



**Zoning**  
**CITY OF AUSTIN**  
**RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: Z-8**  
**AGENDA DATE: Thu 04/07/2005**  
**PAGE: 1 of 1**

**SUBJECT:** C14-04-0091 - Family Dental Practice - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 901 East 15<sup>th</sup> Street (Waller Creek Watershed) from family residence-neighborhood plan (SF-3-NP) district zoning to limited office-mixed use-combining overlay-neighborhood plan (LO-MU-CO-NP) combining district zoning. Planning Commission Recommendation: To forward the request without a recommendation. Applicant: Dr. Fernando H. Loya. Agent: Lopez-Phelps & Associates (Amelia Lopez-Phelps). City Staff: Sherri Sirwaitis, 974-3057.

**REQUESTING** Neighborhood Planning  
**DEPARTMENT:** and Zoning

**DIRECTOR'S**  
**AUTHORIZATION:** Greg Guernsey

## **ZONING CHANGE REVIEW SHEET**

**CASE:** C14-04-0091

**P.C. DATE:** December 14, 2004  
February 22, 2005

**ADDRESS:** 901 East 15<sup>th</sup> Street (1421 Olander)

**OWNER/APPLICANT:** Dr. Fernando H. Loya

**AGENT:** Lopez-Phelps & Associates (Ameila Lopez-Phelps)

**ZONING FROM:** SF-3-NP    **TO:** LO-MU-CO-NP\*    **AREA:** 0.134 acres (5,837 sq. ft.)

\*On February 7, 2005, the applicant provided the staff with a list of additional conditions that they would like to place on the rezoning request (Attachment A). At the Planning Commission hearing, the applicant presented the staff and the Commission with a revised list of these conditions along with a list of property owners in favor of the proposed zoning change (Attachment B). The following information is a summary of the conditions the applicant is proposing with this case:

- Restrict the dental office (medical office) use on the site for a space not to exceed 1,600 square feet.
- Pedestrian access to the dental office (medical office) use will be restricted to Olander Street.
- Should the dental office (medical office) use by Dr. Loya cease, Dr. Loya will support a roll back of the zoning of the property to SF-3-NP. The City may initiate the zoning rollback upon receiving a request by the property owner and/or the neighborhood association at the time the dental office/medical office business ceases operations.
- A private/or public restrictive covenant will be prepared by an attorney, reviewed by the City of Austin and the neighborhood association, signed and recorded. This restrictive covenant will include the conditions of this zoning request if the LO-MU-CO-NP zoning is granted. The proposed restrictive covenant may include the property owners, neighborhood associations, and/or the City of Austin as parties to the covenant.
- The applicant agrees to prohibit all LO, Limited Office District, uses with the exception of medical office uses (Medical Offices-not exceeding 5000 square feet of gross floor area) and allow all other SF-3, Family Residence District, uses for the property.

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends denial of the request for LO-MU-CO-NP, Limited Office-Mixed Use-Conditional Overlay-Neighborhood Plan Combining District.

### **PLANNING COMMISSION RECOMMENDATION:**

12/14/04: Postponed to 2/22/05 by the staff (6-0, J.C., J.R.-absent); D.S.-1<sup>st</sup>, M.M.-2<sup>nd</sup>.

02/22/05: To approve applicant's request for LO-MU-CO zoning, including conditions proposed by the applicant in a restrictive covenant. Permit Medical Office as only LO district use and all SF-3 district uses (3-4, C.G., J.R., M.M.-FOR MOTION; C.R., C.M., M.H., J.M.C.-AGAINST MOTION); J.R.-1<sup>st</sup>, M.M.-2<sup>nd</sup>.  
**MOTION FAILS.**

Send to City Council without a recommendation (6-0-1, C.S.-Abstain); C.M.-1<sup>st</sup>, M.H.-2<sup>nd</sup>.

**ISSUES:**

The applicant and agent for this case met with the Swede Hill Neighborhood Association on January 10, 2005 and with the Organization of Central East Austin Neighborhoods (OCEAN) on January 11, 2005 to present their rezoning request. On February 7, 2005, the Swede Hill Neighborhood Association voted to oppose the rezoning and plan amendment requests. OCEAN met on February 8, 2005 and voted (8-1, 2-abstaining) to oppose the applicant's request for LO-MU-CO-NP zoning and for a change to office land use designation.

The staff has received several comments from nearby property owners concerning the rezoning of this site (Attachment C).

**DEPARTMENT COMMENTS:**

The property in question is developed with a duplex structure. The owner/applicant lives on the site with his wife and child. He is currently utilizing the first floor of north side of the duplex for a dentist office. The applicant is requesting a zoning change for this site to LO-MU-CO-NP because the property was red-tagged for an illegal use (Medical Office-not exceeding 5,000 sq. ft. of gross floor area) in 2004.

The staff recommends denial of the applicant's request for a rezoning because the proposed zoning is not consistent with the Central East Neighborhood Plan (CEANP). The CEANP designates this site for single-family residential use on the approved Land Use Plan. There have been no significant changes in the area since the adoption of the CEANP that would warrant the proposed rezoning. In addition, the area on the site under consideration does not meet the minimum size requirements for the 'LO' zoning district and the overall lot is not adequate in size to accommodate the necessary parking requirements for office uses. The current SF-3 zoning is consistent with the existing zoning and residential uses surrounding the site the north, south and east. The property in question is located at the intersection of two residential streets and takes access through the established residential neighborhood to the east.

There is a pending Neighborhood Plan Amendment request (case NPA-04-0009.02) associated with this rezoning case. The staff does not support the applicant's request to change the Central East Austin Future Land Use Map from single family to office-mixed use for this site.

The applicant does not agree with the staff's recommendation.

**Property History**

The site was developed with the current structure in 1997. The owner of the property at the time, Tom Luth, informed the neighborhood that a single-family home was under construction. Mr. Luth then requested a variance for lot size for a duplex use and impervious cover. The request to allow a duplex on a lot of 6,000 square feet rather than 7,000 square feet and to increase impervious cover

from 45% to 58% was granted by the Board of Adjustment in 1995. Upon completion, the site was used for both a Construction Contracting Business/Title Company and a residence. The neighborhood reported the zoning violation to the city and the commercial business ceased due to City of Austin zoning enforcement. The current property owner purchased the property in 2001. Since that time, Dr. Loya has converted the first floor of the north side of the duplex structure into a medical office use.

The applicant, Dr. Fernando Loya, originally filed a zoning case for this property on June 27, 2002 (Zoning Case C14-02-0108) because he wished to move his dental practice to the site so that he could construct a small medical office downstairs and reside upstairs. At that time, the zoning case manager advised the agent for the case, Phil Moncada, that the property was located within the boundaries of the Central East Austin Neighborhood Plan (CEANP) and that the rezoning request would require a Neighborhood Plan Amendment. Secondly, the agent was made aware of the Neighborhood Planning and Zoning Department policy to deny rezoning requests for properties within adopted neighborhood plan boundaries made within one year of a neighborhood plan approval if the request is contrary to the Neighborhood Plan Future Land Use Map. The Central East Austin Neighborhood Plan's one-year anniversary was on December 13, 2002 and the Neighborhood Plan Amendment process had not been finalized by the City Council. Therefore, the staff advised the applicant to wait until December of 2002 for a staff recommendation on the proposed rezoning and public hearing. During that time, the applicant met with the Swede Hill and the OCEAN Neighborhood Associations to present his request for a change in zoning. The neighborhood associations recommended against the rezoning of the property to LO-MU-CO-NP. The staff also recommended denial of the proposed zoning and scheduled the case for the December 11, 2002 Planning Commission meeting. The case was postponed to the January 8, 2003 PC meeting by the staff and then the applicant requested a postponement of the case to the February 12, 2003 PC meeting. On February 7, 2003, the agent submitted a letter to the staff requesting to withdraw case C14-02-0108.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	SF-3-NP	Duplex (with illegal Medical Office use)
<i>North</i>	MF-3-NP	Undeveloped
<i>South</i>	SF-3-NP	Single-family Residence
<i>East</i>	SF-3-NP	Single-family Residence
<i>West</i>	Unzoned, CS, MF-4	City of Austin and Texas Department of Transportation Right-of-Way, University of Texas Events Center

**AREA STUDY:** Central East Austin NP

**TIA:** Not required

**WATERSHED:** Waller Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

372 - Swede Hill Neighborhood Association  
 511 - Austin Neighborhoods Council  
 603 - Muller Neighborhood Coalition

623 - City of Austin Downtown Commission  
 966 - Organization of Central East Austin Neighborhoods  
 972 - PODER (People Organized in Defense of Earth & Her Resources)

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-02-0108	SF-3-NP to LO-MU-CO-NP	12/11/02: Postponed to 1/8/03 by staff (8-0)  1/8/03: Postponed to 2/12/03 by applicant (8-0)  2/7/03: Case withdrawn.	N/A
C14-01-0148		11/14/01: Approved staff's recommendation. (7-0-1, C. Haynes- Abstained, S. Garza- Absent)	10/4/01: Approved the Planning Commission recommendation to grant the Central East Austin Neighborhood Plan on first reading (6-0, Mayor Watson was absent).  12/6/01: Approved the Planning Commission recommendation to grant the Central East Austin Neighborhood Plan Rezoning on second reading (7-0).  12/13/01: 1) Approved with amendment to change the conditional overlay for Tract 138 and removed from the NPCD the proposed Neighborhood Urban Center for "Webberville Triangle"(7-0); 2) Approved rezoning recommendations, except for properties with valid petitions (7-0); 3) Changed zoning on Tract 5, 1406 Waller, from GR to LO-MU-NP (7-0); 4) Postponed Tract 132 to 1-17-02 to allow staff time to communicate with the property owner (7-0)  1/17/02: Case C14-01-0148.004 - Approved CS-MU-CO-NP zoning allowing Automotive Sales and Automotive Rentals as the only change to the Conditional Overlay (7-0)

C14-01-0016	SF-3 to LR	Approved LO-CO with conditions (8-0, B.H.-abstain)	Approved SF-6 (6-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
C14-01-0035	City Initiated	Motion made to initiate rollback zoning, staff to research rollback possibilities from GR to an appropriate zoning (8-0)	Withdrawn by applicant on 9/19/01.

**RELATED CASES:** NPA-04-0009.02 (Neighborhood Plan Amendment Request)  
C14-02-0108 (Previous Zoning Case)  
C14-01-0148 (Central East Austin Neighborhood Plan Rezoning)

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION	DAILY TRAFFIC
Olander Street	40'	20'	Residential	400
E. 15 <sup>th</sup> Street	40'	25'	Residential	N/A

**CITY COUNCIL DATE:** March 24, 2005

**ACTION:** Postponed to April 7, 2005 at the request of Senator Gonzalo Barrientos (7-0)

April 5, 2005

**ACTION:**

**ORDINANCE READINGS:** 1st

2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057  
sherri.sirwaitis@ci.austin.tx.us



## **STAFF RECOMMENDATION**

Staff recommends denial of the request for LO-MU-CO-NP, Limited Office-Mixed Use-Conditional Overlay-Neighborhood Plan Combining District.

## **BASIS FOR RECOMMENDATION**

1. *Zoning changes should promote compatibility with adjacent and nearby uses and should not result in detrimental impacts to the neighborhood character.*

The rezoning request to LO-MU-CO-NP is not consistent with the Central East Austin Neighborhood Plan (CEANP). The approved Land Use Plan for the CEANP designates the site for single-family residential use. In addition, the CEANP delineates East 12<sup>th</sup> Street as the main commercial corridor for the area.

The current SF-3 zoning is consistent with the existing zoning (MF-3-NP, SF-3-NP) and residential uses surrounding the site the north, south and east. The property in question is located at the intersection of two residential streets (with pavement widths of only 20-25 feet) and takes access through the established residential neighborhood to the east.

2. *No change in conditions has occurred within the area indicating that there is a basis for changing the originally established zoning and/ or development restrictions for the property.*

There have been no significant changes in the area since the adoption of the Central East Austin Neighborhood Plan to warrant this rezoning request.

3. *Zoning should promote a transition between adjacent and nearby zoning districts, land uses, and development intensities.*

The existing SF-3/duplex use provides a transition of land uses from a major arterial roadway (Interstate Highway-35), to a residential street (Olander Street), to a duplex use (the site), to single-family uses to the east (Swede Hill Residential Neighborhood).

4. *Zoning should allow for reasonable use of the property.*

The current SF-3 zoning allows for the continued use of the existing residential/duplex structure on the property.

The overall property is not adequate in size to accommodate the necessary parking requirements for office uses on the site.

## **EXISTING CONDITIONS**

### **Site Characteristics**

The site is developed with a three-story duplex structure.



### **Impervious Cover**

The maximum impervious cover allowed by the LO zoning district would be 70%. However, if the Watershed impervious cover is more restrictive than the zoning district's allowable impervious cover, the impervious cover on this site would be limited by the watershed ordinance.

The site is located in the Waller 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. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

### **Environmental**

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Waller 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. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply. 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.

According to flood plain maps, there is no flood plain within the project area.

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.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

### **Transportation**

Right-of-way dedication may be required with any redevelopment of the site.

The trip generation under the requested zoning is estimated to be 140 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification (without consideration of setbacks, environmental constraints, or other site characteristics).

Existing Street Characteristics:

<u>Name</u>	<u>ROW</u>	<u>Pavement</u>	<u>Classification</u>	<u>Daily Traffic</u>
Olander St.	40'	20'	Residential	400
E. 15 <sup>th</sup> Street	40'	25'	Residential	N/A

There are no existing sidewalks along Olander Street.

Capital Metro bus service is available along The IH-35 service road and East 16<sup>th</sup> Street.

### **Right of Way**

The scope of this review is limited to the identification of needs for dedication and/or reservation of right-of-way for funded Capital Improvement Program (C.I.P.) Roadway Construction Projects and Transportation Systems Management (T.S.M.) Projects planned for implementation by the City of Austin. No aspect of the proposed project is being considered or approved with this review other than the need for right-of-way for City projects. There are separate right-of-way dedication and reservation requirements enforced by other Departments and other jurisdictions to secure right-of-way for roadway improvements contained in the Austin Metropolitan Area Roadway Plan, roadway projects funded by County and State agencies, and for dedication in accordance with the functional classification of the roadway.

We have reviewed the proposed subdivision, site plan, or zoning case and anticipate no additional requirement for right-of-way dedication or reservation for funded C.I.P. or T.S.M. projects at this location.

### **Water and Wastewater**

The site is served with City water and wastewater utilities. If water or wastewater utility improvements, or system upgrades, or utility relocations, or adjustment are required, the landowner will be responsible for all costs and providing. Also, the water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. The plan must be in accordance with the City's utility design criteria.

### **Stormwater Detention**

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

### **Compatibility Standards**

This tract is already developed and the proposed zoning change is a footprint within the existing development. A change of use within the existing structure would not trigger compatibility development regulations. However, any new construction on this site would be subject to compatibility development regulations due to the existing SF-3-NP zoned property to the north, south & east, and would be subject to the following requirements:

The site is subject to compatibility standards. Along the north, south & east of the property line, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

There was a pre-submittal of a site plan, referenced as C14R-84-063, but was never officially approved by commission back in 1984.

The site is also under the Swedish Hill National Register District. The City Historic Preservation Officer will review all proposed construction prior to site plan approval. Please contact the Historic Preservation Officer at 974-2414 for additional information.

This site is located in the Central East Austin Neighborhood Plan Area. Recommended design guidelines will be enforced at the time a site plan is submitted.

CHANDLER COUNTY  
ILLINOIS

PLAN  
P-H-NP







**Lopez-Phelps**  
& Associates, LLC

Attachment A

February 7, 2005

Mr. Adam Smith  
City of Austin Watershed Protection  
505 Barton Springs Rd., 5<sup>th</sup> Floor  
Austin, Texas 78701

RE: 901 East 15<sup>th</sup> St.  
C14-04-0091

Dear Mr. Smith:

Per our discussions, I have confirmed the following conditions of zoning from my client, Dr. Loya. In addition, we will review the other allowed uses, beyond medical use, to determine which uses we would also like to offer as prohibited uses.

1. Restrict use for dental offices, for space not to exceed 1600 sq. ft.;
2. The remainder of the existing building will be used for residential use only;
3. Access to the dental office will be restricted to 15<sup>th</sup> Street;
4. Should the use by Dr. Loya cease, a roll back zoning to the current SF-3-NP will be supported by Dr. Loya. This item should be included as part of the Zoning Conditional Overlay to follow the land. The City of Austin may initiate the zoning rollback upon receiving a request by the property owner and/or the neighborhood association, at the time the business ceases operations.
5. To support the action of item 3, listed above, a Restrictive Covenant will be signed and recorded, to include the Conditions of this zoning request, should the request be granted;
6. The Restrictive Covenant may include the property owner(s), the Neighborhood Association(s), and/or the Austin City Council, as parties to the restrictive covenant agreement, as a condition, should the zoning request be approved.

We have provided this language to an attorney to prepare the legal document and expect it to be ready this week for your review. A copy will also be provided to the COA case manager and COA attorney.

Sincerely,

Amelia Lopez-Phelps



**Lopez-Phelps**  
& Associates, LLC

Attachment B

February 22, 2005

Mr. Adam Smith  
City of Austin Watershed Protection  
505 Barton Springs Rd., 5<sup>th</sup> Floor  
Austin, Texas 78701

RE: C14-04-0091 / 901 East 15<sup>th</sup> St.  
Item # 3 & #4 / Dr. Loya

Dear Mr. Smith:

Per our discussions with the Swede Hill and OCEAN Neighborhood Associations, we are including the following conditions from our client, Dr. Loya, as a condition of our request for LO-MU-CO-NP zoning change and Plan Amendment:

1. Restrict use for dental offices, for space not to exceed 1,600 sq. ft.;
2. Pedestrian access to the dental office will be restricted to Olander Street;
3. Should the dental use by Dr. Loya cease, a roll back zoning to the current SF-3-NP will be supported by Dr. Loya. This item should be included as part of the Zoning Conditional Overlay to follow the ownership of the land. The City of Austin may initiate the zoning rollback upon receiving a request by the property owner and/or the neighborhood association, at the time the business ceases operations;
4. To support the action of item 3, listed above, a Restrictive Covenant will be prepared by an attorney, reviewed by the City of Austin and the Neighborhood Association, signed and recorded, to include the Conditions of this zoning request, should the request be granted;
5. The Restrictive Covenant may include the property owner(s), the Neighborhood Association(s), and/or the Austin City Council, as parties to the restrictive covenant agreement, should the zoning request be approved;
6. In response to the neighborhood's concerns of other LO uses, our client agrees to prohibit all other LO uses, with the exception of the medical office, as needed for his dentist office.

Please review the information provided above and contact me to determine what our next requirement is and the due date to receive any signed documents from my client, prior to the scheduled City Council meeting.

Sincerely,

  
Amelia Lopez-Phelps  
Agent for Dr. Loya

# PETITION

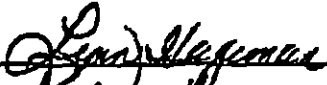
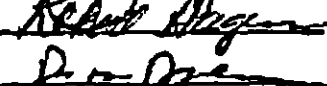


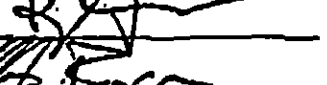

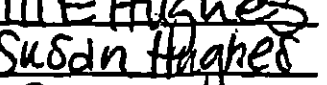

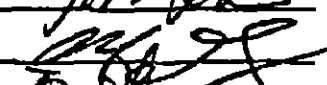







File No.:

C14-04-0091

Address of rezoning request:

901 East 15<sup>th</sup> Street

We, the undersigned owners of property affected by the requested zoning change described in the reference file, do hereby support this zoning request and Central East Austin Neighborhood Planning Area plan amendment from single family to office, (NPA-04-0009.02) zoning change from SF-3-NP to LO-MU-CO-NP. We further understand this request is intended to allow the existing building to be an owner/occupied residence and dental office, specifically to be occupied and operated by Dr. Loya, with a rollback provision at the time Dr. Loya's practice ceases operation.

<u>PRINTED NAME</u>	<u>ADDRESS / PHONE</u>	<u>SIGNATURE</u>
Lynn Hageman	807 E. 14 <sup>th</sup>	
Robert Hageman	807 E. 14 <sup>th</sup>	
Deborah van Duden	1002 E. 13 <sup>th</sup> St.	
Rupesh Chhagan	1004 E. 15 <sup>th</sup> St.	
LOUISA BENSMADE	1000 E. 15 <sup>th</sup>	
Nathalie Chellula	1002 E. 15 <sup>th</sup>	
Bonnet Ambuster	1004-A E. 15 <sup>th</sup>	
Clayton Fagan	1004-A E. 15 <sup>th</sup>	
Katy Miller	1005 E. 15 <sup>th</sup>	
Jill Hughes	1005 E. 15 <sup>th</sup>	
Susan Hughes	1005 E. 15 <sup>th</sup>	
Jason Laird	1000 East 15 <sup>th</sup>	
TOO RUST	817 East 13 <sup>th</sup>	
Pamela Mendoza	817 East 13 <sup>th</sup>	
Ben Swan	1203 Olander St	
Shawn Kach	1012 E. 15 <sup>th</sup> St	
CHAD KAGGER	1007 E. 14 <sup>th</sup> St	
AMY GRAPPEL	1007 E. 14 <sup>th</sup> St	



# PETITION

**File No.:** C14-04-0091  
**Address of rezoning request:** 901 East 15<sup>th</sup> Street

We, the undersigned owners of property affected by the requested zoning change described in the reference file, do hereby support this zoning request and Central East Austin Neighborhood Planning Area plan amendment from single family to office, (NPA-04-0009.02) zoning change from SF-3-NP to LO-MU-CO-NP. We further understand this request is intended to allow the existing building to be an owner/occupied residence and dental office, specifically to be occupied and operated by Dr. Loya, with a rollback provision at the time Dr. Loya's practice ceases operation.

PRINTED NAME	ADDRESS/PHONE	SIGNATURE
MARDISSA DAVIS	1406 WALLER	Mardissa Davis
JANET SMITH	1406 WALLER	Janet Smith
PAT RASH	1406 WALLER	Pat Rash
ALYSON MATHEW	1406 WALLER	Alyson Mathew
CANDACE AMBURGEY	1406 WALLER	Candace Amburgey
KATHY TOLLIVER	1406 WALLER	Kathy Tolliver
SAVITRI JARDANA	1406 WALLER	Savitri Jardana
DIAPHANN CLEMENS	1305 OLANDER	Diaphann Clemens
Richard Fennis	904 E 12th St	Richard Fennis
Frank Merillo	904 E 12th St	Frank Merillo
Larry Clemens	1705 OLANDER	Larry Clemens

# PETITION

**File No.:** C14-04-0091  
**Address of rezoning request:** 901 East 15<sup>th</sup> Street

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PRINTED NAME	ADDRESS/PHONE	SIGNATURE
LARRY VAUGHN	1008 E 14TH ST 469-0029	[Signature]
Jennifer Kaliszewski	1003 E 14TH ST	[Signature]
Michelle Stupka	910 E 14TH ST	[Signature]
LORI J. WALKER	910 E. 14TH ST.	[Signature]
Rob. Seidenberg	1001 E. B ST	[Signature]
Linda Perle	1400 BOB HARRISON ST	[Signature]
John Arcola	1400 BOB HARRISON ST	[Signature]
FRANKIE PERKINS	1205 East 13th St	[Signature]
Mrs. Jewel Thomas	1201 E 13 St 478/885	[Signature]

Written comments may be submitted to:

City of Austin  
Neighborhood Planning and Zoning Department  
Adam Smith  
P. O. Box 1088  
Austin, TX 78767-8810

If you do not use this form to submit your comments, you must include the name of the body conducting the public hearing, its scheduled date, the Case Number and the contact person listed on the notice in your submission.

Case Number: NPA-04-0009.02  
Contact: Adam Smith, (512) 974-7685  
Public Hearing:  
December 14, 2004 Planning Commission



CASEY MONAHAN

Your Name (please print)

904 East 14th St.

Your address(es) affected by this application

CASEY MONAHAN

Signature

Date

12-13-04

Comments: Please keep our neighborhood residential.

Attachment C

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

Case Number: C14-04-0091  
Contact: Sherri Gager, (512) 974-3057  
Public Hearing:  
December 14, 2004 Planning Commission



CASEY MONAHAN

Your Name (please print)

904 East 14th St.

Your address(es) affected by this application

CASEY MONAHAN

Signature

Date

12-13-04

Comments: Please keep our neighborhood residential.

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

City of Austin  
Neighborhood Planning and Zoning Department  
Sherri Gager  
P. O. Box 1088  
Austin, TX 78767-8810

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

Case Number: C14-04-0091

Contact: Sherri Gager, (512) 974-3057

Public Hearing:

December 14, 2004 Planning Commission



Mary Anne  
Your Name (please print)

903 East 14th St

Your address(es) affected by this application

Mary Anne  
Signature

Comments: Keep residential

12/16/04  
Date

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City of Austin

Neighborhood Planning and Zoning Department

Sherri Gager

P. O. Box 1088

Austin, TX 78767-8810

Written comments may be submitted to:

City of Austin

Neighborhood Planning and Zoning Department

Adam Smith

P. O. Box 1088

Austin, TX 78767-8810

If you do not use this form to submit your comments, you must include the name of the body conducting the public hearing, its scheduled date, the Case Number and the contact person listed on the notice in your submission.

Case Number: NPA-04-0009.02

Contact: Adam Smith, (512) 974-7685

Public Hearing:

December 14, 2004 Planning Commission



Mary Anne  
Your Name (please print)

903 East 14th St

Your address(es) affected by this application

Mary Anne  
Signature

12/16/04  
Date

Comments: Keep residential

## 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 amendment. You may also contact a registered neighborhood organization that is within the planning area.

The proposed amendment will be reviewed and acted upon at two public hearings: by the Planning Commission and then, by the City Council.

The Planning Commission, after evaluating City staff's recommendation and public input, may recommend that the Council:

- approve the application as proposed;
- approve a more restrictive zoning classification than requested;
- approve the proposed or a more restrictive classification subject to conditions; or
- deny the application.

After a public hearing, the Council may:

- approve the application as proposed;
- approve a more restrictive zoning classification than requested;
- approve the proposed or a more restrictive classification subject to conditions; or
- deny the application.

For additional information on Neighborhood Plans, visit the website: [www.ci.austin.tx.us/zoning/](http://www.ci.austin.tx.us/zoning/).

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Adam Smith  
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Austin, TX 78767-8810

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Case Number: NPA-04-0009.02

Contact: Adam Smith, (512) 974-7685

Public Hearing:

December 14, 2004 Planning Commission

Your Name (please print) Kelley Kochert

906 E. 14th St.

Your address(es) affected by this application

Kelley Kochert

Signature

12/7/04

Date



Comments: Dr. Loya has repeatedly been told the neighborhood does not want any commercial development in the core, but on the corridor of 12th street. He has ignored our concerns + started a business anyway against zoning + city ordinance which was resulted in fines. He is illegally operating a

medical practice in a  
residential neighborhood &  
should not be rewarded for  
violating the law. Dr. Loya seems  
to think that because he has  
money, he can do whatever he  
wants. Additionally, he & his  
wife has made comments that  
make it clear they do not respect  
the working class roots & historic  
nature of Sweden Hill. The same  
address was previously cited for  
~~re~~ illegally running a commercial  
enterprise when it was owned by  
Robert Hageman. Just because Mr. Hageman lied to  
Dr. Loya to get him to buy the property doesn't mean the  
neighborhood should pay for Dr. Loya's poor decision in buying  
a property he couldn't develop. <sup>He should have done more research.</sup>

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. 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 its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. 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.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

[www.ci.austin.tx.us/development](http://www.ci.austin.tx.us/development)

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

Case Number: C14-04-0091

Contact: Sherri Gager, (512) 974-3057

Public Hearing:

December 14, 2004 Planning Commission

Kelley Kochert

Your Name (please print)

906 E. 14th St.

Your address(es) affected by this application

Kelley Kochert

Signature

12/4/04

Date

Comments: Dr. Loya has tried to do this ever since he bought the property & the neighborhood has ALWAYS objected. We do not want commercial encroachment in our neighborhood. Dr. Loya started his business anyway against city ordinance & zoning. Plus this property has a prior history of violating city zoning when Mr. Hageman owned it. It does not match

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The historic nature of the neighborhood is gentrification

Dr. Loya has made it clear he does not respect the working class past of this neighborhood and feels poorer neighbors are an eyesore + nuisance. He thinks just because he has money he can do whatever he wants. He is not a good neighbor + doesn't deserve to be rewarded for blatantly disregarding the neighborhood's wishes, the city ordinances, + the law.

The ALA is already working on commercial development on 12th street. He should move his office there.



**Austin, TX 78767-8810**

**CITY PLANNING COMMISSION**

**February 22, 2005**

**CITY HALL – COUNCIL CHAMBERS**

**301 W. 2<sup>ND</sup> STREET**

**1<sup>st</sup> Floor**

**CALL TO ORDER – 6:00 P.M. COMMENCE 6:08PM; ADJOURN 10:00PM**

\_\_\_\_ John-Michael Cortez

\_\_\_\_ Matthew Moore, Secretary

\_\_\_\_ Cid Galindo

\_\_\_\_ Jay Reddy

\_\_\_\_ Matt Hollon, Asst. Secretary

\_\_\_\_ Chris Riley, Chair

\_\_\_\_ Cynthia Medlin, Vice-Chair

\_\_\_\_ A Dave Sullivan, Parliamentarian

\_\_\_\_ A Keith L. Jackson

**A. REGULAR AGENDA**

**EXECUTIVE SESSION (No public discussion)**

The Planning Commission will announce it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel on matters specifically listed on this agenda. The Planning Commission may also announce it will go into Executive Session, if necessary, to receive advice from Legal Counsel regarding any other item on this agenda.

Private Consultation with Attorney – Section 551.071

**CITIZEN COMMUNICATION:**

1. The first four (4) speakers signed up to speak will each be allowed a three-minute allotment to address their concerns regarding items *not* posted on the agenda.

**APPROVAL OF MINUTES**

2. Approval of minutes from February 8, 2005.

***MOTION: APPROVE BY CONSENT***

***VOTE: 7-0 (JR-1<sup>st</sup>, JMC-2<sup>nd</sup>; DS, KJ- ABSENT)***

**PLAN AMENDMENT**

- 3. Neighborhood Plan Amendment:** **NPA-04-0009.02 - Dr. Fernando Loya Dental**  
**Location:** 901 East 15th Street, Waller Creek Watershed, Central East Austin NPA  
**Owner/Applicant:** Dr. Fernanado H. Loya Dental (Fernando Loya)  
**Agent:** Lopez-Phelps & Associates (Amelia Lopez-Phelps)  
**Request:** To change the designation on the future land use map from single family to office use.  
**Staff Rec.:** RECOMMENDATION PENDING  
**Staff:** Adam Smith, 974-7685, adam.smith@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

***SEE ITEM 4 FOR DISCUSSION AND MOTION.***

**DISCUSSION AND ACTION ON ZONING CASES**

- 4. Rezoning:** **C14-04-0091 - Family Dental Practice**  
**Location:** 901 East 15th Street, Waller Creek Watershed, Central East Austin NPA  
**Owner/Applicant:** Dr. Fernanado H. Loya Dental (Fernando Loya)  
**Agent:** Lopez-Phelps & Associates (Amelia Lopez-Phelps)  
**Request:** SF-3-NP to LO-MU-CO-NP  
**Staff Rec.:** RECOMMENDATION PENDING  
**Staff:** Sherri Gager, 974-3057, sherri.gager@ci.austin.tx.us  
Neighborhood Planning and Zoning Department

Adam Smith presented staff recommendation.

Commissioner Galindo asked why it was determined that there is not enough parking. He said he drove out to the site and saw that there was parking available on the street. Mr. Smith said that the Code requires parking for office uses to be located on-site.

Commissioner Reddy asked if the owner would have to go to the Board of Adjustment. Mr. Smith said the applicant should answer that question.

**FOR**

**Amelia Lopez Phelps**, representing the owner, said TxDOT ROW is between the subject property and IH-35. She said they realize that the request is not consistent with the neighborhood plan, but request is consistent with idea of transitioning zoning. The owner had one month at the previous location to move from site, so the owner decided to move his practice to his house. He knew it was a risk.

In response on Commissioner Reddy's question, Ms. Phelps said that the dental practice has been at the house since December 2003. The owner's house is about 5000sf, and the practice uses 1600sf of that total square footage. There are two employees, in addition to Dr. Loya. She said there are five parking spaces on site.

Commissioner Riley asked how many patients there are per day and Ms. Phelps said there is about one patient per hour, sometimes 2-3 an hour. The practice is open from 8:30am-3:30pm. Ms. Phelps mentioned that the owner has agreed to SF-3 rollback restrictive covenant.

Commissioner Riley asked if there was a sign on the property and Ms. Phelps said yes, but he needs to get a sign permit for it.

Commissioner Riley asked if a medical office can be a home occupation use and Ms. Sirwaitis said that it is not allowed as a home occupation. Marty Terry said she was assistant city attorney at the time the home occupation ordinance was drafted. Council expressed concern about allowing medical office as a home occupation because of the waste and traffic generated. The home occupation ordinance is for something that is being operated out of a home as part of a residential neighborhood.

Commissioner Medlin confirmed with Ms. Terry that the conditional overlay cannot be associated with the owner and the particular business. Ms. Terry said that is correct and she said that the only way to accomplish something similar is to file a public restrictive covenant that states the owner will not object (not file a valid petition) against the zoning rollback.

Commissioner Hollon confirmed that the restrictive covenant would be tied to the type of land use and not the owner.

#### **FOR, DID NOT SPEAK**

Nancy Costa

Fern Loya

#### **AGAINST**

**James Medina** is the acting president of Swede Hill Neighborhood. He asks that the Commission support Swede Hill's opposition to the zoning request. There is a fundamental belief that Swede Hill needs to remain residential. Recently there was a case where Swede Hill actually supported a rezoning from residential to commercial, but there was an agreement that a portion of property would have SF-6 zoning to provide more housing. In regards to the restrictive covenant, it becomes the neighborhood's responsibility to enforce it. He said that Swede Hill does not want to become the place east of downtown to park, with parking meters in front of the houses.

Commissioner Medlin said that there is already mixed-use zoning at the end of the street. Mr. Medina said that is a transitional home, where the commercial zoning was downzoned. Commissioner Medlin asked when the applicant came to the neighborhood association to request the zoning and Mr. Medina said in 2002. The applicant lived at the house but had not yet started his business at the house in 2002. The dental practice was added to his house in 2003.

Commissioner Hollon said he thinks it is not logical why some type of buffer zoning would be opposed. Mr. Medina said that the actual property sits on the intersection of Oleander and 14<sup>th</sup> Street, so it is not on the highway. If there was direct access to IH-35, he could see buffer zoning, but there is not direct access. There is a difficult intersection to navigate to get to the property. Mr. Medina added that notice was sent from the City during the neighborhood planning process

that the request for rezoning property should be done at the neighborhood planning stage because it will be difficult to request a rezoning in the future.

Commissioner Hollon said that he understands that it would be a hassle for the neighborhood, but it seems that it just requires a request to the Commission or Council to initiate the rollback. Mr. Medina responded that the mediator Tracy Watson (of the City) offered his services, but the neighborhood walked away from the meeting because there was a fundamental difference between what the applicant wanted in that case, and what the neighborhood wanted, which is to maintain residential.

Commissioner Reddy asked what effects the business has had on the neighborhood since it opened a year ago. Mr. Medina said he is not in the area during the day so he does not see any impacts.

Commissioner Riley said that the neighborhood expressed concern about the non-residential zoning going into the neighborhood. He asked if there have been rezoning requests near the property zoned non-residential and Mr. Medina said no.

Commissioner Medlin asked staff about the transitional housing use needing office zoning. Mrs. Sirwaitis said that their understanding is that it is a group home, and not transitional housing. Commissioner Medlin asked if Group Home does not need non-residential zoning, and Mrs. Sirwaitis said that a class II group home needs MF zoning or less restrictive zoning.

Commissioner Riley asked what the vote was at Swede Hill and Mr. Medina said it was 8-7.

Margo Garana said her residence faces IH-35. It is actually a very quiet neighborhood. There is some confusion about the parking. There were no parking signs installed in the area in response to parking problems from UT events. There has been some talk about limitations on the property, but there is a burden. She is a teacher, and does not have much time. There is a 32 foot bluff between the Loya residence and IH-35. Also, between the group home and the Loya residence, there are several homes with children and pets. They came with good faith and due diligence knowing that the Loya residence was a residence and not an office.

#### **AGAINST, DID NOT SPEAK**

Kathryn Blount

Gene Chiles

Rosalie Benson Chiles

#### **REBUTTAL**

Ms. Phelps pointed out on the zoning map that the properties highlighted in yellow, where Denny's and Doubletree Hotel, are primarily zoned commercial, with a few multi-family properties. There are only two properties with single-family zoning- Loya's residence and one other property. The applicant is requesting a mixed-use designation with a very strict restrictive covenant. The residents are correct- the residence does look like a house. The applicant does not intend to remove the house and build an office complex, and the site is too small to do that anyway. The house was built in 1987 and is in very good shape. The applicant does have support. Dr. Loya really wants to provide a service. They feel the request is appropriate and

provides a good buffer. He will have to meet parking and building code requirements. If to rezone, they would not be zoning the entire building for non-residential. The photos provided were taken today at 2pm and were provided to show what it looks like at that time. The parking in front of his building does not have a no parking sign.

Commissioner Moore asked if the property did not get the requested zoning. Ms. Phelps said she is speculating that the owner would sell the property. Commissioner Moore confirmed that the house would be a duplex if the dental practice was not located. Commissioner Moore said he thought that 10 trips per day are assumed for a single-family house. He pointed out that a dental office open for 6-7 hours with one patient an hour would have less parking than a single-family unit. In addition, the owner works at the house, so that he would not be generating as many trips.

Commissioner Riley asked what type of services Dr. Loya provides that could be available to the neighborhood. Ms. Phelps said that he participates in the dental mobile van that provides dental services at area schools. He provides discounts to people within the Swede Hill neighborhood. Some of the people that signed the letter of support are patients of his. He used to be on Cesar Chavez, so he moved to the current location to stay in the neighborhood. He made a judgment call to move forward with this site. Given the location and there are no plans to redevelop, he did not imagine opposition.

Commissioner Medlin asked Ms. Sirwaitis what the issues were to keep single-family along the commercial IH-35 corridor. She replied saying that the single-family zoning along IH-35 were for existing residential uses. The subject property does not have direct access to IH-35.

Commissioner Hollon asked if the Central East Austin neighborhood adopted the corner store and Ms. Sirwaitis said she did not know.

***MOTION: CLOSE THE PUBLIC HEARING***

***VOTE: 7-0 (JR-1<sup>st</sup>, MM-2<sup>nd</sup>)***

***MOTION: APPROVE APPLICANT REQUEST LO-MU-CO, INCLUDING CONDITIONS AND RESTRICTIVE COVENANT. PERMIT ONLY MEDICAL OFFICE AND ALL SF-3 USES PERMITTED IN LO-MU.***

***VOTE: 3-4 (JR-1<sup>st</sup>, MM-2<sup>nd</sup>; CG, JR, MM-FOR MOTION; CR, CM, MH, JMC-AGAINST MOTION)***

***MOTION FAILS.***

Commissioner Reddy said he thinks it is sound planning practice to use mixed-use as a buffer. The neighborhood has not noticed this place being in operation for a year. Commissioner Moore said the amount of traffic will be insignificant. He would like to walk the walk of allowing live/work units. He cannot imagine it as an inappropriate use on a highway.

Commissioner Cortez asked if the zoning change is approved, will Dr. Loya be able to get a certificate of occupancy. Ms. Sirwaitis said that Ms. Phelps mentioned she would have to comply with parking and building code requirements prior to receiving a CO.

Commissioner Medlin said she will not support the motion because the applicant knew his business did not comply and did not work in good faith with the neighborhood. If approving the zoning change, the commercial creep the neighborhood is concerned about would be institutionalized by the decision. The only thing that would have mitigated her concern is if residents spoke in favor of the service.

Commissioner Cortez said he will not support the motion because he wants to respect the neighborhood plan. A lot of consensus had to be built over the years. He would feel different if the property was located on the access road. Since one has to go into the neighborhood to access the property and because there is not adequate parking, he will not support the motion.

Commissioner Riley said he would not support the motion, and it pains him. He thinks that if he lived in the neighborhood he would support the request because he would like to have that type of service in the neighborhood. The vote was 8-7 against the request. He thinks that there are a lot of people out there that do not know is going on and would have supported it. He agrees with Commissioner Cortez that neighborhood plans should be respected, but he emphasized that plans are not written in stone and that neighborhood plans should adapt over time. He does not support changes against a neighborhood plan unless there is neighborhood support.

Commissioner Galindo said he will support the motion. With no disrespect to the work done by the neighborhood, and regardless of how the applicant handled the case, planning principles should guide the decision. This case represents the planning principle of supporting mixed-use development.

Commissioner Hollon said this is an excruciating case. He is puzzled why the community does not embrace it. He said that he understands the concerns of the neighborhood, and he'll have to support the neighborhood, but he sympathizes with the request.

***MOTION: SEND TO COUNCIL WITHOUT A RECOMMENDATION.***

***VOTE: 6-0-1 (CM-1<sup>st</sup>, MH-2<sup>nd</sup>; CG-ABSTAIN)***

Marty Terry explained that if no motion is passed, staff has to wait 14 days after the closing of the public hearing. By making a motion to send it without a recommendation, staff does not have to wait 14 days.

<b>5. Rezoning:</b>	<b>C14-04-0149 - OWAN 1206 LORRAINE</b>
Location:	1306 LORRAIN ST, SHOAL CREEK Watershed, Old West Austin NPA
Owner/Applicant:	Jerry Jeff & Susan Walker
Agent:	COA
Request:	Rezone from MF-3 - NP to SF-3-NP
Staff Rec.:	<b>RECOMMENDED</b>
Staff:	Thomas Bolt, 974-2755, Thomas.Bolt@ci.austin.tx.us Neighborhood Planning & Zoning

***MOTION: APPROVE BY CONSENT***

## **TIMELINE FOR CASES C14-04-0091 / NPA-04-0009.02**

- 01/13/04** Property owner receives zoning violation notice from City of Austin (red tag).
- 06/16/04** Charges filed in Municipal Court.
- 06/17/04** Rezoning application submitted.
- 07/14/04** Neighborhood Plan Amendment application submitted.
- 08/24/04** Applicant submits letter to the staff requesting a change of agent.
- 08/25/04** Staff meets with new agent to discuss details/process for the rezoning and NPA cases. Agent requests time to become familiar with the cases.
- 09/16/04** Agent requests that staff hold off on scheduling a mandatory neighborhood meeting to discuss the rezoning and land use plan change requests because she would like to contact the neighborhood representatives first.
- 10/06/04** Staff e-mails agent to check on the status of applicant meeting with the neighborhood representatives.
- 11/22/04** Staff informs the agent that they will be placing the rezoning and NPA cases on the December 14, 2004 Planning Commission agenda because the cases will expire on 12/14/04 without Commission action.
- 12/14/04** Staff requests a postponement of cases C14-04-0091 and NPA-04-0009.02 to February 22, 2005, to schedule mandatory neighborhood meetings for the applicant/agent to present the cases to the effected neighborhood associations.
- 01/10/05** Applicant presents rezoning and NPA requests to the Swede Hill Neighborhood Association.
- 01/11/05** Applicant presents rezoning and NPA requests to the Organization of Central East Austin Neighborhoods (OCEAN).
- 02/07/05** Swede Hill Neighborhood Association votes to oppose the rezoning and neighborhood plan amendment requests.
- 2/08/05** OCEAN discusses the cases and votes to oppose the applicant's request for LO-MU-CO-NP zoning and for a change to office land use designation.
- 02/22/05** Planning Commission hears cases C14-04-0091 and NPA-04-0009.02. A motion to approve the applicant's request for LO-MU-CO-NP zoning fails (3-4). The Planning Commission votes to send the case to the City Council without a recommendation (6-0-1, CS-abstain).
- 03/24/05** City Council public hearing scheduled to occur.