating of the lower part of the structure which is wood and stucco. His steel and concrete floor and structure was not supported by the wood structure, so the issue was not about load-bearing, but about the rating of the lower part of the structure regulating the entirety of the structure.

Mr. West said the height issue is not related to building code, this is a zoning code issue.

Commissioner Spelman asked why it would not be easier to remove the top 10 feet. Mr. West said that there is a question about the patio cover and the 5<sup>th</sup> floor. It has a bearing on how much of the structure has to be removed. Just removing one of the portions, would be about \$27,000 according to a bid from one company that may have questionable liability protection, so the cost might be more.

Commissioner Armstrong asked staff about the issue of the measurement. Ms. Courtney said that the UBC (Building Code) requires the structure to be limited to four floors. Commissioner Armstrong asked staff if rooftop machinery could be allowed. Ms. Courtney said that machinery can go 15% above height. Commissioner Armstrong said that conditions could be imposed on the waiver to prohibit patios or machinery. Ms. Courtney added that the issue of air rights and views of the common area is a different legal issue from compatibility.

Commissioner Riley asked staff how much confidence should be placed in the measurements of the heights of the intervening and subject structure. Ms. Courtney said staff depends on the sealed plans by the professional surveyor. Commissioner Riley said the City is not in the position of verifying the heights. Ms. Courtney said based on the seal of the surveyor, the heights were accepted. She said there are cases where the finished grade next to the buildings is manipulated.

Commissioner Cortez asked about the potential for precedent. Ms. Courtney said that decisions do depend on precedent. Ms. Courtney confirmed that the subject building could be considered an intervening structure, and thus allow an even higher height behind that building.

Commissioner Riley asked about whether the compatibility height requirement would apply on the southside of Sixth Street. Ms. Courtney responded that she does not know the distance between the southside of the street and the house triggering the compatibility.

**MOTION: APPROVE STAFF RECOMMENDATION, WITH ADDITIONAL CONDITIONS:**

- Prohibit roof top equipment and rooftop patio

**VOTE: 2-5-1 (MA-1<sup>st</sup>, MM-2<sup>nd</sup>; JM, CM, NS, JM, DS- OPPOSED; CR, CG-ABSTAIN)**

**MOTION FAILED.**

Commissioner Armstrong said that the height waiver is reasonable, and the conditions are reasonable, and the testimony brought up good concerns about rooftop patios and machinery. There are other issues not associated with the height waiver that should be settled at another time.

Commissioner Moore said that this is only about the height waiver, and compatibility. The other issues, such as the acrimony between the owner and the neighborhood, are not related to compatibility. In addition, did not want to make a punitive decision.

Commissioner Sullivan said he disagrees with the motion. There are a number of factors. First, set aside issue of punitive. There is a matter of principle that knowingly violated the law, despite the economic hardship he may face. He believes people should be more tolerant of higher heights downtown.

Commissioner Cortez said he disagrees with the motion. Though the waiver is triggered by the compatibility, need to look at the other issues. He said that there is a risk that approval of the waiver sets a precedent for letting people slide. The rules need to be followed for development.

Commissioner Spelman said that she had leaned not supporting the motion, and said the precedent-setting is a serious concern for her. She said that economic value of the decision does not need to be a consideration.

Commissioner Riley said he visited the site, and his impression was the same as Commissioner Moore's. He did not think it was incompatible, but his problem with the request is that decision must be made on calculations that he cannot verify. He is not confident that the structure does not exceed the height of the intervening structure. He does not think a sound decision can be made based on the measurements, and so he will abstain. He also would not support a prohibition against rooftop patios because it does provide eyes on the street safety.

**MOTION: DENY WAIVER**

**VOTE: 5-2 (JC-1<sup>st</sup>, DS-2<sup>nd</sup>; MA, MM-OPPOSED; CR, CG-ABSTAIN)**

**16. Preliminary:****C8-03-0181.SH - RIVERSIDE MEADOWS (S.M.A.R.T. HOUSING)**

Location: RIVERSIDE DRIVE AT UPHILL & YELLOW JACKET LANE,  
CARSON CREEK Watershed, MONTOPOLIS NPA NPA  
Owner/Applicant: STEINER & SONS LTD. (BOBBY STEINER) & J.M. RICHARD  
Agent: CENTEX HOMES (KEITH PEARSON)  
Request: APPROVAL OF PRELIMINARY PLAN  
Staff Rec.: **RECOMMENDED**  
Staff: Javier V. Delgado, 974-7648, javier.delgado@ci.austin.tx.us  
Bill Andrews, 974-7649, bill.andrews@ci.austin.tx.us  
Watershed Protection & Development Review

**MOTION: APPROVE BY CONSENT**

**VOTE: 7-0 (DS-1<sup>st</sup>, MA-2<sup>nd</sup>; JC, CG- ABSTAIN)**