

Z-11

Case: C14-04-0072

① Valid property
owner petition

② July 13, 2004
Planning Commission
meeting summary

PETITION

RECEIVED

JUL 29 2004

DATE: JULY 28, 2004

FILE NUMBER: 014-04-0072

Neighborhood Planning & Zoning

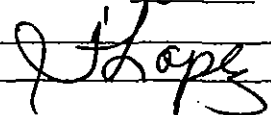
ADDRESS OF REZONING REQUEST: 515 PEDERNALES STREET
AUSTIN, TEXAS

To: Austin City Council

We, Johnny and Tommie Lopez, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than CS-1-CO-MU-NP.

The reasons for our protest are as follows:

1. We have owned the property for over thirty (30) years and because of its current zoning we have greater flexibility when renting the property to future tenants.
2. The current zoning allows the option of leasing the property to any potential tenants without restrictions.
3. If it were to be down zoned, restrictions would keep us from acquiring potential tenants that would want to operate a bar. For example, if the property is leased such that a tenant operates some other type of business other than a bar, we would not be able to go back and lease the property to any tenant who may wish to operate a bar from this location.
4. As currently zoned, we are able to lease the property to any interested party wishing to operate any type of business that would conform to its current zoning.
5. There is a contract on this property and the issuance of a liquor license is pending.
6. The tenant has already invested time and money into the business.
7. The tenant has met with neighborhood representatives and has agreed to maintain lines of communication and consider their needs.
8. We have met with neighborhood representatives and have agreed to maintain lines of communication and consider their needs.
9. We also live in east Austin and wish to co-exist with our neighbors.

<u>Signature</u>	<u>Printed Name</u>	<u>Address</u>
	<u>Tommie Lopez</u>	<u>1729 Giles St.</u>

Date: 7/28/04

Contact Name: Tommie Lopez
Phone Number: 512-474-2471

RECEIVED

JUL 29 2004

Neighborhood Planning & Zoning

P E T I T I O N

Date: 7/28/04

File Number: 014-04-0072

Address of
Rezoning Request: 515 Pedernales Street
Austin, Tx.

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than CS-1-CO-M4-NP.

(STATE REASONS FOR YOUR PROTEST)

(PLEASE USE BLACK INK WHEN SIGNING PETITION)

Signature

Printed Name

Address

[Signature]

Tommie Lopez

1729 Giles St

Date: 7/28/04

Contact Name: Tommie Lopez

Phone Number: 512-474-7171

Commissioner Cortez expressed concern about holding another hearing July 27 and requested to have the public hearing closed.

MOTION: CLOSE PUBLIC HEARING
VOTE: 8-0 (DS-1st, MM-2nd; CR-RECUSED)

MOTION: POSTPONE TO JULY 27, 2004 (SEND BACK TO CODES AND ORDINANCES COMMITTEE FOR REVIEW)
VOTE: 8-0 (DS-1st, MM-2nd; CR- RECUSED)

Commissioner Riley recused himself from the discussion. He had filed an affidavit. He owns property that may be considered historic.

4. **Zoning:** C14-04-0072 - Powerhouse Lounge
Location: 515 Pedernales Street and 2507 E. 6th Street, Town lake Watershed, Holly NPA NPA
Owner/Applicant: City of Austin
Agent: NPZD (Glenn Rhoades)
Request: CS-1-CO-MU-NP to CS-CO-MU-NP
Staff Rec.: **Not Recommended**
Staff: Glenn Rhoades, 974-2775, glenn.rhoades@ci.austin.tx.us
Neighborhood Planning and Zoning

Glenn Rhoades presented the staff recommendation.

FOR

Gloria Moreno, said that she supports the downzoning. The goal is to live in peace and tranquility. She presented a letter stating support.

Commissioner Medlin asked if Ms. Moreno was on the original Holly Neighborhood Planning Team and she said yes.

Gavino Fernandez, served as chair of the Holly Neighborhood Planning Team, said that they did not initiate a downzoning on the property because there was an agreement that properties would not be downzoned for properties with existing uses. There was an overall effort to reduce the number of bars on Sixth St. and Cesar Chavez St. They are concerned about safety. The owner does not want to risk the downzoning if there is not a tenant for the space as a result of the zoning. The request is part of enhancing the quality of life in this corridor.

Commissioner Moore asked about what land uses would be taken away. Mr. Rhoades said that it would just be removing alcohol sales.

Commissioner Moore asked where consumption of alcohol might occur. Mr. Fernandez said that there are bars in the immediate area. Commissioner Moore asked if any of those bars are next to neighborhoods. Mr. Fernandez said that 2-3 on Cesar Chavez are next to residential

neighborhoods, and those along Sixth Street and near the highway are away from the neighborhood.

In response to Mr. Fernandez's request for clarity about the East Austin overlay, Stuart Hersh said that neighborhood plans replaced the East Austin Overlay. The entirety of the East Austin overlay is now covered by neighborhood plans, and so it does not exist.

Commissioner Reddy asked if there is something attracting people to the site. Mr. Fernandez said that the owners of the property no longer manage the business. The property is now rented out to others. Since then, there has been a complete change in the behavior of the patrons. It used to be a neighborhood establishment. He thinks that there is a better use for the property, such as a bookstore or apparel store, that would be better for the site. The increase in the number of residential units in the area has increased the value of the properties in the area, but the option to rent out to other uses is not explored as long as there is zoning allowing a bar.

Commissioner Galindo asked why the neighborhood did not request the downzoning as soon as the previous bar closed. Mr. Fernandez said that they were under the understanding that they still had the East Austin Overlay which has a provision for a neighborhood to request a downzoning for properties where a land use ceases for more than 90 days. They waited for 90 days. They have since learned that the East Austin Overlay no longer applies. Ms. Moreno added that they were not aware that the property was being renovated for another bar because work was not done during the day and an application to the TABC was not submitted, until recently.

Paul Hernandez, said that there is a difference between an owner interested in the neighborhood versus one just interested in making a buck. They want to improve their neighborhood. They are for community economic development. They would like to attract businesses good for the neighborhood. The only business opportunities for minorities in the past were drinking and eating establishments- there are too many bars in the area. He is in full support of the downzoning. At the minimum, if a downzoning cannot be recommended, that it be forwarded to the Council without a recommendation.

AGAINST

David Magana, asked that the current zoning remain the same. The tenant has not been able to pull a permit due to Ms. Moreno's actions. The establishment has been under a contract for a year now, and the only thing keeping it from opening is the intervention from the neighborhood association. He said that there is a property in the neighborhood that is zoned CS-1 and operating a bar. The fact that the tenant has already invested money in the property, they are just losing money. They have had a contract for the past year and half. Intervention at the state level has resulted in little being done to the property.

Commissioner Medlin said that he said the property has been under contract for over a year. At what point did they approach the owner about these negotiations. Mr. Magana said at the same point that they requested a downzoning from the Commission they contacted the owners.

Commissioner Hollon asked if the owners are open to other uses. Mr. Magana said yes. Commissioner Galindo asked if the contract means that there is a lease signed. Mr. Magana said that the lease is for two years, but no rent is charged if there is not a business operating.

Mr. Lopez, the owner, said he was available for questions.

Commissioner Medlin asked Mr. Lopez about the lease and if there are any penalties for behavior such as drug use. Mr. Lopez said that for some of the behavior they were not aware until later when an undercover officer said that the behavior was occurring, and the Police said they did not inform him of the illegal behavior because they wanted to "catch the big fish." He rents the building. The person renting can open a business. He says he is stuck. He asked the neighborhood to communicate with the person leasing the property to work on any issues that may arise. He says there are drugs, prostitutes, and gangs, in other places than bars.

Commissioner Galindo asked if there is anything in the lease about being able to evict the lessee if performance of the business is poor in regards to illegal behavior. Mr. Magana said that there is a clause in the lease that allows the owner to break the contract if all laws are not met. In addition, any deviation from the use listed in the lease can be terms of breaking the contract.

REBUTTAL

Gloria Morena, said that she approached the Zoning and Platting Commission in April 13, 2004. She said she would like to see a copy of the lease contract. She would also like to talk with the person leasing the property, but she has not contacted her (Ms. Moreno).

Commissioner Riley asked what the waiting period is for a downzoning and Mr. Rhoades said it is 18 months. The case could be indefinitely postponed 6 months at a time.

Commissioner Hollon asked about notification. Mr. Rhoades said that this case does not require a neighborhood plan amendment for land use. Notice was mailed out for this zoning case.

Commissioner Galindo said that he has heard there is a bar across the street in CS zoning. Mr. Rhoades said it is there, but from what he hears, the bar has been there awhile and is probably grandfathered. Commissioner Galindo said that he is not sure a downzoning is not needed in this case.

MOTION: CLOSE THE PUBLIC HEARING

VOTE: (JMC-1st, DS-2nd)

MOTION: REZONE THE PROPERTY TO CS-MU-CO

VOTE: 4-5 (JMC-1st, DS-2nd; MH, JMC, JM, DS- FOR; JR, CM, CR, MM, CG- AGAINST)

MOTION FAILED

Commissioner Cortez said that the neighborhood is opposed to the number of bars in the area. The neighborhood has indicated that they seek to reduce the number of bars, but they wait for the opportunity to downzone at the closing of a bar so as not to disrupt operations of existing bars. He is opposed to getting rid of all the bars in the area, but he does support reducing the number of bars in close proximity to residential neighborhoods. He says there is an entertainment district in

the middle of the neighborhood, and that does not work for residents trying to maintain the quality and liveability of their neighborhood.

Commissioner Sullivan said there is a great opportunity for the site to be used for another use considering the construction of the lofts across the street. Just looking at a map with the zoning labels does not give the whole story because there are two other bars nearby that are not indicated on the map.

Commissioner Medlin said her concern is that Ms. Moreno said she was hoping the City would help Mr. Lopez financially because of the downzoning. The City is in serious financial difficulty and so she does not think the City would help him. She is not hearing how the financial impact will be dealt with. Commissioner Sullivan responded saying that he thinks with the construction of the lofts nearby, then other uses will be viable for the site. Commissioner Medlin said that there is a contract on it for a bar, but there is an immediate impact to him with the current business relationship.

Commissioner Riley asked Mr. Magana what improvements have been done. Mr. Lopez said that all the walls are painted real dark, and there are lights, mirrors. He added that they are planning on providing security guards. Mr. Lopez said he does not know if he can convince the tenant to open a sandwich shop instead of a bar.

Commissioner Galindo asked why the tenant is not present tonight. Mr. Lopez said that she owns a business and goes out of town.

Commissioner Galindo said that he sympathizes with the neighborhood and their desires to improve the neighborhood, however the approach would be to allow small business owners to prove that they could actually run a business that would not take away from the neighborhood. His concern is that the person that will be affected is not present. It troubles him that they would make a decision that could put that person out of business, and so he probably would not support the motion.

Commissioner Cortez said that he supports small businesses, but ultimately we are making a land use decision, and it is not the Commission's responsibility to micromanage a business. He said that CS-1 is not an appropriate zoning for the area due to the proximity to residential neighborhood and the saturation of the CS-1 zoning.

Commissioner Reddy said that he drove around the area and noticed the construction around the area. He said that the CS-1 usage in the area is Kelly's Place and he wonders if by not providing bars within the area would contribute to drunk driving because there is not a place to walk to drink liquor.

Commissioner Moore said that Jane Jacobs said it is important to have eyes on the street. He will not support the motion because residents will provide the eyes on the street needed to protect the neighborhood from negative activity.

Commissioner Riley said that he cannot support the motion because it is not fair for a business owner to invest money and then unexpectedly have the zoning pulled out from under them. The

timing of this zoning case might allow for a probationary period, by indefinitely postponing the case. If the business does not control illegal activity, then the neighborhood would have a right to request the rezoning at a later time.

Stuart Hersh said that an indefinite postponement could result in an alcoholic permit not being certified by the local government because of a pending downzoning case. It is unknown how the TABC would act with the pending zoning case, and so he recommends that the case be postponed to the next Planning Commission meeting to get that information from TABC.

Commissioner Galindo offered an alternate recommendation to approve the staff recommendation. Moore seconded.

Commissioner Cortez asked for a copy of the lease agreement to understand the timeframe they are under.

Stuart Hersh explained that the City of Austin issues a Certificate of Occupancy for a land use that complies with zoning requirements. Any other permits, such as a TABC license, are not part of determining whether the use is legal, non-conforming.

Commissioner Cortez asked for the case to be postponed for two weeks as a substitute motion to get more information about TABC's policy. Commissioner Sullivan seconded the motion. Commissioner Riley said he can support that motion.

Commissioner Galindo said that he would not support the motion because the Commissioners have made their positions clear and the neighborhood can always come back if there are problems. The business should be allowed to operate as per current zoning and should operate unfettered- they should be innocent until proven guilty.

Commissioner Cortez said that they are not zoning for the tenant. He supports the postponement to answer some of the procedural questions.

MOTION: POSTPONE ACTION TO JULY 27, 2004

VOTE: 5-4 (JMC-1st, DS-2nd; JMC, DS, CR, JM, MH- FOR; MM, CM, JR, CG- AGAINST)

5. Zoning:	C14-04-0012.003 - Brentwood/Highland Neighborhood Plan (PART)
Location:	6208 Burns Street, Waller Creek Watershed, Brentwood/Highland NPA
Owner/Applicant:	Applicant: City of Austin Owner: Ken McWilliams
Agent:	City of Austin Neighborhood Planning & Zoning Department
Request:	MF-3-NP to OR-MU-CO-NP
Staff Rec.:	MF-3-NP
Staff:	Annick Beaudet, 974-2975, annick.beaudet@ci.austin.tx.us Neighborhood Planning and Zoning

MOTION: POSTPONE BY CONSENT TO AUGUST 10, 2004 (NEIGHBORHOOD AND STAFF REQUEST).