RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: 47
AGENDA DATE: Thu 10/07/2004
PAGE: 1 of 1

SUBJECT: Consider action on an appeal by Melton West of the Planning Commission's decision to deny a compatibility height waiver for property located at 1106 West 6th Street, Unit 301. (Public hearing conducted and closed on June 17, 2004.)

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING DEPARTMENT: Watershed Protection and Development Review **DIRECTOR'S AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: Lynda Courtney, 974-2830; Martha Vincent, 974-3371

PRIOR COUNCIL ACTION: Public hearing conducted and closed on June 17, 2004.

BOARD AND COMMISSION ACTION: Denied by the Planning Commission.

PURCHASING: N/A

MBE / WBE: N/A

The applicant is requesting a compatibility height waiver to continue construction of a vertical addition in an existing condominium building in the Commercial Services-Mixed Use-Conditional Overlay-Neighborhood Plan (CS-MU-CO-NP) zoning district. The building to which the addition was initiated is within 100 feet of a single-family property, and height of the structure is limited to 40 feet due to compatibility height standards, under Section 25-2-1062 of the Code. The addition of the building exceeds the 40 feet height, but there is an existing intervening structure between the addition and the single-family property which is of a greater height than the proposed addition. Under Section 25-2-1081 (D) of the Code the land use commission or city council can approve a waiver of compatibility height if the proposed structure does not exceed the height of the existing intervening structure.

Staff recommended approval of the compatibility height waiver as complying with City regulations. The Planning Commission heard the case on April 13, 2004, and denied the waiver by a vote of 5-2-1. Melton West is appealing the Commission's denial on the basis that this request meets the requirements for consideration of a waiver under Land Development Code section 25-2-1081 and feels that one should be granted.

W. MICHAEL MURRAY

January 5, 2004

The Planning Commission of Austin, Texas

Dear Commission Members:

I am writing to support the application of Melton West to waive the compatibility height restrictions so that he may complete the modifications to his condominium unit at the Encinal Condominiums.

I am President of the Encinal Condominium Owners Association. In this position, I am also Chairperson of the Board of Directors. I would first like to state that Mr. West's proposed changes to his unit were properly submitted to the Board and the Association on several occasions. In no case was any opposition, either verbal or written, received by the Board prior to Mr. West's receiving final approval to go forward with construction. Since construction on the project has been stopped, I have personally discussed the situation with two owners, only one of whom still opposes the modifications. I believe that the opposition arose because of the negative visual impact of the unit in its current state.

Since the overall height of the condominium project already exceeds the proposed height of Mr. Melton's unit, I do not believe that granting his requested waiver will have any negative effect on the project. Personally, I believe that the changes that Mr. Melton has proposed will be beneficial to the entire condominium project and will enhance the overall aesthetics and value of the project.

Sincerely,

W. Michael Murray

1106 WEST SIXTH STREET • NO. 213 • AUSTIN, TEXAS 78703
PHONE: 512/472-5194 •

David Gentry
Gentry Custom Frames
1500-a W. 5th St.
Austin, TX 78703

April 3, 2004

Planning Commission
City of Austin
P.O. Box 1088
Austin, TX 78767

Dear Commission:

Please consider Melton West's zoning variance for his condominium at the Encinal, 1106 W. 6th St.

I am very familiar with this neighborhood, as I own a picture framing business two blocks west, and one block south of his condo. In my opinion, his proposal is not out of character with the existing structures along the adjacent blocks of 6th St.

I frequent the businesses along that block of 6th St. every week, and have considered Melton's project for some time—often while walking to Sweetish Hill, Z Tejas, or Whit Hanks. The complex is built up the side of a hill, and his proposed addition's height does not appear out of character with the existing structures. Though it may technically exceed the zoning specifications, in relation to the adjacent property, it seems to blend right in with the steep hillside. The entire property is nicely shielded with huge live oaks that provide a significant buffer to the street.

I have visited the Encinal, and I do not see that his proposed project would be deleterious to his neighbors' property or views. In fact, the rest of the property seems to be in a state of decline, and his addition may encourage a renaissance of renovation for all of the units.

To conclude, I support Melton West's petition for a variance.

Sincerely,

David B. Gentry

Kirk S. Petersen
12440 Alameda Trace Circle, #1518
Austin, TX 78727
(512) 750-6879

April 5, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767
RE: 1106 W. 6th Street, Unit 301

To Whom It May Concern:

I am writing to express my views and opinions in support of the Height Waiver Request submitted to you by Mr. Melton West. It is important to note that I hold a real estate license with the State of Texas and presently work as a mortgage loan officer for the oldest alternative lender in Texas. I have a degree in civil engineering and have worked on numerous development projects throughout Texas.

As a long-time resident of Austin, I am very familiar with properties in the Clarksville/Castle Hill area. In fact, I have lived and worked in the area, both, just a few blocks from his home. I am also familiar the modifications that Mr. West is planning for his home at Encinal. I applaud the proposed improvements and feel that the improvements create a win-win scenario for all concerned parties. Having lived in the area, I also know that the rather obstreperous "neighborhood association" can be averse to any change, whatsoever. I ask you to keep in mind that neighborhoods are growing and changing, or they are dying and deteriorating – never are they static.

I urge you to grant the variance due to the following fates:

- The improvements proposed are in-line with other improvements being made in the area and are aesthetically pleasing up-close and hardly visible from the street or surrounding properties.
- Face facts – the area is predominantly commercial and on a very busy street. Any construction that would encourage residential use in the area would be a benefit to other residences in the area, as well as surrounding businesses.
- The improvements will increase the property values of other units at Encinal, as well as surrounding residential properties. This means that the tax basis increases. With current budget challenges, I think it is in the best interest of the commission, the City, and Austin residents to collect as much revenue as possible from these sorts of projects.
- Other buildings in the area are taller than the improvements proposed my Mr. West. It would be plain silly to limit his right to improve his property as others in the area have improved theirs.
- Improvements proposed by Mr. West secure the safety and structural integrity of the building. This will benefit other residents of Encinal, as well as that of surrounding properties. It is my understanding that the building was in compliance with city building codes at the time of original construction. Obviously, the improvements would bring a number of items up to current 2004 standards.

You may easily contact me as indicated above, at anytime, with your questions or to verify the authenticity of this letter.

Best Regards,

Kirk S. Petersen

WAYNE BAILEY, P.C.
Attorney At Law
2150 Justin Lane, Suite 113
Austin, Texas 78757
(512) 263-5376; Fax: (512) 380-0504

April 4, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767.

Re: Height Waiver at 1106 W. 6th Street, Unit 301
Property Owner: Melton West

Dear Sirs:

I am writing in support of the application for waiver of height restriction filed by Melton West, the owner of the property referenced above.

I grew up in and around the Austin area and moved back here after attending law school in Houston. I appreciate the unique flavor of the Austin experience and have no desire to see the quality of life diminished by building projects that damage that uniqueness in anyway.

I have known Mr. West for some time and have had the opportunity to visit him in his home on many occasions. He has hosted fundraisers for both local and national charities at this property. The Encinal is wonderful enclave in the midst of several commercial properties and is an example of urban living at its best. Mr. West's planned addition to the property in no way diminishes that experience and in fact, in my opinion, only serves to strengthen the character and beauty of the neighborhood and increase his neighbors' property values.

The planned addition will not be a black eye, painfully obvious to all who pass by. In fact, the completed addition will not be as tall as several existing buildings in the vicinity, most notably the AISD Building and the Garden Condominiums at 1115 W. 6th. In any event, because the Encinal is located on a heavily treed lot with many mature oak trees

and because the canopies of the trees, together with the setback of the buildings, obscure the buildings from the street, the increased height would go unnoticed by most anyway.

Accordingly, I lend my support for Mr. West's application and ask that his plans be approved as submitted.

Very Truly Yours,

Wayne Bailey
WB:jr

April 4th, 2004

City Planning Commission
City of Austin
Austin, TX

RE: Melton West-Height Waiver Request for 1106 W. 6th St

Dear Commission Members,

I have been watching the construction of the top floors of the condominium at 1106 West 6th Street with fascination. After inquiring about the apparent stoppage in the project, I was disappointed to hear of the work stop order in place. I think that the project is an asset to both the condominium complex and the surrounding community.

The height of the structure should not be an issue because of the blending of the structure with the surround tree canopies, as well as the slope of the hill. There are structures within the same complex that appear taller, just up the hill from the property under review. Also, there are many trees and buildings with higher elevations as one travels up the hill.

Mr. West has apparently taken great care in carefully planning an esthetically appealing structure, as well as a strong structure with large steel beams supporting it. This not only improves his property, but also improves the surrounding properties because of the steel reinforcements he has also provided them.

As a City of Austin property owner, I would hope that more residential structures in Austin would be built with steel reinforcement, and with such careful blending into the hillsides.

I encourage and support the height waiver for Mr. Melton to complete the condominium renovation at 1106 W. 6th Street.

Respectfully,

John S. Hogg

John S. Hogg MD

4109 Jefferson Street
Austin, Texas 78731
April 2, 2004

City of Austin Planning Commission
P O Box 1088
Austin, Texas 78767

Re: Encinal Condominium construction

Dear Planning Commission;

I have resided in central Austin for the last 20 years and enjoy the architectural integrity of our city. I am writing in regard to the construction in the Encinal Condominiums, specifically 1106 W 6th Street, Unit 301, 78703.

This Condominium has many special features which include a very sloped grounds and varying heights of the units as well as tall trees. The current structural improvement, which can be determined by its completed skeleton, harmonizes with and complements the existing neighboring structures. The slope of the property allows the new construction to blend in with its environment inconspicuously.

In my opinion, the improvements fit in well with the immediate surrounding area, which includes buildings of a greater height than this structure. It also balances the newer downtown construction of urban residences.

I support the allowance of a waiver to complete the construction on this project.

Sincerely yours,

Thomas H Smith, MD

Terry M. Franz
1904 Kenwood
Austin, Texas 78704
512-447-8768
tmfranz@airmail.net

April 4, 2004

City of Austin Planning Commission
PO Box 1088
Austin, Texas 78767

Dear Planning Commissioners:

Please consider my letter in support of Melton West's request for a waiver for the height of his residence at 1106 West 6th Street, Unit 301. I am a 19-year Austin resident, and for 15 of those years I have lived in Austin's inner-city. I love Austin and plan to spend my life here.

The height of Mr. West's residence is not noticeable except from a few points in the neighborhood. The topography of the area and the many trees in the neighborhood conceal his residence from most vantage points, even on the streets nearest to his property. In fact, the height of his residence is consistent with heights of several other nearby residences, including the Garden Condominiums, residential suites in the AISD complex, and several residences on nearby Baylor Street.

Secondly, the improvements he is making to his property will enhance the value of his and his neighbors' properties.

Thank you for your consideration. I hope you will support Mr. West's variance request for his residence.

Sincerely,

Terry M. Franz

A. Arro Smith

909 West 29th Street, Austin, Texas 78705 512/294.8646 arro@austin.rr.com

2 April, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

Dear Commission Members:

I understand that Mr. Melton West of 1106 West Sixth Street is petitioning your Board for a zoning variance. I urge you to approve Mr. West's request for two main reasons:

Mr. West has lived in Austin for many years, and understands the unique texture and tenor of central Austin. I have great faith that his proposed addition will blend into the eclectic blend of architecture already present on West Sixth Street. I have reviewed his plans, and find them aesthetically compelling.

I have been a friend of Mr. West for many years. Before his current construction project began, I was privileged to be a guest at his apartment for many charitable functions. He is a dedicated philanthropist that has unselfishly raised thousands of dollars for deserving organizations. It is rare to find a private home so well suited for small charity functions. With its location on West Sixth Street, there is always plenty of parking; and it is easy to find without disturbing the neighbors. I am confident that his proposed addition will continue to serve many in the community through his networking generosity.

Thank you for your consideration,

April 3, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

Dear Sirs:

I am writing regarding the renovation efforts of Melton West at the Encinal Condominiums,1106 W. 6th, Unit 301, Austin.

I came to Austin 40 years ago from Houston. I remember when the Austin's population was about 60,000. I am very familiar with this neighborhood. I have lived in the immediate neighborhood, and I have many fiends who have lived in the neighborhood.

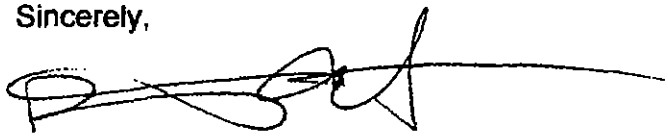
I remember when the Encinal was constructed. There was some controversy that the complex was destroying a family neighborhood. Now it is one of the few remaining residences actually on 6th Street, surrounded by businesses.

I do not feel that the new height of the structure does any harm to the area. The Encinal is surrounded by commercial properties, and there are several taller buildings within a block. I feel that Mr. West's unit is actually hard to see from much of the surrounding neighborhood. I have tried to point it out to friends while driving through the vicinity, and it is hidden behind trees and other buildings. When one does get into a position to clearly see the complex, I feel that Mr. West's unit compliments the whole.

It is my belief that Mr. West deserves the opportunity to complete his project. I understand that he has tried to work with the City to arrange satisfactory compromises and that the work actually includes structural improvements. I hope that the City will find a way to allow the work to successfully go forward.

Thank you for your time on this matter.

Sincerely,



Dennis Ciscel
8023 Doe Meadow Dr.
Austin, TX 78749

JIM CARUTH
1811 SANTA CLARA ST. • AUSTIN TX 78757
PHONE 512-453-8878

April 5, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin TX 78767

To the Planning Commission:

I am writing to support Melton West's residential construction project at 1106 West Sixth Street. Although the addition to his residence rises beyond the height restriction for that property, it does so by only a few feet. I feel that the few extra vertical feet that the construction requires does not detract from the property or from the neighborhood. There are other buildings in the immediate vicinity that are taller.

Melton West's partially constructed addition has been in existence for well over a year. I have seen it many times. The variable, stair-stepped elevations of the buildings at 1106 West Sixth Street allow the Melton West's addition to fit in with the surrounding buildings. Also, the area's varying ground elevation places other buildings at a higher absolute elevation, although they may not be as tall as Mr. West's addition. Consequently, Mr. West's addition doesn't protrude noticeably, as it might in an area of flat topography and structures of uniform height.

I hope that the Planning Commission will grant a waiver to the height restriction and allow Melton West to complete his addition.

I live in Brentwood, and as a former member of the Brentwood Neighborhood Associaton's steering committee, I am sensitive to neighborhood planning decisions. I have lived in Austin since 1995, and also lived in Austin from 1973 to 1979.

Thanks for your consideration.

Sincerely,

Jim Caruth

Jim Caruth

April 4, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, Texas 78767

Dear Planning Commission Members:

As a long-term resident of the Austin community, I feel compelled to express my dismay over the halt of the construction/remodeling project at 1106 W. 6th St., Unit 301. I feel that a waiver should be granted to Melton West in order for the construction to continue, as there is no reasonable explanation as to why it should not. Surrounding the property, there are several other residential buildings that exceed the height and with much more intrusive and obvious appearance than what this Encinal property will have once completed. This property expansion is so inconspicuous that those walking and driving down 6th Street more often than not, will never notice any change. Helping this inconspicuous appearance is the fact that the new construction blends into the existing structure and complex and I feel will only increase the property valuation of the surrounding units and properties. In addition to a blended appearance of the architecture, there are beautiful and very large trees surrounding the structure and property that almost completely hide the structure from the primarily commercial area around the property.

Thank you for your attention to planning matters that are very important to our community. I hope that you will grant Melton West with the necessary approval to complete this project, which will only add value and beauty to our wonderful city!

Sincerely,

Steve Overman

Steve Overman
3105 Lafayette Avenue
Austin, Texas 78722
soverman@austin.rr.com

5624 Woodrow Avenue
Austin, Texas 78756

April 4, 2004

City of Austin Planning Commission
Post Office Box 1088
Austin, TX 78767

To the Members of the Planning Commission:

This is in support of Melton West's application for a height waiver for his home at 1106 West 6th Street, Unit 301, of the Encinal Condominiums. I am a long-time resident of Austin, having moved here from San Antonio in 1971.

Frankly, I have never understood why there's been any issue whatsoever with the height of Melton's beautiful condo redesign. With those huge oaks and pecans in front, you can barely see his place from 6th Street. And there are *definitely* more than just a few buildings very close by Encinal that are obviously taller than Unit 301.

I feel that his creative and attractive design is going to do nothing more or less than vastly improve the Encinal, as well as the OWANA area in general.

I urge you to grant him this waiver and allow the project to come to completion.

Sincerely,

Georgia Cotrell

1800 Rainy Meadows
Austin, TX 78757

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

April 3, 2004

To Whom It May Concern:

I have known and respected Melton West for ten years. During this time, he has been a responsible citizen of Austin, Texas. He has strived to be a good citizen and improve the quality of Austin as a city. I am writing this letter to request that you grant a waver regarding the height of the new construction at 1106 W. 6th Street, Unit 301.

There are several reasons that I do so. Firstly, the property is surrounded on three sides by commercial property, Z-Tejas, Whit Hanks Furniture and AISD complex across the street. Secondly, the property is on 6th street a commercial street. Finally, there are several properties nearby that are taller than the construction for which Mr. West is requesting a waver. These properties are: 1) the Garden Condominiums at 1115 W., 2) the AISD complex's residential suites and 3) several residences on Baylor street.

Because of the other structures at the same height or higher, the commercial nature of the area, the mature trees that shield the expansion and the face that the expansion adds value to the existing properties in the complex, I believe it is quite appropriate that a height waver be granted. Mr. West has always been tasteful in his approach to his property, both inside and out. The small extra height will not be obtrusive or even really seen because of the large trees.

Again, I am requesting that you approve the height waver for Mr. West's property at 1006 West 6th Street.

I do thank you for giving me an opportunity to express my views.

Sincerely,

James N. Roe

James N. Roe

April 5, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

RE: 1106 W. 6th, Unit 301
Property of Melton West

To Whom It May Concern:

I am writing you in support of the improvements on the above address. I understand that modifications were necessary to address structural problems and that the modifications will bring the unit in line with current fire and building code. I believe the building's additional height will not be conspicuous and will upscale the entire condominium complex and surrounding area. The renovations should increase property values and consequently the tax base.

I am a native of Austin and have lived primarily in the 78703 and 78704 areas since 1950. I witnessed the development of that specific area and am familiar with the Encinal Condominiums. The revitalization of the area, including the new Whole Foods office building only one block away, is complemented by the upgrade of this property.

I am in full support of granting the height waiver. Thank you for your attention in this matter.

Sincerely,

Dwight Spears
2210-A Quarry Rd
Austin TX 78703
Phone: 512-236-8900
dwight@dwightspears.com

April 5, 2004

Thom Washington
1304 Summit Street, Unit214
Austin, Texas 78741

To the Members of the Planning Commission:

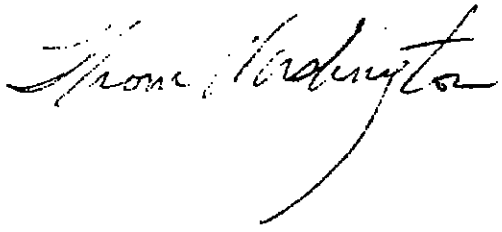
I have been recently made aware of the proposal for a waiver of zoning restrictions in regards to the home improvement to Unit 301 at 1106 W. 6th St. I would like to voice my support for waiving these restrictions. I can understand the need for such regulations as they ensure the integrity of the neighborhood. However, I can not see that the modifications that Mr. West is proposing would detract from the integrity of the neighborhood but rather it seems to me to be a vast improvement. I do not find that this construction, when completed, will cause the structure to be out of proportion to the other buildings around it, nor would it be easily visible from any of the adjoining streets.

I have always enjoyed the architectural styles of the buildings in Old West Austin and I would be vehemently opposed to anyone who would build a structure that would take away from the neighborhood character. In my opinion this project can only serve to add to people's enjoyment of the city. Additionally, the owners of the project have invested a great amount of capital into the renovations and to deny the waiver would be financially debilitating to them.

Once again, please include me as very much in favor for Mr. West's request for a waiver to the restrictions that are blocking this much anticipated progress.

Sincerely,

Thom Washington
407-3658



April 5, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

RE: Request for height waiver at 1106 W. 6th Street, Unit 301

I am writing in support of Mr. West's application for a height waver for his home at 1106 W. 6th St. As a long time resident of Austin, residing at 1300 Norwood Rd. on property that adjoins the old airport, I am very familiar with the many changes occurring in our city. I feel that the changes that Mr. West wishes to incorporate into his residence will not only increase its value, but also that of his neighbor's properties and the general area as well. As a taxpayer and registered voter, I urge a favorable ruling for his application.

Respectfully,

Paul Raney

Paul Raney,
1300 Norwood Road
Austin, TX 78722
512-517-2748

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

The purpose of this letter is to request a height waiver for the new construction on Unit 301 at 1106 W. 6th Street.
My name is Robert Quevedo and I have lived in Austin for the past 7 years. I have had the pleasure of spending time in the shops, restaurants and galleries with friends and family in or about the 1100 block of West 6th street. Much to my surprise the Encinal complex is never noticed. Even with Melton West's expansion to his property, I still find myself pointing out the complex and the buildings to them. The tall old trees and the surrounding buildings do an excellent job of helping the complex blend in. The complex has uniqueness to it and its integrity is not being compromised by the construction. It would add a more distinct character to it. The change would definitely improve not only the appearance of the property but also add value to it.

Sincerely,

Robert Quevedo
7104 Tesoro Trail
Austin, TX 78729

April 4, 2004

David Swim
1707 Mariposa Drive
Austin TX 78741

City of Austin Planning Commission
P.O. Box 1088
Austin TX 78767

Dear Planning Commission:

I am a have lived in Austin since escaping Oklahoma in 1985. I have owned property in Austin since 1987. I am writing you in support of the request for a height waiver for the remodel of Mr. West's condo at 1106 W. 6th, Unit 301.

I believe granting the height waiver is appropriate for the following reasons:

1. The immediate area currently has a healthy mix of residential and commercial uses with Whit Hanks across the street and Z-Tejas right next door. This construction renovates existing residences and thus reinvests in valued residential space in the midst of this growing commercial area.
2. These condominiums are virtually surrounded by very large oak and pecan trees that screen the unit from the street and neighbors.
3. The remodel enhances and blends well with the Encinal and its neighbors. The project will increase the prestige of the area and thus its overall property value.

Sincerely,

David Swim

David Swim

April 5, 2004

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

RE: 1106 W. 6th, Unit 301
Property of Melton West

To Whom It May Concern:

I am writing you in support of the improvements on the above address. I understand that modifications were necessary to address structural problems and that the modifications will bring the unit in line with current fire and building code. I believe the building's additional height will not be obtrusive and will upscale the entire condominium complex and surrounding area. The renovations should increase property values and consequently the tax base.

I am a native of Austin and have lived primarily in the 78703 and 78704 areas since 1950. I witnessed the development of that specific area and am familiar with the Encinal Condominiums. The revitalization of the area, including the new Whole Foods office building only one block away, is complemented by the upgrade of this property.

I am in full support of granting the height waiver. Thank you for your attention in this matter.

Sincerely,

D. Spears

Dwight Spears
2210-A Quarry Rd
Austin TX 78703
Phone: 512-236-8900
dwight@dwightspears.com

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767

Dear City of Austin Planning Commission,

I have been a Realtor in Austin for 5 years. Clarksville is one of my favorite neighborhoods in Austin.

I am writing to you to urge you to give Melton West at 1106 W. 6th, Unit 301 a height waiver. The new structure would blend in beautifully with the present aesthetic theme, and would INCREASE the property values of the area.

Please give Mr. West a height waiver.

Sincerely,

Jeremy Dearman

Jeremy Dearman
512-632-3147

2401 Winsted lane #6
Austin, TX 78703-3004

5 April, 2004

Gary Lane
10235 Scull Creek Dr
Austin, TX 78730

City of Austin Planning Commission
PO Box 1088
Austin, TX 78767

To Whom It May Concern:

I would like to write a few lines in support of my friend, Melton West. He is attempting to renovate his condominium at Encinal (1106 W 6th Street, Unit 301).

As a long-time resident of Austin (more than 30 years), I've noted that growth in this city is inevitable. Even through the ups and downs, the city continues to expand and the property values continue to rise.

What I believe Mr. West is attempting to do is to enhance the value of his home and the other condominiums in Encinal, as well as the surrounding area. It will afford him a beautiful view of the city, while remaining unobtrusive behind large trees and set back from the street.

My hope is that you would give serious consideration to allowing him to make these improvements to his property.

Thank you for your time.

Respectfully,

Gary Lane

City of Austin Planning Commission
P.O. Box 1088
Austin, TX 78767.

Dear Commissioners,

My friend, Melton West, is seeking a height waiver to the zoning at his condominium at 1106 W. 6th, Unit 301. There are a number of good reasons to grant the variance. Unique housing downtown adds to the character of downtown and causes more people to want to live in the central business district. If people are allowed to create unique living environments then more people will choose to not go out over the aquifers, instead building downtown.

The height of this structure doesn't harm the surrounding area. Encinal is surrounded on three sides by commercial properties such as Z-Tejas, AISD office complex and the Whit Hanks furniture store. The property presents on 6th street, not a residential street. There are several nearby buildings (within a couple of hundred feet) that are taller than this condominium. These are the Garden Condominiums at 1115 W. 6th, the AISD complex's residential suites and several of the residences on Baylor Street. The increased height is inconspicuous. For most of the year, very large trees in front of and around the Encinal complex obscure the condo from being seen from West 6th Street almost completely. A full view of the unit is only available from a few faraway vantage points. His condominium unit is surrounded by other condominiums and thus the height is stepped back from surrounding properties. This provides appropriate scale and clustering. The new design blends in with existing Encinal architecture.

I have lived in Austin since 1974, much of the time in the downtown area. I love the feel of our downtown and hope more people will move back. Fancy look-a-like lofts are not for everyone. I urge you to consider allowing these changes and promoting an open, architecturally diverse and interesting downtown living environment.

Stephen Wright 4/3/04

Stephen Wright
6704 Manchaca Rd., Unit #3
Austin, Texas 78745

Lynda Courtney
Watershed Protection and Development Review
For the Austin Planning Commission
City of Austin
P.O. Box 1088
Austin, Texas 78767-8835

Dear Planning Commissioners:

I own and reside at 700 Baylor Street. I am opposed to any waivers or variances of the building codes for the property at 1106 W. 6th, Encinal condominiums, Unit 301. The applicant has created their own hardship by substantially constructing a addition to the structure that is not in compliance with the land development height limits. To grant a waiver at this point rewards and encourages people to undertake construction without regard to building codes or city regulations. Then if they are cited they will feel that they can apply for waiver of the codes simply because what they have constructed out of compliance is an accomplished fact.

The applicant has known for some time that neighbors had a problem with the height of the construction. Indeed neighbors had to repeatedly contact the enforcement officials to try to get them to cite the non-compliance.

There is no unusual or compelling reason for the applicant to have not followed the codes except that getting around them suited personal interests. There is no legal basis for granting a waiver and if the applicant is forced to follow the law the property is not rendered valueless or unusable, except as the willful disregard for the law has created serious consequence of the applicant's own making.

I and my family are opposed to any waiver of height limits, as allowed in LDC 25-2-1081, for the case pending in file number SPC-03-0023W.

Sincerely,

Daniel J. Traverso

Daniel J. Traverso

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

April 7, 2004

Mr. Chris Riley, Vice Chair of the Planning Commission and Commission Members
City of Austin
P.O. Box 1088
Austin, Texas 78767

Subject: SPC-03-0023W; Request for Waiver to Compatibility Standards at 1106 West 6th street, Unit 301, Melton West Residence

Dear Vice Chair Riley and Commission Members:

I am writing to you concerning the request for a waiver for the Melton West residence at the Encinal Condominium project at 1106 West 6th Street. Specifically, I would like you to know that the OWANA Steering Committee voted unanimously on April 5, 2004 to oppose the granting of this waiver. In addtion, OWANA members and neighbors who live close by this project protest against and oppose the granting of any waiver which would allow the structure at 1106 West 6th Street #301 to fail to comply, in any manner, with the compatibility standards delineated in the City of Austin Land Development Code.

The history of this project has triggered a great deal of concern within the neighborhood, as well as with City staff. A letter from Mr. Ronald Menard, Plan Review Coordinator of the City's Watershed Protection and Development Services Department (dated August 28, 2003) to Mr. Charles Fisk of The Architect's Office Corporation (Mr. West's architectural firm) states that "the permit to remodel the existing 4th story was issued based on false information. A search of all permits issued at this address failed to uncover a permit for the construction of the 4th story greenhouse. It is my conclusion that since the 4th story greenhouse was not legally constructed, the permit is revoked." Mr. Menard also stated in that letter that "The 5th Story addition must be removed: a demolition permit is required." As of this date, the construction remains standing.

The Austin Land Development Code, Volume 2, Section 25-2-1081, allows your commission to grant a waiver to compatibility standards as Mr. West is requesting, if the waiver is "appropriate and will not harm the surrounding area". We believe that a waiver is *not* appropriate in this case. The Old West Austin Neighborhood Plan, passed by the City Council in June 2000 as an Ordinance, in Section A (regarding Land Use/Zoning), under Objective 2.3 of Goal 2 - Protect the Character of the Neighborhood, Action 7 states the need to "Have a zoning inspector available to spend up to 8 hours per week in the neighborhood. If necessary, increase staff in Inspections Division of the Development Review and Inspection Department. (City Action Item: DRID)." It is quite clear that the basic need behind the unequivocal statement of this Neighborhood Plan objective has been the history of people gambling that they won't get caught and going ahead with building

whatever they want, without compliance to code, knowing that if they get caught the consequences won't be very serious and they can simply request a waiver and complete their project. The surrounding OWANA property owners feel strongly that in order to protect the neighborhood, no waiver is appropriate in this case. A waiver is not appropriate in terms of height because it is not compatible with the SF zoned property within 100 feet of it, and because this construction harms the surrounding area by diminishing property values because it represents such a visual blight in the neighborhood.

In November of 2003 the applicant reported that he worked with his condo association for 2 years to get approvals for his construction, but said that he "was unaware of OWANA". Since becoming aware of OWANA, Mr. West, the applicant, and his attorney, Mr. J. Bradley Greenblum, have requested to be put on the agenda to speak about this construction at two OWANA general Membership meetings. Members of the Zoning subcommittee have also met with them about the concerns of the neighbors, as has an owner of SF zoned property within 100 feet. Neighbors report an impression that the applicant has acted in bad faith throughout the entire process, and this factor alone is significant in denying any height or elevation waiver. The granting of a waiver in this case carries with it the risk of setting a potentially disastrous precedent to others who might be tempted to risk moving forward on a construction project that is not in compliance with code, taking the risk that if caught they can simply obtain a waiver and then proceed. Granting a waiver could set a precedent which would represent an undermining of City ordinances and codes, and an erosion of the protection that property owners and residents rely upon their zoning to afford them. In order to discourage this kind of behavior it is obvious that the consequences of taking this kind of gamble need to be made more serious, and need to be stringently enforced.

Currently we are undertaking a zoning rollback effort with the City, as set forth in the Old West Austin Neighborhood Plan, whereby dozens of property owners are changing their zoning from MF-4 to SF. This will strengthen our use of compatibility standards throughout the neighborhood. Granting a waiver to compatibility standards, even before the rollback has been implemented, would serve to undermine this effort.

While there has not been a motion at a General membership meeting of our neighborhood association specifically relating to this project, a motion addressing the importance of code compliance was passed unanimously last year. As you must realize, waivers not only undermine the ordinance but also disempower City staff, like Mr Menard, who are charged with enforcing it. We would like to ask you to let our neighborhood know that you will protect us and our properties by denying this waiver, and by stringently enforcing compliance of all zoning codes and compatibility standards.

Sincerely,

Linda MacNeilage

Linda MacNeilage, Ph.D.
OWANA Chair

City of Austin Watershed Protection and Development Review
505 Barton Springs Road/ P.O. Box 1088 / Austin, Texas 78767-8835

NOTICE OF PLANNING COMMISSION PUBLIC HEARING FOR A SITE PLAN WAIVER

Mailing Date of this Notice: April 2, 2004 **File Number: SPC-03-0023W**

The Watershed Protection and Development Review Department has received an application for a waiver or variance of a site plan for the project described below. This notice has been mailed to you because City Ordinance requires that all property owners within 300 feet of a proposed development and affected neighborhood organizations be notified that an application for development has been filed.

OWNER: Jesse and Barbara West PHONE: (713) 782-8406

AGENT: Melton West PHONE: (512) 478-8400

PROJECT NAME: Encinal Condominiums, Unit 301

PROJECT ADDRESS AND/OR LEGAL DESCRIPTION: (See map) 1106 W. 6th Street

WAIVER REQUESTED: The applicant requests the following waiver from the Land Development Code: From Compatibility height limits, as allowed in LDC 25-2-1081.

PLANNING COMMISSION HEARING DATE: April 13, 2004 **TIME: 6:00 PM**

LOCATION: 505 Barton Springs Road, One Texas Center, 3rd Floor Room #325, Austin, Texas

If you have any questions concerning this notice, please contact Lynda Courtney at the City of Austin, Watershed Protection and Development Review Department, (512) 974-2830. Office hours are 7:45 a.m. to 4:45 p.m. Please be sure to refer to the File Number at the top of the page when you call.

You may send your written comments to the Zoning & Platting Commission Assistant, Neighborhood Planning & Zoning Department, P. O. Box 1088, Austin, TX 78767-8835.

File # SPC-03-0023W **Zoning & Platting Commission Hearing Date:** 4-13-04

Name (please print) Martha Fitz Water ☐ I am in favor *(Estoy de acuerdo)*

Address 1106 W. 6th St ☒ I object *(No estoy de acuerdo)*

Encinal Condominiums, Unit 209

Austin, Texas 78703

Martha Fitzwater, owner and resident

Courtney, Lynda

A15

Addendum pg-1

From: Deborah Wallace [whereisdeborah@sbcglobal.net]
Sent: Monday, April 12, 2004 11:30 PM
To: Lynda.Courtney@ci.austin.tx.us; jmvcortez@hotmail.com; cidg@galindogroup.com; Matt.PC@Newurban.Com; ns@ecpi.com; Cynthia.Medlin@sbcglobal.net; sully@jump.net; MaggieArmstrong@hotmail.com; chrisriley@rusklaw.com
Cc: Karens@austin.rr.com
Subject: Encinal Condo Project: Opposition to waiver of compatibility standards

Mr. Chris Riley
Vice Chair of the Planning Commission and Commission Members City of Austin
P.O. Box 1088 Austin, Texas 78767

Subject: SPC-03-0023W
Encinal Condominium project: Request for Waiver to Compatibility Standards at
1106 West 6th Street, Unit 301, Melton West Residence

Dear Vice Chair Riley and Commission Members:

I am writing to you concerning the request for a waiver for the above-referenced project. Specifically, I would like you to know that the OWANA Steering Committee voted unanimously on April 5, 2004 to oppose the granting of this waiver. In addition, OWANA members and neighbors who live close by this project protest against and oppose the granting of any waiver which would allow the structure at 1106 West 6th Street #301 to fail to comply, in any manner, with the compatibility standards delineated in the City of Austin Land Development Code.

The Austin Land Development Code, Volume 2, Section 25-2-1081, allows your commission to grant a waiver to compatibility standards as Mr. West is requesting, if the waiver is 'appropriate and will not harm the surrounding area'. We believe that a waiver is not appropriate in this case. The Old West Austin Neighborhood Plan, passed by the City Council in June 2000 as an Ordinance, in Section A (regarding Land Use/Zoning), under Objective 2.3 of Goal 2 - Protect the Character of the Neighborhood, Action 7 states the need to "Have a zoning inspector available to spend up to 8 hours per week in the neighborhood. If necessary, increase staff in Inspections Division of the Development Review and Inspection Department. (City Action Item: DRID)." It is quite clear that the basic need behind the unequivocal statement of this Neighborhood Plan objective has been the history of people gambling that they won't get caught and going ahead with building whatever they want, without compliance to code, knowing that if they get caught the consequences won't be very serious and they can simply request a waiver and complete their project. The surrounding OWANA property owners feel strongly that in order to protect the neighborhood, no waiver is appropriate in this case. A waiver is not appropriate in terms of height because it is not compatible with the SF zoned property within 100 feet of it, and because this construction harms the surrounding area by diminishing property values because it represents such a visual blight in the neighborhood.

In November of 2003 the applicant reported that he worked with his condo association for 2 years to get approvals for his construction, but said that he "was unaware of OWANA". Since becoming aware of OWANA, Mr. West, the applicant, and his attorney, Mr. J. Bradley Greenblum, have requested to be put on the agenda to speak about this construction at two OWANA general Membership meetings. Members of the Zoning subcommittee have also met with them about the concerns of the neighbors, as has an owner of SF zoned property within 100 feet.

AIS
Addn. 2

Neighbors report an impression that the applicant has acted in bad faith throughout the entire process, and this factor alone is significant in denying any height or elevation waiver. The granting of a waiver in this case carries with it the risk of setting a potentially disastrous precedent to others who will be tempted to risk moving forward on a construction project that is not in compliance with code, taking the risk that if caught they can simply obtain a waiver and then proceed. Granting a waiver would set a precedent which would represent an undermining of City ordinances and codes, and an erosion of the protection that property owners and residents rely upon their zoning to afford them. Our Neighborhood Plan specifically addresses the concern about code compliance because we have learned that the development pressures in our neighborhood are such that people are willing to take the chance of operating beyond the law, recognizing that the consequences, if caught, are not great. In order to discourage this kind of behavior, it is obvious that the consequences of taking this kind of gamble need to be made more serious, and need to be stringently enforced.

While there has not been a motion at a General membership meeting of our neighborhood association specifically relating to this project, a motion addressing the importance of code compliance was passed unanimously last year. As you must realize, waivers not only undermine the ordinance but also disempower City staff, like Mr Menard, who are charged with enforcing it. We would like to ask you to let our neighborhood know that you will protect us and our properties by denying this waiver, and by stringently enforcing compliance of all zoning codes and compatibility standards.

With Regards,

Deborah Wallace
OWANA resident

A15
Addm. 3

Courtney, Lynda

From: Carol [carolmerrill@earthlink.net]

Sent: Monday, April 12, 2004 10:51 PM

To: jmvcortez@hotmail.com; cidg@galindogroup.com; Matt.PC@Newurban.Com; ns@ecpi.com; Cynthia.Medlin@sbcglobal.net; sully@jump.net; MaggieArmstrong@hotmail.com; chrisriley@rusklaw.com

Cc: Lynda.Courtney@ci.austin.tx.us; Karens@austin.rr.com

Subject: oppostion to waiver at Encinal

Dear Austin Planning Committee Members,

My name is Carol Barnes; my husband and I are members of the Old West Austin Neighborhood Association and property owners at 1108 W. 7th Street for the past nine years. My family and I love living here in the center of the city. Several of our immediate neighbors own houses here that they grew up in. And several other owners and renters have been here for twenty plus years. We all share a belief in urban density; however, it must in accordance with city guidelines. If we all satiated our individual desires without regard for our neighbor we would lose the charm of our neighborhood. Many of the houses in this area.are designated historical. I am respectfully asking you to deny the request for variance at the Encinal and help us maintain the feel and character of our streets with appropriate type building. We have a community of people here who care deeply for the integrity of our neighborhood.

Sincerely,
Carol Barnes

A15
Addn. 4

Courtney, Lynda

From: Robert T. Renfro [rtr@mail.utexas.edu]
Sent: Monday, April 12, 2004 10:18 PM
To: Lynda.Courtney@ci.austin.tx.us
Subject: Fwd: Encinal Condominiums

>>Re: Encinal Condominium Variance(s)
>>
>>Dear Planning Commission Members:
>>
>>It is my understanding that you will be reviewing an application for a
>>variance(s) from the City of Austin Building Code on a unit of the
>>Encinal Condominiums at 1106 W. 9th Street. I am writing to urge you to
>>reject granting this variance(s) in the strongest possible terms.
>>
>>Further, it is my understanding that the applicant proceeded to construct
>>additions to his unit without a proper building permit. If that is true
>>this is an egregious act.
>>
>>As a long time resident (over 26 years just a few blocks away) of this
>>neighborhood I watched as the Encinal was being built, designed I
>>believe, by Howard Barnstone, a prominent Texas and Houston
>>architect. The building has a unified and coherent Southwest style that
>>I find extremely appealing. Then I watched appalled as the applicant
>>began adding to his unit in a completely unsympathetic, incompatible, out
>>of scale, and ungainly way to this handsome building. Any sense of
>>respect for the building and the neighborhood was blithely tossed
>>aside. What he did is without precedent in this unique amalgam of
>>stately houses and small scale bungalows. I believe that to condone what
>>applicant has done would undermine any value that compatibility standards
>>might stand for and open up this historic neighborhood to construction of
>>the worst kind.
>>
>>I base these judgments on over forty-six years as an architect and
>>industrial designer trained at Yale and Pratt Institute, and over 20
>>years teaching architectural design at the School of Architecture at the
>>University of Texas.
>>
>>I again urge you to reject this application for variance(s) and require
>>the dismantling of all work done to date in violation of applicable
>>building codes and condominium association restrictions.
>>
>>Sincerely,
>>Robert T. Renfro, Architect Emeritus
>>Senior Lecturer Retired
>>The School of Architecture
>>The University of Texas at Austin

A15
Addn. 5

Courtney, Lynda

From: Robert T. Renfro [rtr@mail.utexas.edu]
Sent: Monday, April 12, 2004 10:18 PM
To: Lynda.Courtney@ci.austin.tx.us
Subject: Fwd: Encinal Condominiums

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>>I again urge you to reject this application for variance(s) and require
>>the dismantling of all work done to date in violation of applicable
>>building codes and condominium association restrictions.
>>
>>Sincerely,
>>Robert T. Renfro, Architect Emeritus
>>Senior Lecturer Retired
>>The School of Architecture
>>The University of Texas at Austin

A15
Addn. 6

Wayne and Julie Orchid
604 Harthan Street
Austin, TX 78703

April 12, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767-8835

File Number: SPC-03-0023W

We are writing to you concerning the request for a waiver for the Melton West residence at the Encinal condominium project at 1106 West 6th Street. As members of Owana, we are deeply concerned that it has been overlooked that we have voted against this project from the beginning of the construction. This occupant has failed to comply with the compatibility standards delineated in the City of Austin Land Development Code. In addition, the owner Melton West has been dishonest in his statements and intentions from the start of this development.

From my front porch we are able to view this illegal monstrosity and watch the occupant continue to construct in an illegal manner even in inclement weather, in order to rush the completion of this project. It is apparent that he has no regard for following procedure and feels that he is entitled to go around the correct process.

We oppose this waiver for the following reasons:

- the construction is out of height variance
- constant misrepresentation of the project
- we do not want to set a example for future projects
- improper use of the system
- blocks previous beautiful views of downtown from my location
- decreases property values for the occupants around him

Sincerely --

Wayne and Julie Orchid

A15
Addn. 7

Property Owners within 300 FT of 1106 W. 6th St. #301

PETITION

Date: _____

File Number: **SPC-03-0023W**

Address of Waiver Request: 1106 W. 6th St., #301

To: Austin City Council

We, the undersigned owners of property affected by the requested waiver described in the referenced file, do hereby protest against and oppose the granting of any waiver or variance, which would allow the structure at 1106 W. 6th St, #301, to fail to comply with the compatibility standards in the City of Austin Land Development Code in any manner.

(PLEASE USE BLACK INK WHEN SIGNING PETITION)

Signature	Printed Name	Address
Carol Barnes	Carol Barnes	1108 W. 7th
Laura Smitz	Laura Smitz	701 Baylor
	JAY BARNES	1108 W 7th
	RICHARD REEVES	705 BAYLOR ST.
Cheryl Petre	CHERYL PETRE	704 Baylor St.
Robert Ocumpo	Robert Ocumpo	704 Baylor St.
James Grappe	James Grappe	707 Baylor St.
Dale Sengelmann	DALE SENGELMANN	1107 W. 9th
Donna Squyres	DONNA SQUYRES	1116 W 7th
	GUILYN MARCOS	604 BAYLOR ST.

Date: _____ Contact Name: _____

Phone Number: _____

215
Addm. 8

We the undersigned neighbors and property owners in Old West Austin, oppose any waiver or variance which would allow the Encinal Condominum #301 to fail to comply with the compatibility standards in the Austin Land Development Code in any manner.

Printed Name	Signature	Address
Ashley Smith	A Smith	1613 Baylor A.
Lesley Hopper	Lesley Hopper	613 Baylor B
Staci Pope	Staci Pope	1107 W. 7th #2
Sean Kennedy		613 Baylor St. Apt. D
Shea D Broussard		1614 Baylor St.
Erin Ritter		807 C Baylor St Apt C
Dameran Ritter		807 C Baylor St Apt C
Noah Keys		1119 W. 7th

AV5
Addm. 9

We the undersigned neighbors and property owners in Old West Austin, oppose any waiver or variance which would allow the Encinal Condominum #301 to fail to comply with the compatibility standards in the Austin Land Development Code in any manner.

Printed Name	Signature	Address
LA		
Sarah Uribe	Sarah Uribe	1105 Elm St.
Saralyn Stewart	Saralyn Stewart	700 Patterson Avenue
PAULA GRUBER	Paula Gruber	1700 ELM ST
LINDA MACNEILAGE	Linda MacNeilage	606 Hartford St 78703
Ted Wassenich	Ted Wassenich	1611 Waterston 78703
Jim Kaighin III.		1401 W. 9th 78703
Chris Schorre		717 Brooke Cir. 78703
Nancy Toelle	Nancy Toelle	1201 Castle Hill #203 78703
Margaret Bruch	Margaret Bruch	1803 Palma Plaza 78703
KATY O'NEILL	Katy O'Neill	1510 W. 10TH 78703
David Viescas	David Viescas	1115 W. 7th St. 78703
Adam Schwitters	Adam Schwitters	701A Highland 78703

A15
Addm. 10

We the undersigned neighbors and property owners in Old West Austin, oppose any waiver or variance which would allow the Encinal Condominum #301 to fail to comply with the compatibility standards in the Austin Land Development Code in any manner.

Printed Name	Signature	Address
Charles Geary		1107 West 7th #1
John Ross		1107 West 7th #3
[illegible]		1115 W 7th #105
Natalie [illegible]		1115 W 7th #105
MICHELE CHABOUDY		1115 W 7th #101
Eron Flory		1115 W. 7th St. #101
YOCHI SOLIS		701 A HIGHLAND AVE.

A15
Addm.11

603 West 13th Street, Suite 1A, PMB 215
Austin, Texas 78701
April 11, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767-8835

RE: File # SPC-03-0023W

I own a condominium unit at the Gardens on West Seventh, and I was very unhappy to find that you are thinking of granting a waiver to the owner of Unit # 301 at The Encinal at 1106 West 6th Street to exceed the compatibility height of a newly constructed addition to a condominium. This owner never obtained the permits necessary to make such a drastic change that affects nearby homeowners. Please ensure the integrity of the neighborhood by denying the waiver and instructing the owner to remove the partially constructed addition.

Thank you.

Sincerely,

Suzanne L. Viescas

Suzanne L. Viescas

A15
Addm. 12

Robin Carter
811 Blanco Street
Austin, TX 78703

April 11, 2004

Via Electronic Transmission

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767-8835

Subject: SPC-03-0023W; Request for Waiver to Compatibility Standards at 1106 West 6th street, Unit 301, Melton West Residence

Dear Vice Chair Riley and Commission Members:

I am writing to express my concern regarding the waiver request of Melton West for his property at the Encinal Condominium complex at 1106 West 6th Street. From the information I've gleaned from neighboring residents, city planning staffers, and the owner himself, the problems with this project are the direct result of Mr. West's poor judgment and conduct. He intentionally misrepresented his site plans to the City, then refused to respect the City's order to cease construction. He outrightly dismissed the resolution strategies and feasible rehabilitation efforts of neighbors, once sympathetic to his circumstance, and he mismanaged the financial resources that could long ago have remedied his dilemma. As a property owner in the vicinity of this site, I have duly abided by the planning procedures and requirements of the City for construction, and I would be angered and offended to think that the time, effort and financial burdens that I and other citizens have undertaken to do so were made ridiculous by the granting of this waiver. Undoubtedly, cases come before you that warrant an exception to compatibility standards and other aspects of the code; this, however, is not one of those cases. Such consent would undermine the validity of the Code and of the Commission dedicated to its judicious implementation, expressly because of the owner's willful disregard of both. As you reflect upon the request before you, I urge you to consider your expectation of citizen compliance, and your own commitment to the City's Zoning and Land Use Code. Please re-establish respect for the City by denying this waiver.

Sincerely,

Robin Carter

A15
Addm. 13

606 Harthan Street
Austin, TX 78703
April 9, 2004

Mr. Chris Riley, Vice Chair of the Planning Commission and Commission Members
City of Austin
P.O. Box 1088
Austin, Texas 78767

Subject: SPC-03-0023W; Request for Waiver to Compatibility Standards at 1106 West 6th street, Unit 301, Melton West Residence

Dear Vice Chair Riley and Commission Members:

I am writing to you to express my opposition to the request of a waiver by Melton West for his construction at unit 301 of the Encinal at 1106 West 6th Street. There are numerous reasons that this request should be denied.

- Mr. West did not file the proper papers for a permit for what he ultimately built.
- He hastily erected two stories, in flagrant disregard for height limitations triggered by compatibility standards, constructing a project far beyond what he had obtained a permit to construct.
- After receiving a letter from the City instructing him to cease construction, and after being red-tagged and being notified that he needed to obtain a demolition permit to tear down what he had illegally constructed, he has instead continued construction with apparent confidence that his disregard for City process and city zoning ordinances would not result in a sanction.
- The visual blight of this construction, and its inappropriate scale, harms the surrounding area, and clearly diminishes the property values of nearby property owners.
- The mass and scale of this project is incompatible with surrounding buildings and is inappropriate in relation to the surrounding properties. To allow this construction to stand would be to make a mockery of City codes, most particularly of compatibility standards.
- Compliance with Zoning and Land Use codes are what all property owners rely upon for protection of their properties. To grant a wavier would be to reward disregard for proper process and would set a terribly dangerous precedent for others who might be inclined to gamble with not being sanctioned for constructing a project beyond that allowed by code.

I urge you to uphold the City's Zoning and Land Use codes by denying this application for a waiver because granting it condones a blatant disregard for the City's laws and ordinances.

Sincerely,

Peter F. MacNeilage

A15
Addm. 14

Karen Schwitters

From: MICHAEL METTEAUER [MMETTEAUER@austin.rr.com]
Sent: Monday, April 12, 2004 9:29 AM
To: karens@austin.rr.com; LMacNeilage@austin.rr.com; scolburn@austin.rr.com
Subject: Fw: SPC-03-0023W Encinal Condominium Unit #301

FYI, attached is a message I sent Lynda Courtney:

----- Original Message -----
From: MICHAEL METTEAUER
To: lynda.courtney@ci.austin.tx.us
Sent: Monday, April 12, 2004 9:27 AM
Subject: SPC-03-0023W Encinal Condominium Unit #301

Lynda Courtney
City Watershed Protection and Development Review Dept.

Re: SPC-03-0023W Encinal Condominium Unit #301

Dear Ms. Courtney:

I am unable to attend the Planning Commission hearing on the referenced property so I am writing to express my objection to the request for a waiver of height limits.

I am the owner of a house at 602 Harthan, located just over one block from the subject property. Built in 1876 on a hill overlooking the Colorado River and the downtown area and now the subject of city, state and national landmark status, the house's views of the River have been blocked by development to the south. The remaining views of downtown are protected only by the city's regulations, such as the height limitation in question. Applicant's half-built addition is visible from my house. Granting the requested variance would set a bad precedent and is inconsistent with the OWANA Neighborhood Plan.

If you need any further information, please do not hesitate to contact me.

Sincerely,

Michael Metteauer

4/12/2004

A15

Addn. 15

Karen Schwitters

From:	Linda [lmacneilage@austin.rr.com]
Sent:	Monday, April 12, 2004 9:20 AM
To:	Karen Schwitters
Subject:	Encinal

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

April 7, 2004

Mr. Chris Riley, Vice Chair of the Planning Commission and Commission Members City of Austin P.O. Box 1088 Austin, Texas 78767
Subject: SPC-03-0023W; Request for Waiver to Compatibility Standards at 1106 West 6th Street, Unit 301, Melton West Residence

Dear Vice Chair Riley and Commission Members:

I am writing to you concerning the request for a waiver for the Melton West residence at the Encinal Condominium project at 1106 West 6th Street. Specifically, I would like you to know that the OWANA Steering Committee voted unanimously on April 5, 2004 to oppose the granting of this waiver. In addtion, OWANA members and neighbors who live close by this project protest against and oppose the granting of any waiver which would allow the structure at 1106 West 6th Street #301 to fail to comply, in any manner, with the compatibility standards delineated in the City of Austin Land Development Code.

The history of this project has triggered a great deal of concern within the neighborhood, as well as with City staff. A letter from Mr. Ronald Menard, Plan Review Coordinator of the City's Watershed Protection and Development Services Department (dated August 28, 2003) to Mr. Charles Fisk of The Architect's Office Corporation (Mr. West's architectural firm) states that "the permit to remodel the existing 4th story was issued based on false information. A search of all permits issued at this address failed to uncover a permit for the construction of the 4th story greenhouse. It is my conclusion that since the 4th story greenhouse was not legally constructed, the permit is revoked." Mr. Menard also stated in that letter that "The 5th Story addition must be removed: a demolition permit is required." As of this date, the construction remains standing.

The Austin Land Development Code, Volume 2, Section 25-2-1081, allows your commission to grant a waiver to compatibility standards as Mr. West is requesting, if the waiver is 'appropriate and will not harm the surrounding area'. We believe that a waiver is not appropriate in this case. The Old West Austin Neighborhood Plan, passed by the City Council in June 2000 as an Ordinance, in Section A (regarding Land Use/Zoning), under Objective 2.3 of Goal 2 - Protect the Character of the Neighborhood, Action 7 states the need to "Have a zoning inspector available to spend up to 8 hours per week in the neighborhood. If necessary, increase staff in Inspections Division of the Development Review and Inspection Department. (City Action Item: DRID)." It is quite clear that the basic need behind the unequivocal statement of this Neighborhood Plan objective has been the history of people gambling that they won't get caught and going ahead with building whatever they want, without compliance to code, knowing that if they get caught the consequences won't be very serious and they can simply request a waiver and complete their project. The surrounding OWANA property owners feel strongly that in order to protect the neighborhood, no waiver is appropriate in this case. A waiver is not appropriate in terms of height because it is not compatible with the SF zoned property within 100 feet of it, and because this construction harms the surrounding area by diminishing property values because it represents such a visual blight in the neighborhood.

In November of 2003 the applicant reported that he worked with his condo association for 2 years to get approvals for his construction, but said that he "was unaware of OWANA". Since becoming aware of OWANA, Mr. West, the applicant, and his attorney, Mr. J. Bradley Greenblum, have requested to be put on the agenda to speak about this construction at two OWANA general Membership meetings. Members of the Zoning subcommittee have also met with them about the concerns of the neighbors, as has an owner of SF zoned property within 100

A15
Addm. 16

feet. Neighbors report an impression that the applicant has acted in bad faith throughout the entire process, and this factor alone is significant in denying any height or elevation waiver. The granting of a waiver in this case carries with it the risk of setting a potentially disastrous precedent to others who might be tempted to risk moving forward on a construction project that is not in compliance with code, taking the risk that if caught they can simply obtain a waiver and then proceed. Granting a waiver could set a precedent which would represent an undermining of City ordinances and codes, and an erosion of the protection that property owners and residents rely upon their zoning to afford them. Our Neighborhood Plan specifically addresses the concern about code compliance because we have learned that the development pressures in our neighborhood are such that people are willing to take the chance of operating beyond the law, recognizing that the consequences, if caught, are not very great. In order to discourage this kind of behavior it is obvious that the consequences of taking this kind of gamble need to be made more serious, and need to be stringently enforced.

While there has not been a motion at a General membership meeting of our neighborhood association specifically relating to this project, a motion addressing the importance of code compliance was passed unanimously last year. As you must realize, waivers not only undermine the ordinance but also disempower City staff, like Mr Menard, who are charged with enforcing it. We would like to ask you to let our neighborhood know that you will protect us and our properties by denying this waiver, and by stringently enforcing compliance of all zoning codes and compatibility standards.

Sincerely,

Linda MacNeilage, Ph.D.
OWANA Chair

A15
Addm. 17

April 9, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767-8835

Re: File Number SPC-03-0023W

I am a property owner at the Gardens at West 7th with a view to the South and East that has been significantly impaired by the illegal construction on Unit 301 at the Encinal Condominiums at 1106 W. 6th Street.

I am strongly opposed to the granting of any waivers for this property because the owner has not abided by City rules in pursuing this construction, and does not satisfy the requirements for a waiver. Unprofessional, beyond-code construction of this type is a detriment to my property values and those of the rest of the neighborhood. Providing false information to the City and then asking for a waiver is completely beyond code compliance and makes a mockery of city planning values.

I urge you to deny this waiver request.

Sincerely,

Karen Schwitters
1115 West 7th Street #300
Austin, Texas 78703

JOHN VIESCAS

A15
Addm. 18

April 11, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, TX 78767-8835

RE: File # SPC-03-0023W

Dear Sirs:

As the owner of unit #102, 1115 W. 7th Street, I am appalled to learn that the Commission is seriously considering a request for a height variance for the property owner behind us on 6th Street. The owner of the subject property began construction without obtaining proper permits. Allowing completion of the height extension will block the view of some unit owners on West 7th, establish an eyesore on 6th Street, and will reduce the value of our property. I respectfully request that the commission deny the request and order the owner of the subject property to restore the building on 6th Street as soon as possible.

Sincerely,

John L. Viescas

603 W. 13TH STREET, SUITE 1A, PMB 215 • AUSTIN, TEXAS • 78701-1796
PHONE: (512) 478-2991 • FAX: (512) 476-2994

A15
Addn.19

608 Harthan Street
Austin, TX 78703
April 10, 2004

Mr. Chris Riley, Vice Chair of the Planning Commission and Commission Members
City of Austin
P.O. Box 1088
Austin, Texas 78767

Case File Number: SPC-03-0023W

Dear Vice Chair Riley and Planning Commission Members:

I have lived at 608 Harthan Street for nearly forty years. I am writing to you today because I want to express my view about how important I believe it is that you deny the request for a waiver to compatibility standards for the illegal construction that has occurred at Melton West's unit, number 301, at the Encinal Condominiums at 1106 West 6th street.

It should be clear that property owners purchase the property they do with the understanding that they are afforded certain protections by the City's zoning ordinances and regulations. Failure to uphold these ordinances, especially in the face of a fait accompli, is particularly irksome to other property owners, as it would, in effect, constitute a betrayal of the good faith other property owners have shown in the City's ordinances when they purchased their property. This construction is clearly not appropriate, as it harms the surrounding area, and diminishes the property values of other property owners.

If you should grant Mr. West the waiver he is applying for he could make a fortune by writing a manual explaining exactly how anyone can get any building alternation or addition done that they happen to desire without regard for City codes and ordinances. I respectfully request that you do not undermine the City's ordinances and codes as I can well imagine that to do so could risk triggering a stampede of further illegal construction, not only in our neighborhood but anywhere within the City.

I rely upon your Commission to insure that the property values and the integrity of the neighborhood are protected by enforcing compliance with compatibility standards. To do otherwise would make a mockery of our City's laws and ordinances.

Best regards,

Gene Waugh

A15
Attm. 20

THE GARDENS AT WEST SEVENTH

HOMEOWNERS' ASSOCIATION

April 11, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, Texas 78767-8835

RE: FILE NUMBER SPC-03-0023W

To the Commission:

The Board of Directors of The Gardens at West Seventh Homeowners' Association have authorized me, on behalf of our association, to formally object to the proposed compatibility waiver for the Encinal Condominiums, Unit 301 at 1106 W. 6th Street. The Association represents the ten homeowners of The Gardens at West Seventh condominium which is located at 1115 W. 7th Street, within 300 feet of the subject property. Further, we request that the improper construction begun on top of the Encinal building without notification or applicable permits be removed forthwith as it has created visual blight to several of our units.

Sincerely,

Roy Schwitters, Secretary
The Gardens at West Seventh
Homeowners' Association

A.15.
Addm. 21

Lynda Courtney
Watershed Protection and Development Review
For the Austin Planning Commission
City of Austin
P.O. Box 1088
Austin, Texas 78767-8835

Dear Planning Commissioners:

I own and reside at 700 Baylor Street. I am opposed to any waivers or variances of the building codes for the property at 1106 W. 6th, Encinal condominiums, Unit 301. The applicant has created their own hardship by substantially constructing a addition to the structure that is not in compliance with the land development height limits. To grant a waiver at this point rewards and encourages people to undertake construction without regard to building codes or city regulations. Then if they are cited they will feel that they can apply for waiver of the codes simply because what they have constructed out of compliance is an accomplished fact.

The applicant has known for some time that neighbors had a problem with the height of the construction. Indeed neighbors had to repeatedly contact the enforcement officials to try to get them to cite the non-compliance.

There is no unusual or compelling reason for the applicant to have not followed the codes except that getting around them suited personal interests. There is no legal basis for granting a waiver and if the applicant is forced to follow the law the property is not rendered valueless or unusable, except as the willful disregard for the law has created serious consequence of the applicant's own making.

I and my family are opposed to any waiver of height limits, as allowed in LDC 25-2-1081, for the case pending in file number SPC-03-0023W.

Sincerely,

Daniel J. Traverso

Daniel J. Traverso

A15
Addm. 22

City of Austin Watershed Protection and Development Review
505 Barton Springs Road/ P.O. Box 1088 / Austin, Texas 78767-8835

NOTICE OF PLANNING COMMISSION PUBLIC HEARING FOR A SITE PLAN WAIVER

Mailing Date of this Notice: April 2, 2004 **File Number: SPC-03-0023W**

The Watershed Protection and Development Review Department has received an application for a waiver or variance of a site plan for the project described below. This notice has been mailed to you because City Ordinance requires that all property owners within 300 feet of a proposed development and affected neighborhood organizations be notified that an application for development has been filed.

OWNER: Jesse and Barbara West PHONE: (713) 782-8406

AGENT: Melton West PHONE: (512) 478-8400

PROJECT NAME: Encinal Condominiums, Unit 301

PROJECT ADDRESS AND/OR LEGAL DESCRIPTION: (See map) 1106 W. 6th Street

WAIVER REQUESTED: The applicant requests the following waiver from the Land Development Code: From Compatibility height limit, as allowed in LDC 25-2-1081.

PLANNING COMMISSION HEARING DATE: April 13, 2004 **TIME: 6:00 PM**

LOCATION: 505 Barton Springs Road, One Texas Center, 3rd Floor Room #325, Austin, Texas

If you have any questions concerning this notice, please contact Lynda Courtney at the City of Austin, Watershed Protection and Development Review Department, (512) 974-2830. Office hours are 7:45 a.m. to 4:45 p.m. Please be sure to refer to the File Number at the top of the page when you call.

You may send your written comments to the Zoning & Platting Commission Liaison, Neighborhood Planning & Zoning Department, P. O. Box 1088, Austin, TX 78767-8835.

File # SPC-03-0023W Zoning & Platting Commission Hearing Date: 4-13-04

Name (please print) Martha Fitz Water ☐ I am in favor (Estoy de acuerdo)

Address 1106 W. 6th St ☒ I object (No estoy de acuerdo)

Encinal Condominiums, Unit 209

Austin, Texas 78703

Martha Fitzwater, owner and resident

1

A15
Addn. 23

Courtney, Lynda

From: Evan M. Williams [ew@texas.net]

Sent: Monday, April 12, 2004 2:05 PM

To: chrisriley@rusklaw.com; MaggieArmstrong@hotmail.com; sulley@jump.net; Cynthia.Medlin@sbcglobal.net; ns@ecpi.com; Matt.PC@Newurban.com; cidg@galindogroup.com; jmvcortez@hotmail.com

Cc: *Lynda.Courtney@ci.austin.tx.us; LCMorrison@prodigy.net*

Subject: SPC-03-0023W; Request for Waiver to Compatibility Standards at 1106 West 6th; Unit 301

Dear Vice Chair Riley and Commission Members,

I am representing the following properties in **opposition** of the applicants request for a waiver in compatibility standards: 524 North Lamar Blvd; 504 North Lamar Blvd; 1221 West 6th St. and 1114 West 7th Street. As developers, we have prided ourselves on working with the community to build appropriately scaled projects and I strongly feel that the applicants request is completely out of character for the area. Granting a waiver, in my opinion, would be harmful for the area. The applicants failure to abide by the rules has resulted in an "Intel" like blight on our area that needs to be removed.

On a personal note, I find it absolutely absurd that the applicant was unaware that a waiver was needed. As we require our contractors to get every permit required for a job, it is irritating (to say the least) to watch this project proceed with out the requisite permits. I also find it curious that given our properties proximity to the applicants that he has not contacted us. I apologize about the timing of this letter but the notices we received from the City regarding this case did not provide any sort of mechanism for a response.

Again, we are in opposition to the waiver request as I feel it will be harmful to the area. Please feel free to call if you should have any questions.

Sincerely,

Evan M. Williams

Evan M. Williams
524 North Lamar Suite #203
Austin, Texas 78703

Phone: 512.477.1277
Fax: 512.320.8507

A15
Addm.24

Courtney, Lynda

From:	Laura C. Morrison [LCMorrison@prodigy.net]
Sent:	Monday, April 12, 2004 11:37 AM
To:	jmvcortez@hotmail.com; cidg@galindogroup.com; Matt.PC@Newurban.Com; ns@ecpi.com; Cynthia.Medlin@sbcglobal.net; Dave Sullivan; MaggieArmstrong@hotmail.com; chrisriley@rusklaw.com
Cc:	Lynda Courtney
Subject:	Opposition to Case SPC-03-0023W/Encinal #310 Waiver

Dear Members of the Planning Commission:

I am a property owner and resident within 300 feet of the subject case, and write to you to express my opposition to granting a waiver to the compatibility standards for the Encinal Unit 301. Compatibility standards are an important element of maintaining the fabric of our area, and granting such a waiver would be harmful to the area by allowing a structure that is out of scale with the surrounding buildings, and, especially considering the history of this project, would set a precedent that would be exceedingly harmful to this neighborhood.

In particular I would like to take this opportunity to stress 2 important factors in this case.

1) The Old West Austin (OWA) Neighborhood Plan does *not* support the granting of the requested waiver.

The Land Use Policy section of the OWA Neighborhood plan explicitly addresses redevelopment of MF use properties on the north side of 6th St. with a statement that any redevelopment in this area "must not negatively impact surrounding residences, considering factors including but not limited to height, traffic, visual character, and other compatibility concerns." (See pg. 11 of the OWA NP.)

The applicant's project has an extremely negative impact on our residences specifically based on height, visual character and other compatibility concerns such as scale and mass.

Therefore, contrary to what is stated in the application, this structure is *not* "thoroughly in agreement with the OWANA [sic] neighborhood plan," but instead violates the policy set forth in the Plan.

2) The applicant's project does *not* qualify for consideration of a waiver to the compatibility standards.

The applicant has submitted his request based on the there being an existing structure between the subject property and the SF-3 triggering property (25-2-1081(C)(1)), and further, on the suggestion that the existing, intervening structure's height exceeds that of the project as required by 25-2-1081(D). However, the heights that have been included in the application are erroneous, and the intervening structure's height is in fact less than the subject property's height, as described in the April 12, 2004 letter to the Planning Commission from Tyson Tuttle.

I would like to add that I met with City Staff in January 2004, to express my concerns over the method and reference points being used for the height measurements (at that time reported as 47.2') because the reference point on the south side was also a recently constructed "flower box" rather than the elevation of the surrounding ground. (This was prior to the more recent construction of the north side "flower box" which is now used to further minimize the reported height at 44.5'.)

At my January meeting, Staff suggested that if the application went forward, a site check would be in order and that Staff would contact me when this was to be done. Unfortunately, despite my having left several messages

to inquire, as far as I know, this site check was not performed. I understand that there is currently an understaffing problem but I urge you to take into consideration that the grade of the adjacent ground is not being used to measure reported height, as is required by the Land Development Code 25-1-21(46).

A15
Addn. 25

Thank you for your consideration of these issues.

Sincerely,
Laura C. Morrison
610 Baylor St.

Cc: Lynda Courtney

A15
Addn.26

Courtney, Lynda

From: MICHAEL METTEAUER [MMETTEAUER@austin.rr.com]
Sent: Monday, April 12, 2004 9:27 AM
To: lynda.courtney@ci.austin.tx.us
Subject: SPC-03-0023W Encinal Condominium Unit #301

Lynda Courtney
City Watershed Protection and Development Review Dept.

Re: SPC-03-0023W Encinal Condominium Unit #301

Dear Ms. Courtney:

I am unable to attend the Planning Commission hearing on the referenced property so I am writing to express my objection to the request for a waiver of height limits.

I am the owner of a house at 602 Harthan, located just over one block from the subject property. Built in 1876 on a hill overlooking the Colorado River and the downtown area and now the subject of city, state and national landmark status, the house's views of the River have been blocked by development to the south. The remaining views of downtown are protected only by the city's regulations, such as the height limitation in question. Applicant's half-built addition is visible from my house. Granting the requested variance would set a bad precedent and is inconsistent with the OWANA Neighborhood Plan.

If you need any further information, please do not hesitate to contact me.

Sincerely,

Michael Metteauer

A15
Addm 27

Tyson Tuttle
608 Baylor Street
Austin, TX 78703

April 12, 2004

City of Austin Planning Commission
505 Barton Springs Road
P.O. Box 1088
Austin, TX 78767-8835

File Number: SPC-03-0023W

Dear Planning Commission Members,

I own the Taylor House at 608 Baylor Street, which has been a designated City of Austin Landmark since 1994. The property is zoned SF3-H and is located less than 100 feet from Unit 301 of the Encinal Condominiums, which triggers the compatibility height limitation of 40 feet and 3 stories as set forth in Section 25-2-1063 of the City of Austin Land Development Code. I am writing this letter to oppose the request for a waiver of this limitation.

My family is nearing completion of a 2-year restoration of the house. We will move-in this summer. This is a significant investment for us, and we are proud to contribute to the historic character of the neighborhood. I believe the height of the new construction at Unit 301 is out of scale with our house at 608 Baylor Street (See photos 5 and 6), other historic houses in the immediate vicinity (Photos 7-10), the West Sixth Street shopping district (Photo 2), and the Treaty Oak (Photo 1). In these examples, the height and scale of Unit 301 is inappropriate to the surrounding area.

As currently constructed, Unit 301 is 5 stories tall and 51.1 feet high from the first floor slab. Within the last month, a flower box was constructed (see Photos 3 and 4) to raise the highest grade by 5.5 feet. With the flower box, the calculated height is 44.5 feet, which still exceeds the compatibility standard of 40 feet. Using the average grade before the flower box was built, the building height is 47.2 feet. The flower box should not be considered due to it's small size and obvious distortion of the grade, and because it was constructed after-the-fact.

Unit 301 Height (in Feet)	Before Flower Box	After Flower Box
Lowest grade elevation	497.1	497.1
Highest grade elevation	508.6	514.1
Average grade elevation	502.9	505.6
Roof elevation (5th floor)	550.1	550.1
Building height from average grade	**47.2**	**44.5**
First floor slab elevation	499.0	499.0
Building height from first floor slab	**51.1**	**51.1**

A15
Addn.28

The intervening structure (see Photos 5 and 6) as identified in the waiver request is a maximum four stories tall, 40.6 feet high from the first floor slab, and 45.5 feet high from the average grade. Two-thirds of the intervening structure is only 3 stories high, including the section closest to our house. The three-story section is 30.6 feet high from the first floor slab and 35.5 feet high from the average grade. The intervening structure does not fully shield the new construction at Unit 301 from our view, even at ground level.

Intervening Structure Height (in Feet)	Without 4th Floor	With 4th Floor
Lowest grade elevation	507.8	507.8
Highest grade elevation	517.5	517.5
Average grade elevation	512.6	512.6
Roof elevation	548.1	558.1
Building height from average grade	35.5	45.5
First floor slab elevation	517.5	517.5
Building height from first floor slab	30.6	40.6

As stated in Section 25-2-1081 of the LDC, the height requirement may be waived only if an intervening structure exceeds the height of the proposed structure. Technically, only in the case where the addition of both the new flower box at Unit 301 and the 4th story of the intervening structure are allowed does Unit 301 even qualify for a waiver.

Melton was aware of the compatibility requirements and impact on my property before he started construction. He came to talk with me in late summer 2002 before construction started, showed me his plans, and asked for my consent to his addition. I stated my opposition, specifically to the height, and incompatibility with my house and view. I showed him the view from all levels of my house. I was very surprised when construction began without notification.

Based on a fair interpretation of the heights of Unit 301 and the intervening structure, and the harm it will have to both my property and the surrounding area, I believe this request for a waiver should be denied, and that the compatibility requirements should be strictly enforced to 40-foot height and 3 story maximum.

Sincerely,

Tyson Tuttle
608 Baylor Street
Austin, TX 78703

A15
Addm. 29

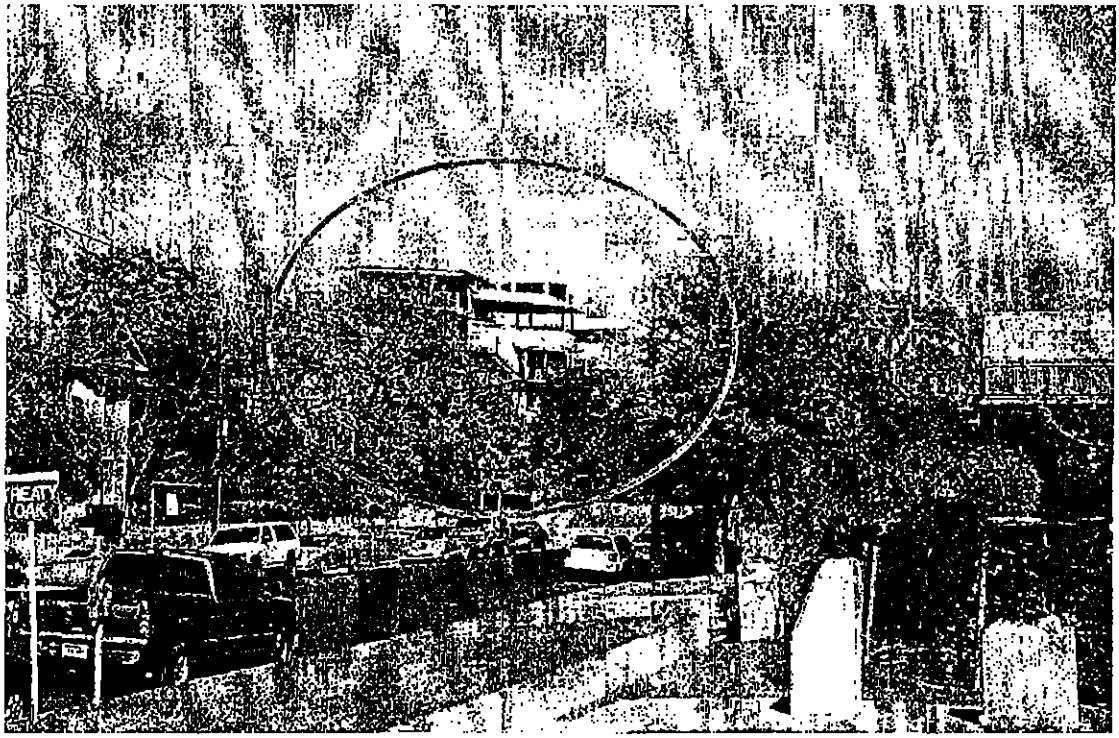

Photo 1: Unit 301 as seen from Treaty Oak

Photo 2: Unit 301 as seen from Z-Tejas

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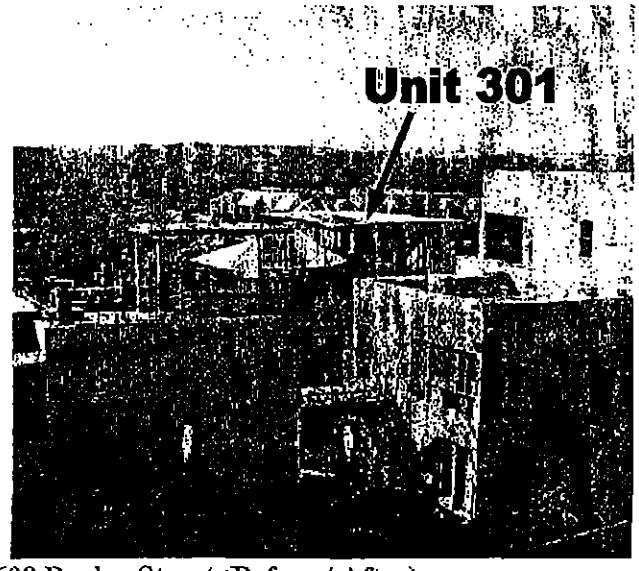
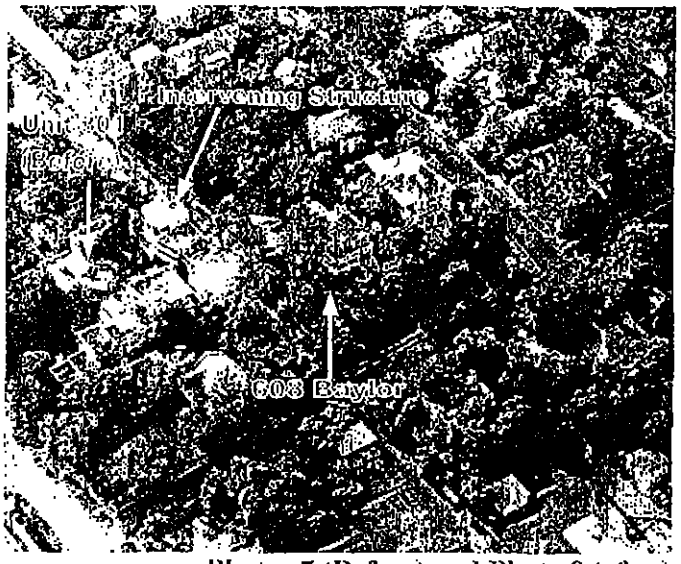
Addm.30

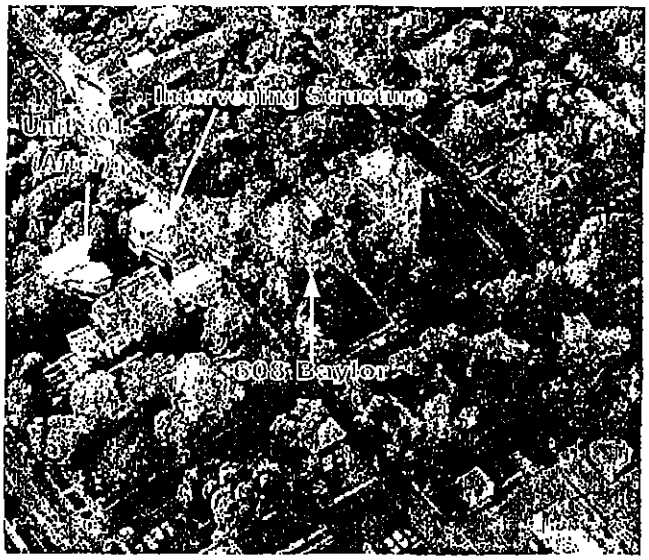
Photos 3 and 4: Newly Constructed Flower Box Used for Height Measurement



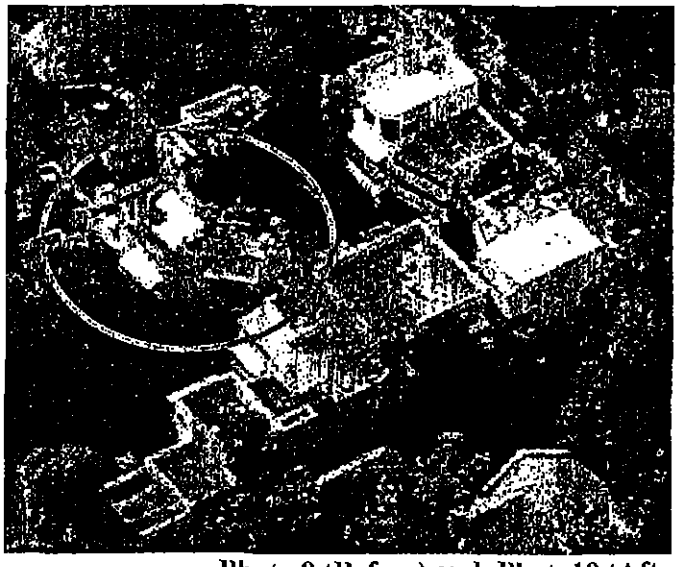
Photos 5 and 6: View from 3rd floor of 608 Baylor Street (Before / After)

A15
Addm. 31





Photos 7 (Before) and Photo 8 (after): Aerial Views of Surrounding Area



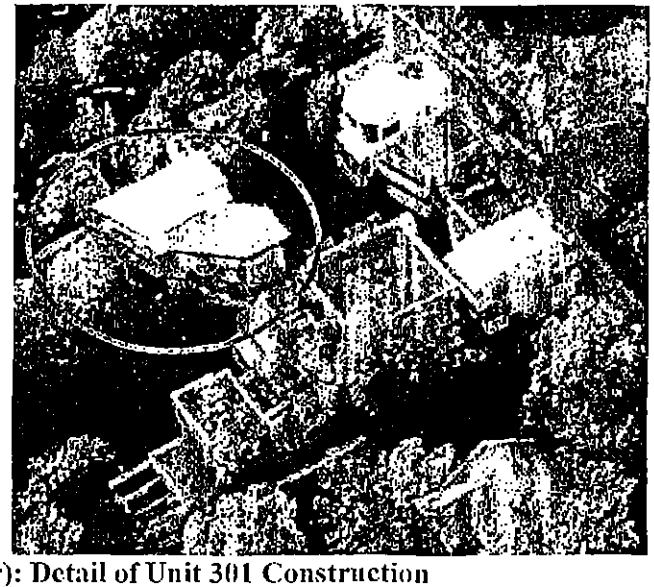


Photo 9 (Before) and Photo10 (After): Detail of Unit 301 Construction

A15
Addn. 32

Courtney, Lynda

From: Phil Morrison [morrison@physics.utexas.edu]
Sent: Sunday, April 11, 2004 7:33 PM
To: Lynda.Courtney@ci.austin.tx.us
Subject: SPC-03-0023W

Subject: Opposition Waiver to Compatibility Standards at 1106 West 6th street, Unit 301 - SPC-03-0023W

Members of the Planning Commission:

I am an owner of the property at 610 Baylor St., which is where I reside and which is within 300' of the Encinal Condominiums. I oppose a waiver to compatibility standards for #301. It is entirely inappropriate to grant a waiver because compatibility standards are an important part of the zoning code that ensures proper development, and because un-permitted development (as is the case with this construction) should not be "forgiven" with waivers such as this.

In particular, I would like to note to you that Mr. West, in his application for this waiver, has proposed the argument that several buildings in proximity to his are "taller in elevation and/or higher from average grade" than his. One of the buildings he explicitly references is my property. (It is in the photographs with the application labeled as "MF3 Residences" although, to clarify, it is zoned MF-4.) First I would like to make clear that my property is NOT higher from average grade than his. Nor are any of the other properties that he has labeled in his photographs higher from average grade than his.

Second, I would like to point out that the building on my property is taller in elevation, but that this is an entirely spurious argument. The standards are meant to ensure, in part, appropriate scale of construction (as he posits in his application and with which I agree) and therefore what matters is not absolute elevation but the absolute sizing of the building itself.

Mr. West's attempted argument is important to refute. In our hilly neighborhood, there are easily differences in elevation of dozens of feet from one block to the next. Following the logic that elevation of the top of the building is germane to compatibility standards, would lead us to allowing excess heights all over the low spots and limiting height on the peaks of the hills. Clearly this would be an unintended and inappropriate result.

Thank you,
Phil Morrison

--
Prof. Philip J. Morrison
The University of Texas at Austin
Physics Department
1 University Station C1600
Austin, TX 78712--0264

morrison@physics.utexas.edu
512-471-1527 Office
512-471-6715 Fax

A15
Addm. 33

Courtney, Lynda

From: Debra Day [ddaytexas@worldnet.att.net]
Sent: Sunday, April 11, 2004 4:42 PM
To: lynda.courtney@ci.austin.tx.us
Subject: Compatibility Waiver: SPC-03-0023W - Encinal Condominiums, Opposition

15. Compatibility Waiver: SPC-03-0023W - Encinal Condominiums

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

I absolutely oppose Mr. Melton West's request for a compatibility waiver and recommend rejection of his application. I own the unit adjacent to Mr. West's problematic construction.

Please find my attached letter explaining some of my reasons for recommending rejection.

It is very likely I will be in Mexico City on Business on the date of the hearing, hence my attempt to communicate my opposition via this email.

Sincerely,
Robert N. Floyd, Architect
President, ARC INC
Consultants and Architects
308 B Congress Avenue
Austin, Texas 78701

Owner Unit 103 Encinal Condominiums
1106 West 6th Street

Former Chairman: City of Austin Electric Utility Commission

ARC INC

308-B CONGRESS AVENUE
AUSTIN, TEXAS 78701
512-476-3971 OFC
512-476-4759 FAX
Email: arcinc@flash.net

A15
Addm. 34

4 April 2004

City of Austin Planning Commission

P.O. Box 1088
Austin, Texas 78767-8835

505 Barton Springs Road
Austin, Texas

Re: File Number: SPC-03-0023W

I emphatically recommend the application requesting a site plan waiver, made by Mr. Melton West, owner of unit #301, located at 1106 West 6th Street, **be rejected**.

Mr. West has made absolutely false statements to me personally with respect to virtually every aspect of the work illegally placed on the site in question.

There are apparently no legal, stamped documents, (i.e., structural, mechanical, electrical or architectural drawings and specifications) required by the City of Austin, the Board of the Encinal Condominium and the Texas Board of Architectural Examiners.

Mr. West has continues to work on the project after being "Red Tagged" by the City of Austin and in violation of the demands of the City of Austin building inspection department.

The construction has damaged my property physically as well as other condominium units. The financial consequences to me are substantial and significant. For example, I wrote a letter to Mr. West and the board of the Encinal Condominium Association demanding in writing that Mr. West and his construction crews stay off my roof (i.e.,unit 103). He ignored this demand and has continued to work on his project from the roof of my unit and has severally damaged my roof and broken my skylight.

Mr. West continues to distort the facts with respect to this project. For example, the representation made by Mr. West that I support his request for a waiver is totally false. The inclusion of my name and others listed on the sheet included in the package submitted to Planning Commission is clearly deceitful. This sheet is titled: " Owners of the twenty two adjacent properties approved the proposed modifications". The use of my name on this document is in fact a prefect example of his willingness to make false representations.

I advise the members of the Planning Commission that I have filed suit against Mr. West for damages.

Sincerely,

Robert N. Floyd, Architect
President, ARC INC
Owner: Unit 103, Encinal Condominiums

CC: Attorney, Brian Engel
McGinnis Lockridge and Kilgore

A15
Addm. 35

Courtney, Lynda

From: Donald Baldovin [debaldovin@worldnet.att.net]

Sent: Sunday, April 11, 2004 4:28 PM

To: chrisriley@rusklaw.com; jmvcortez@hotmail.com; cidg@galindogroup.com; Matt.PC@Newurban.Com; ns@ecpi.com; Cynthia.Medlin@sbcglobal.net; sully@jump.net; MaggieArmstrong@hotmail.com; Lynda.Courtney@ci.austin.tx.us

Subject: Planning Commission--April 13, 2004--File Number: SPC-03-0023W--Encinal Condominiums, Unit 301

Donald E. Baldovin

PMB-122

603 West 13th Street #1A

Austin Texas, 78701

April 10, 2004

City of Austin Planning Commission

505 Barton Springs Road

P.O. Box 1088

Austin, Texas 78767-8835

File Number: SPC-03-0023W

I own and occupy Unit 202 at 1115 West 7th Street (The Gardens) and every day I see the two stories that have been illegally constructed on top of Unit 301 of the Encinal Condominiums, 1106 West 6th Street. I am strongly against this application for a waiver for the following reasons: the height addition harms the surrounding area; the addition will decrease the value of all property in the area, except that of the applicant; the addition is an example of visual blight; the project does not satisfy the requirements for a waiver; and, the applicant's agent has acted in bad faith from the start of the process.

Having reviewed a number of items in the file, I have the following rebuttal comments.

1. Letters supporting the applicant from those who do not live in the neighborhood should be given no weight, since they are not personally affected and make statements that are not accurate. Only one such letter is relevant.

2. The statement that The Gardens is taller than the addition at the Encinal is false. I live on the top floor of the south building at The Gardens. The new height of the addition is much taller than my Unit, and is also taller than the AISD building..

3. The representation that 22 owners at the Encinal "are eager for these modifications to be completed" is false and misleading. Some of these people do not support the addition.

A15
Addn. 36

4. Although the Compatibility Waiver Review Sheet Summary refers to "a four story structure", the submitted plans show five stories. This fact is missing from the request document, and applicant is attempting to obtain a waiver for a five-story structure.

Over the last 18 months, there has been continuing misrepresentations about this project to the City of Austin, affected neighbors and OWANA, and flagrant abuse of the approval process. I strongly recommend that the application be rejected.

Sincerely,

Signed: Donald E. Baldovin

Note to Lynda Courtney: Please provide a copy to Jerome Newton, who does not have a listed email address.

A15
Addm. 37

Courtney, Lynda

From: chsgeorge [chsgeorge@earthlink.net]
Sent: Sunday, April 11, 2004 11:10 AM
To: lynda.courtney@ci.austin.tx.us
Cc: ED
Subject: Comaptibility Waiver: SPC-03-0023W - Encinal Condominiums Unit # 301

Dear Lynda,

Is your office aware that this waiver is for work completed without building permits? I live behind the Encinal and have watched it progress during the past two years. Even the Fire Department has red tagged this work as a life safety hazard. I'm concerned that approval of this height waiver will set a bad precedent and encourage others to build without permission and seek approvals "fait accompli".

I work as a private building inspector to assure buyers and lenders that properties comply with building, fire and zoning codes. Frankly, I have never seen such a disregard of local building codes as I've seen at the Encinal. If I was researching this property for a mortgage, I would flag the Encinal as unlendable until the owner Melton West provided appropriate permits and inspections for the work.

Charles George
1107 West 7th Street #1
Austin

Voice: 512-294-4103 Fax: 512- 857-0417

Staff: Tom Bolt and Glenn Rhoades, 974-2755(74-2775, thomas.bolt@ci.austin.tx.us
Neighborhood Planning and Zoning Department

MOTION: POSTPONE TO APRIL 27, 2004 BY CONSENT
VOTE: 7-0 (DS-1st, MA-2nd; JC, CG- ABSTAIN)

13 Neighborhood Plan Amendment: **NPA-04-0011.01 - 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: 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-1st, DS-2nd; 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-1st, MA-2nd; JC, CG- ABSTAIN)

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

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 5th 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 4th and 5th 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 5th floor. He said he would support the current building, without the addition. His house is west of 6th 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 5th 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 6th 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 Menard 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-1st, DS-2nd; 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 5th 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-1st, MM-2nd; JM, CM, NS, JM, DS- OPPOSED; CR, CG-ABSTAIN)

Facilitator: Katie Larsen 974-6413
katie.larsen@ci.austin.tx.us

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-1st, DS-2nd; 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-1st, MA-2nd; JC, CG- ABSTAIN)

Facilitator: Katie Larsen 974-6413
katie.larsen@ci.austin.tx.us

APPEAL OF PLANNING COMMISSION DECISION
OF A COMPATIBILITY WAIVER

CASE NUMBER: SPC-03-0023W **PLANNING COMMISSION DATE:** 4-13-2004

ADDRESS: 1106 W. 6th Street, Unit 301

WATERSHED: Town Lake (Urban)

AREA: Condo unit

EXISTING ZONING: CS-MU-CO-NP

PROJECT NAME: Encinal Condominiums, unit 301

PROPOSED USE: Condominium

AGENT: Melton West
1106 W. 6th Street, Unit 301
Austin, TX 78703
(512) 478-8400

APPLICANT: Jesse and Barbara West
1106 W. 6th St., Unit 301
Austin, TX 78703

NEIGHBORHOOD ORGANIZATION:
Old West Austin Neighborhood Association
Austin Neighborhoods Council
West End Austin Alliance

APPLICABLE WATERSHED ORDINANCE: Current/ Comprehensive watershed ordinance
CAPITOL VIEW: Not in View Corridor
SUMMARY STAFF RECOMMENDATION: Recommended
PLANNING COMMISSION ACTION: 4-13-2004, Denied 5-2, w/ 2 abstentions
CASE MANAGER: *Lynda Courtney, 974-2830*

PROJECT INFORMATION:
EXIST. ZONING: CS-MU-CO-NP
MAX. IMPERV. CVRG.: 95% **PROPOSED & EXIST. IMP. CVRG.:** N/C
REQUIRED PARKING: N/A **PROVIDED PARKING:** N/A

EXIST. USE: Condominium residential unit
PROPOSED USE: Same

SURROUNDING CONDITIONS:

Zoning/ Land use

North: Alley, then SF-3 H-NP, Single family historic homes
East: CS-MU-CO-NP, Office use
South: West 6th Street, then CS-H-NP, Art gallery retail
West: CS-MU-CO-NP, Retail

SUMMARY COMMENTS ON SITE PLAN:

The applicant requests a waiver of compatibility height requirements in order to complete construction of an additional story to his condo unit.

Mr. West began construction of a 4th or 5th story to the 4-story condominium building in which his unit is located and was red-tagged to stop construction. Due to the proximity of the single family property to the north, the allowable height limit for a structure more than 50' but less than 100' from a single family property is limited to 40' or three stories. The construction is located 98.5' from the single-family property to the north. Mr. West is proposing a height of 42.8* feet, and four stories, based on the limitations set forth in LDC section 25-2-1081. There is an intervening existing structure located between the proposed addition to Mr. West's condo and the single family property. The height of the intervening building is 44.5'* measured from the ground adjacent to the building. The roof level of that structure is actually 9' above the roof of Mr. West's proposed structure due to the higher grade at which the building was built.

*On May 10, 2004, representatives of the City of Austin Watershed and Development Review Department walked the site with Mr. West and pinpointed the specific points from which the measurements for building height should be taken. Due to the topographic challenges of the site and the architectural design of the buildings, it was discussed and decided where the highest and lowest grades adjacent to the buildings were and Mr. West marked those points of reference. A subsequent survey based on those points showed slightly altered legal building heights for zoning, as defined by the Land Development Code 25-1-21 (46).

Mr. West is also asking for the standard exceptions to height, as specified in LDC 25-2-531, in order to have a pergola/trellis on the roof for a roof garden. The exceptions allow for parapet walls, stairways, heating or cooling equipment, protective covers, etc. to exceed the zoning district height limit by 15%, or, in this case, 6' since the zoning height limitation, as controlled by compatibility, is 40'. The maximum height of the pergola would then be 48.8'.

City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPC-03-0023W
PROJECT NAME Encina
PROJECT ADDRESS 106 W 6th #301 Austin TX 78703
APPLICANT'S NAME Melton West
CITY CONTACT Lynda Courtney

DATE APPEAL FILED April 21, 04
YOUR NAME Melton West
SIGNATURE Melton West
YOUR ADDRESS 106 W 6th #301 Austin TX 78703
YOUR PHONE NO. ( ) _____ WORK
( ) 478-8400 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☒ I am the applicant or agent representing the applicant
- ☐ I communicated my interest by speaking at the Planning Commission public hearing on (date) _____.
- ☐ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☒ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan — Date of Decision: _____
- ☐ Replacement site plan — Date of Decision: _____
- ☐ Planning Commission Approval/Disapproval of a Site Plan — Date of Decision: _____
- ☒ Waiver or Extension — Date of Decision: April 13
- ☐ Planned Unit Development (PUD) Revision — Date of Decision: _____
- ☐ Other: _____ — Date of Decision: _____

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

As per section 25-2-1051, this project meets the criteria for a waiver and granting one is appropriate.

(Attach additional page if necessary.)

Applicable Code Section: 25-2-1051

ENCINAL CONDOS - COMPATIBILITY HEIGHT WAIVER

1106 West 6th Street, Unit 301

To the Mayor and Members of the City Council:

We are appealing the Planning Commission's decision to deny a waiver from height limitations specified in Section § 25-2-1063: Compatibility Standards of the Austin's Land Development Code.

It is our contention that a height waiver is entirely appropriate for this project, and that this project is also wholly within the bounds of Section § 25-2-1081: Planning Commission or Council Waiver.

This portion of City code recognizes that the imposition of compatibility standards is unwarranted ***if***:

(a) "...there is an existing structure located between the proposed structure and the closest property to the proposed structure that triggers the compatibility standards"; and
(b) The proposed construction does not "exceed the height of the existing structure."

Moreover, a waiver is allowable ***if***:

(c) The "waiver is appropriate and will not harm the surrounding area."

Compatibility standards limits height to three stories and 40 feet. First, we are requesting that the three-story limitation be waived, since our building and the intervening structure have both been four stories for over 24 years. Second, we are requesting that the 40-foot limitation be waived since the existing intervening building is higher. Our proposed height is well within our base zoning (CS-MU-CO-NP) height limit of 60 feet.

Unfortunately, the Planning Commission was unsure if our proposed height met criteria (b) since neighbors questioned the grade points we used in calculating height. To alleviate these questions, we asked City zoning staff to make a site visit to determine the exact points we should measure. With their guidance, we resurveyed, revised our calculations, and made adjustments to our building plans.

City zoning staff has reviewed our updated materials and confirmed that our proposed structure indeed meets criteria (a) and (b) above. The attached West Elevation plan view illustrates:

1. The height of the proposed structure (43.8'),
2. The height of the existing intervening structure (44.5'), and
3. The distance from the proposed structure to the SF3-H property triggering compatibility (98.5').

As shown, the existing intervening structure is across the alley from the SF3-H property. Our proposed structure has a lower building height by zoning calculations and is 9' lower in absolute elevation since our condominiums are on a hill. The hill and the intervening structure make it difficult to see the proposed structure at all from the property triggering compatibility. Thus, our proposed structure will have negligible impact on it

We also wish to acknowledge that the views of a few of our neighbors will be affected primarily during the winter months, and we sincerely regret this. However, our building is not in a view corridor and we have been advised by City zoning staff that the City's compatibility standards are intended, among other things, to **Insure appropriate scale and clustering of buildings** and not to protect views. To this end, we have also attached photographs that show that our structure is **clearly in scale** with the surrounding area.

In fact, the photographs reveal a variety of other buildings of greater size, height, and/or elevation in comparison with the proposed structure. These photographs also show that, not only does the proposed structure *not* harm the surrounding area, but in fact melds easily into it, being effectually buffered by existing surrounding buildings and trees. Consequentially, our *project readily fulfills requirement (c), described above.*

And, in addition, we believe that our structure is thoroughly in agreement with the OWANA neighborhood plan, which states:

> "The goal of the Neighborhood Planning Team is to protect existing residential property and encourage the development of new residential property."

Our project rehabilitates one of the few existing residential properties on West 6th Street. It adds new residential living space without requiring additional impervious cover which will have zero environmental impact.

In summation, the intervening structure mitigates concerns that compatibility standards address. Our proposed height is compatible with the surrounding area and our project is in alignment with the neighborhood plan. A waiver is thereby appropriate, and we respectfully ask that you grant us one. We thank you for your consideration.

Sincerely,

Melton West

ENCINAL CONDOS - COMPATIBILITY HEIGHT WAIVER
1106 West 6th Street, Unit 301

Applicable Code Sections

§ 25-2-1063 HEIGHT LIMITATIONS AND SETBACKS FOR LARGE SITES.

(A) *This section applies to a site that has:*

(1) an area that exceeds 20,000 square feet; or

(2) *a street frontage that exceeds 100 feet.*

(B) A person may not construct a structure 25 feet or less from property:

(1) in an urban family residence (SF-5) or more restrictive zoning district; or

(2) on which a use permitted in an SF-5 or more restrictive zoning district is located.

(C) *A person may not construct a structure that exceeds a height of:*

(1) two stories or 30 feet if the structure is 50 feet or less from property:

(a) in an SF-5 or more restrictive zoning district; or

(b) on which a use permitted in an SF-5 or more restrictive zoning district is located;or

(2) *three stories or 40 feet if the structure is more than 50 feet and not more than 100 feet from property:*

(a) *in an SF-5 or more restrictive zoning district*; or

(b) on which a use permitted in an SF-5 or more restrictive zoning district is located;

(3) for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive; or

(4) for a structure more than 300 feet but not more than 540 feet from property zoned SF-5 or more restrictive, 60 feet plus one foot for each four feet of distance in excess of 300 feet from the property zoned SF-5 or more restrictive.

§ 25-2-1081 PLANNING COMMISSION OR COUNCIL WAIVER

(A) Except as provided by Subsections (B) and (C), the Land Use Commission, or Council on appeal from a Land Use Commission decision, *may waive a requirement of this article if the Land Use Commission or Council determine that a waiver is appropriate and will not harm the surrounding area.*

(B) The Land Use Commission or Council may not approve a waiver that reduces a required setback to less than five feet.

(C) The Land Use Commission or the Council *may approve a waiver of a height restriction imposed by* Section 25-2-1062 (Height Limitations And Setbacks For Small Sites) and 25-2-1063 (Height Limitations And Setbacks For Large Sites) only if:

(1) *there is an existing structure located between the proposed structure and the closest property to the proposed structure that triggers the compatibility standards*; or

(2) the proposed development is located on and completely surrounded by property in a downtown mixed use (DMU) zoning district and the person applying for the waiver has:

(a) provided notice of the requested waiver, by certified mail with return receipt requested, to the owner of each property that adjoins or is across the street from the proposed development and on which a use permitted in an urban residence (SF-5) or more restrictive zoning district is located; and

(b) submitted the return receipts to the director.

(D) A waiver approved under Subsection (C)(1) *may not permit the construction of a structure that exceeds the height of the existing structure.*

(E) This section does not prohibit the Board of Zoning Adjustment from granting a variance from a requirement of this article under Section 25-2-473 (Variance Requirements).

April 21, 2004

Melton West
1106 W. 6th St. #301
Austin, Texas 78703

City Austin WPDR
P.O. Box 1088
Austin, TX 78767

RE: Request to Appeal of Planning Commission decision.

TO: Joe Pantalion, Director

This is a formal request to appeal the Planning Commission's denial to grant our compatibility height waiver. In our request, we asked that 1) the 40 foot height limit be waived to allow us to finish construction at a height of 44.5 feet and 2) that the 3 story limit be waived so that we may restore the building to a 4 story structure. We believe that our request for a waiver should have been granted as the case clearly meets City of Austin Land Development Code requirements outlined in section 25-2-1081.

Our case (#SPC-03-0023W) was heard on April 13, 2004 in regards to our condominium located at 1106 W. 6th Street which is owned by Jesse and Barbara West. Our request for an appeal is allowed under section 25-2-1081 and our request is in accordance with Article 7, Division 1: Appeals.

Please schedule our appeal for the next available City Council meeting.

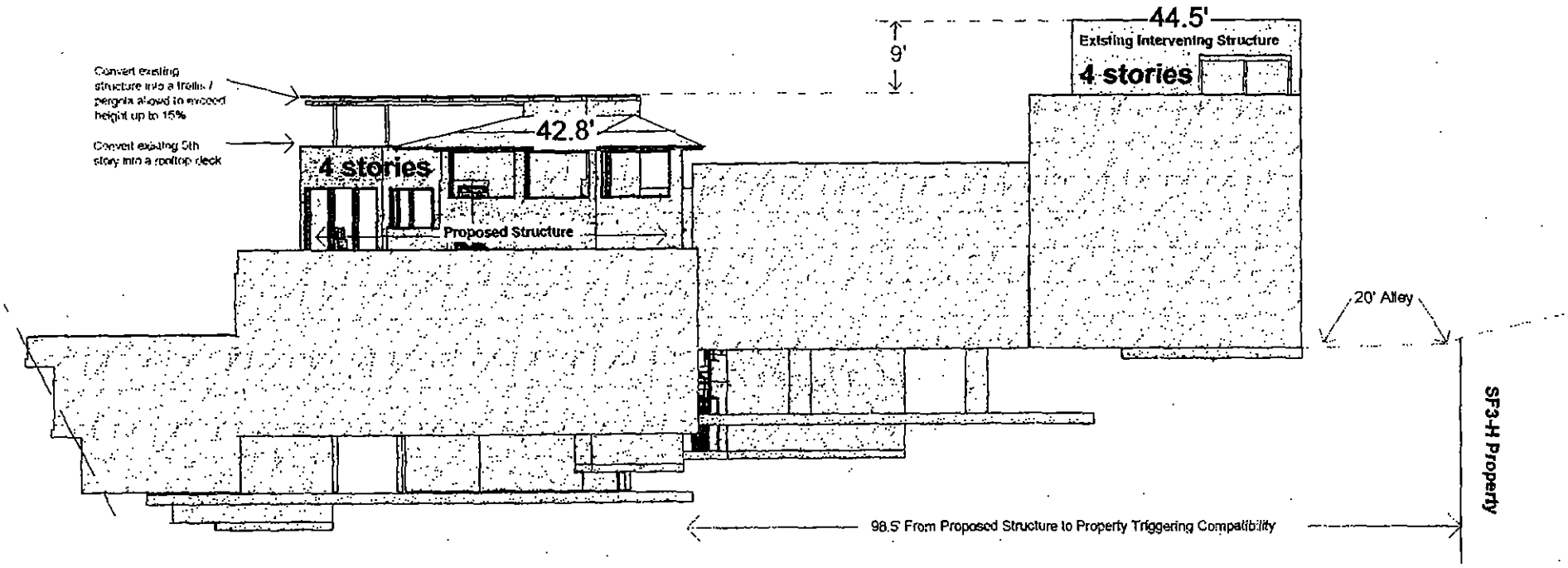
Sincerely,

Melton West

Melton West - Agent

Encinal Condominiums - 1106 West Sixth Street

WEST ELEVATIONS



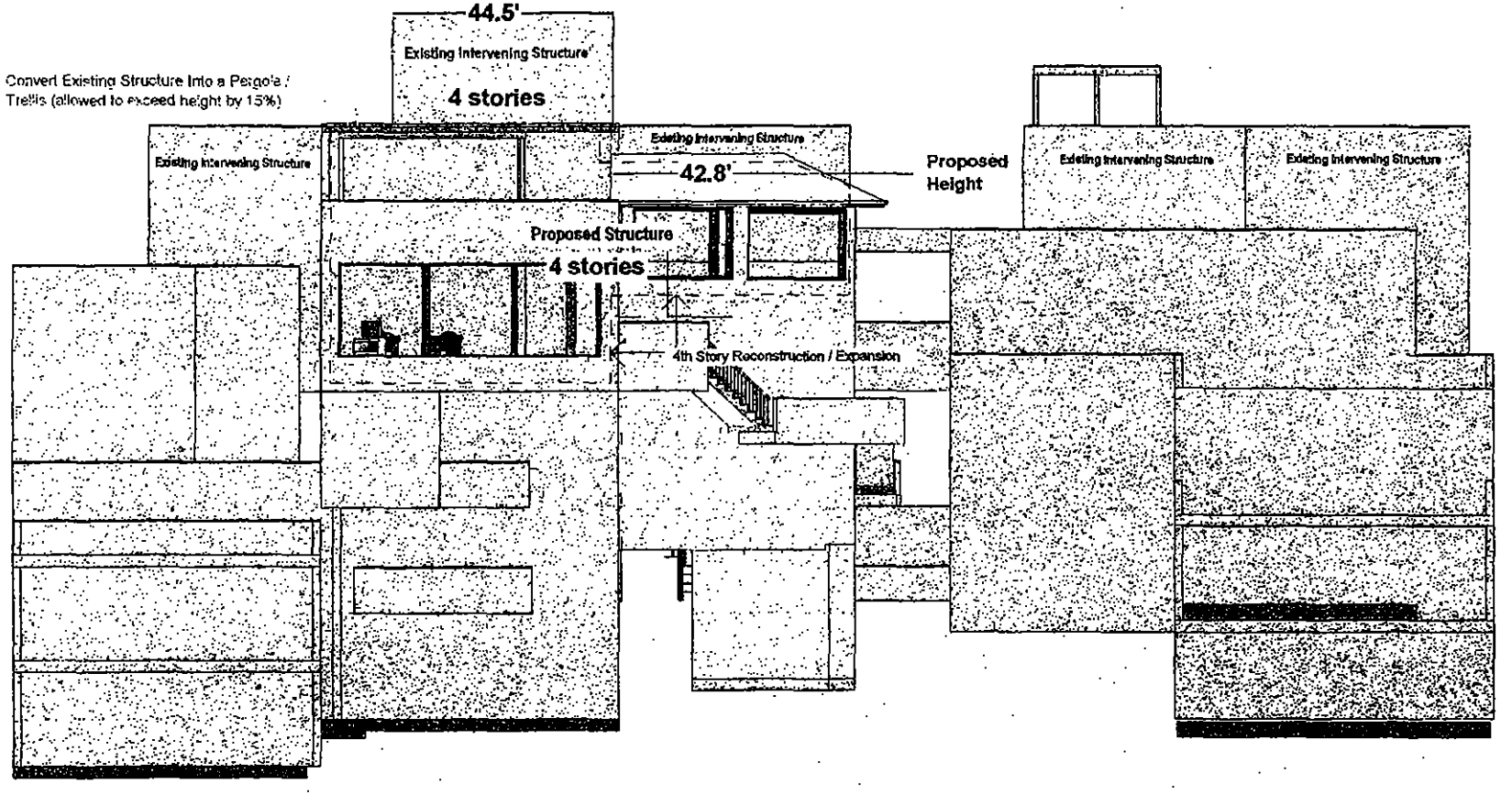
CS-MU-CO-NP base zoning allows 60 feet maximum height but compatibility standards limits height to 3 stories and 40 feet.

1 *The proposed structure and the existing intervening structure have both been 4 stories for 24 years but a waiver is needed to allow the 4th story to be rebuilt and enlarged.*

2 The existing intervening structure is 44.5' high and 9' higher than the proposed structure since it is on a hill but a waiver is needed to to allow the proposed structure to be finished out at 42.8' high.

Encinal Condominiums - 1106 West Sixth Street

NORTH ELEVATIONS



Surveyed Elevations of the Proposed Structure:

Lowest Grade Point=497.1'
Highest Grade Point=508.1'
Building Height=545.4'

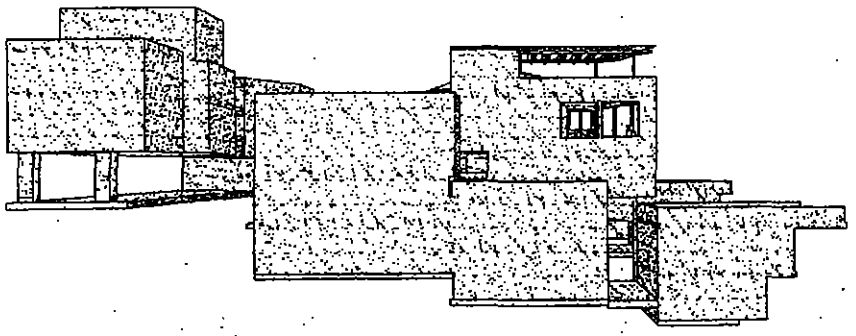
Building heights were measured from average grade as zoning requires. Average grade was determined from grade points selected by City zoning staff and surveyed on May 27, 2004 .

Surveyed Elevations of the Intervening Structure

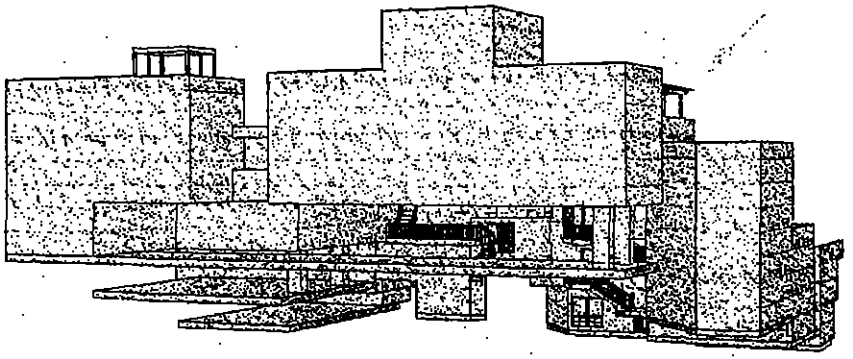
Lowest Grade Point=512.4'
Highest Grade Point=517.7'
Building Height=559.5'

Encinal Condominiums Unit 301

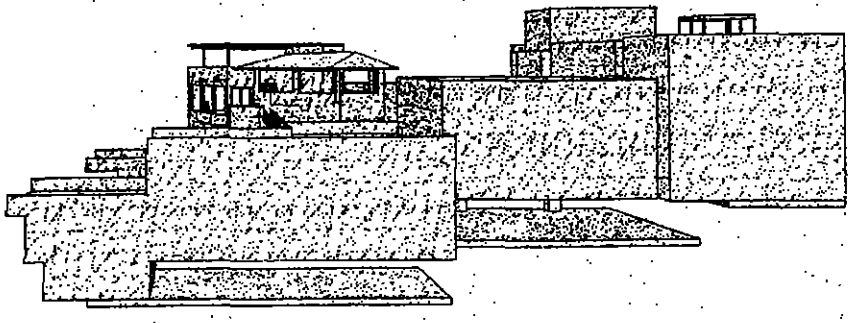
Extent of 4th Story Reconstruction / Expansion



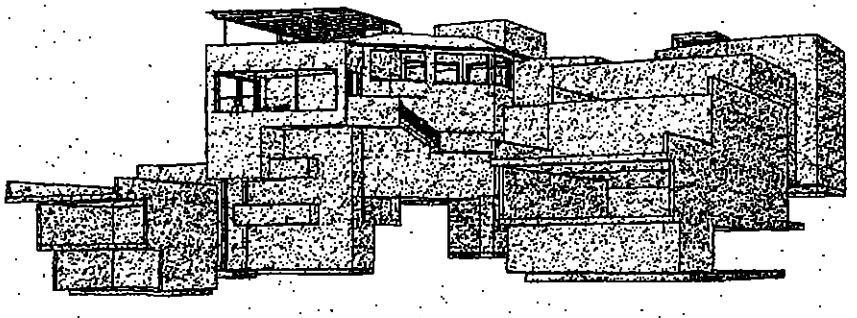
Facing East



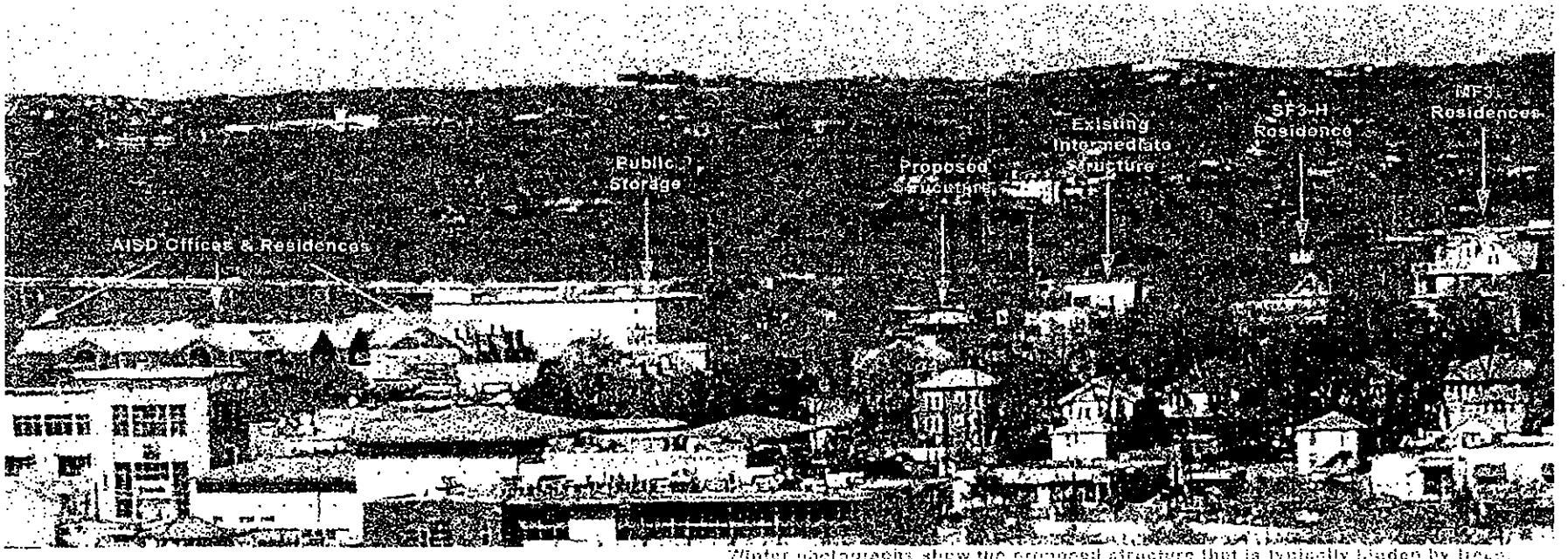
Facing West



Facing West

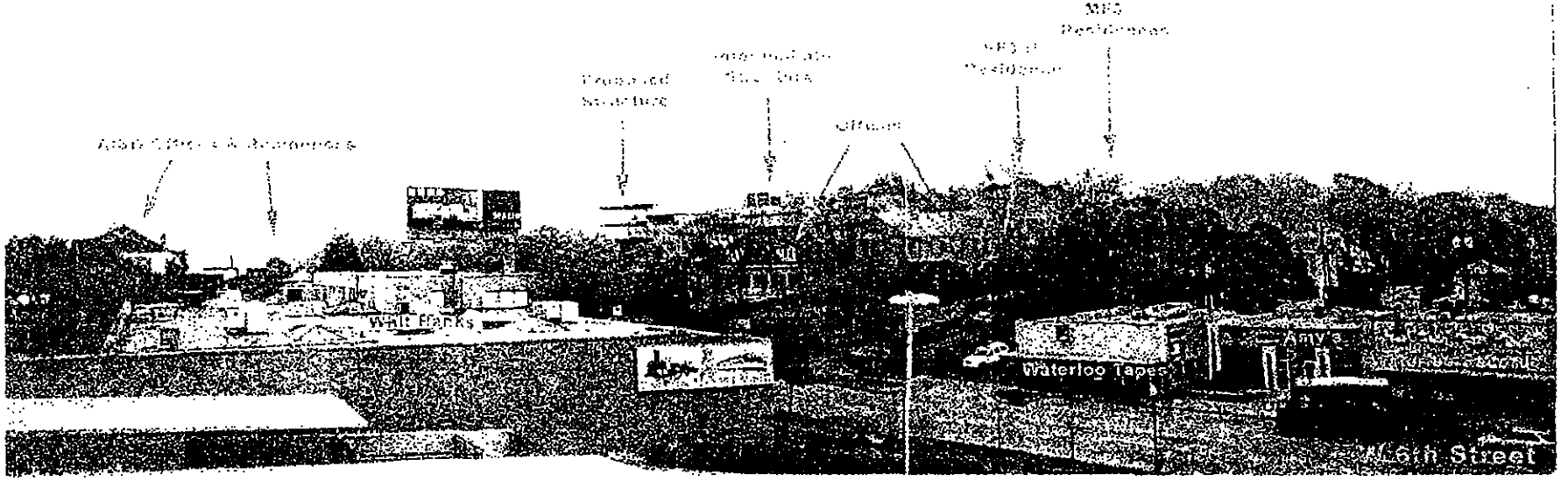


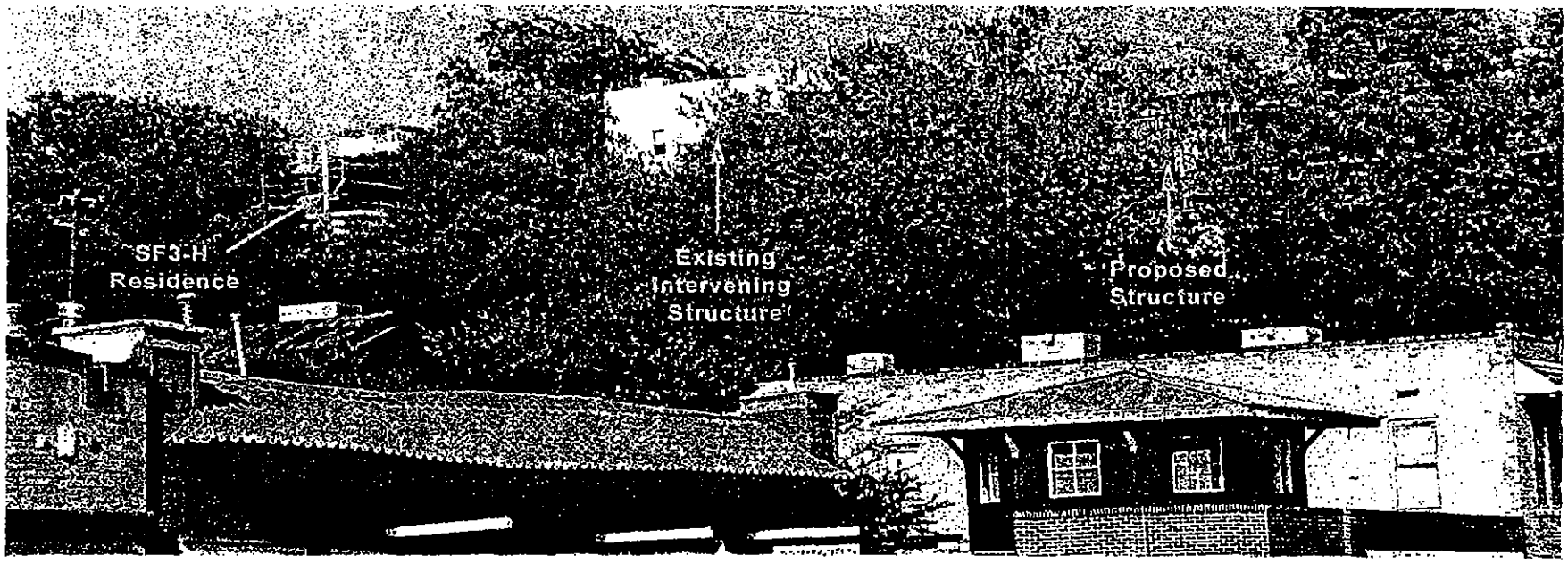
Facing West



Winter photographs show the proposed structure that is typically hidden by trees.

Height of the proposed structure is appropriate for its location, which has many nearby buildings that are taller in elevation and/or higher from average grade.

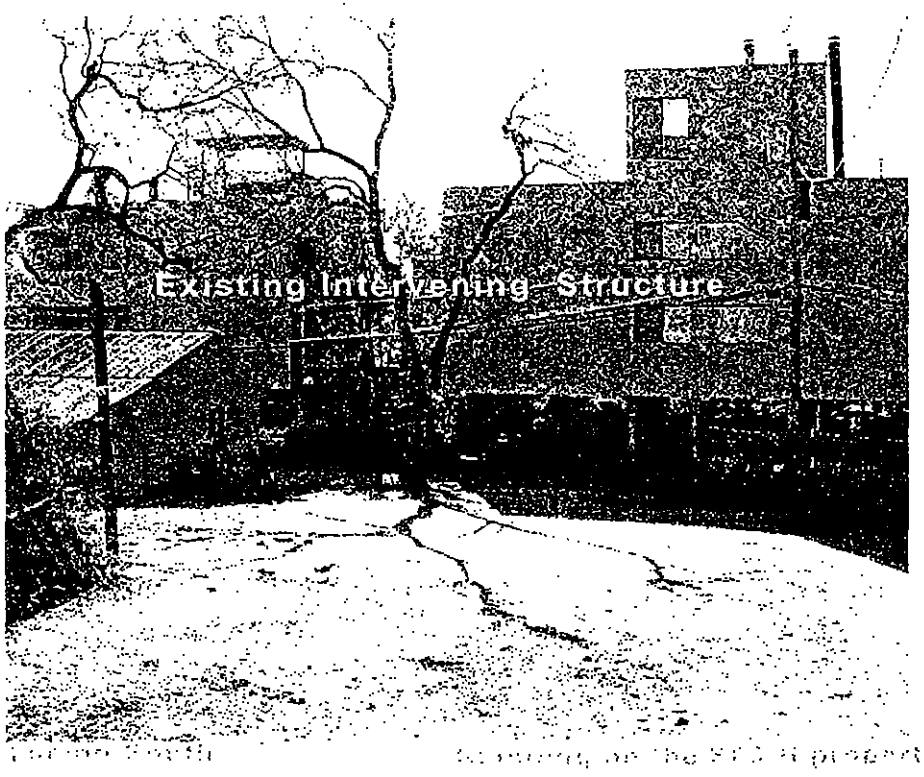


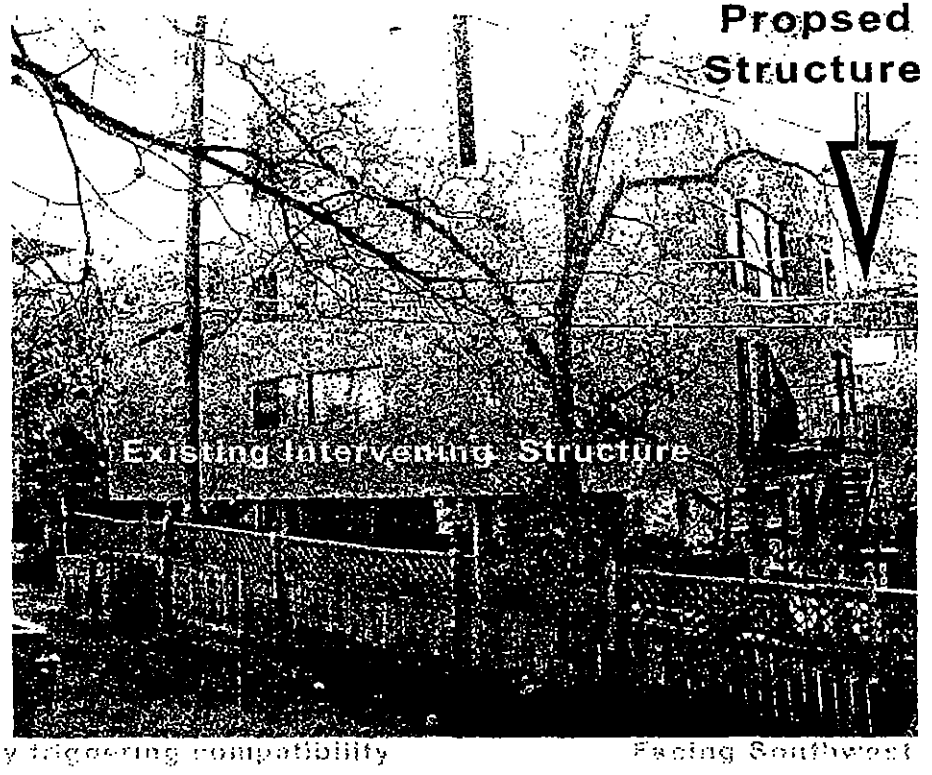


The proposed structure melds with the surrounding area especially since shade trees obscure it nine months out of 12.

Compared with the recently built Gardens Condominiums, the proposed structure is:
(1) lower in elevation, (2) lower in building height from average grade, (3) smaller in mass,
(4) further away from properties triggering compatibility, (5) buffered by more trees,
(6) buffered by intervening buildings, (7) located in an OWANA-designated
commercial area (vs. Gardens being located in the residential core).

Height of proposed residential structure is in scale with neighboring residences and has virtually zero impact on them.



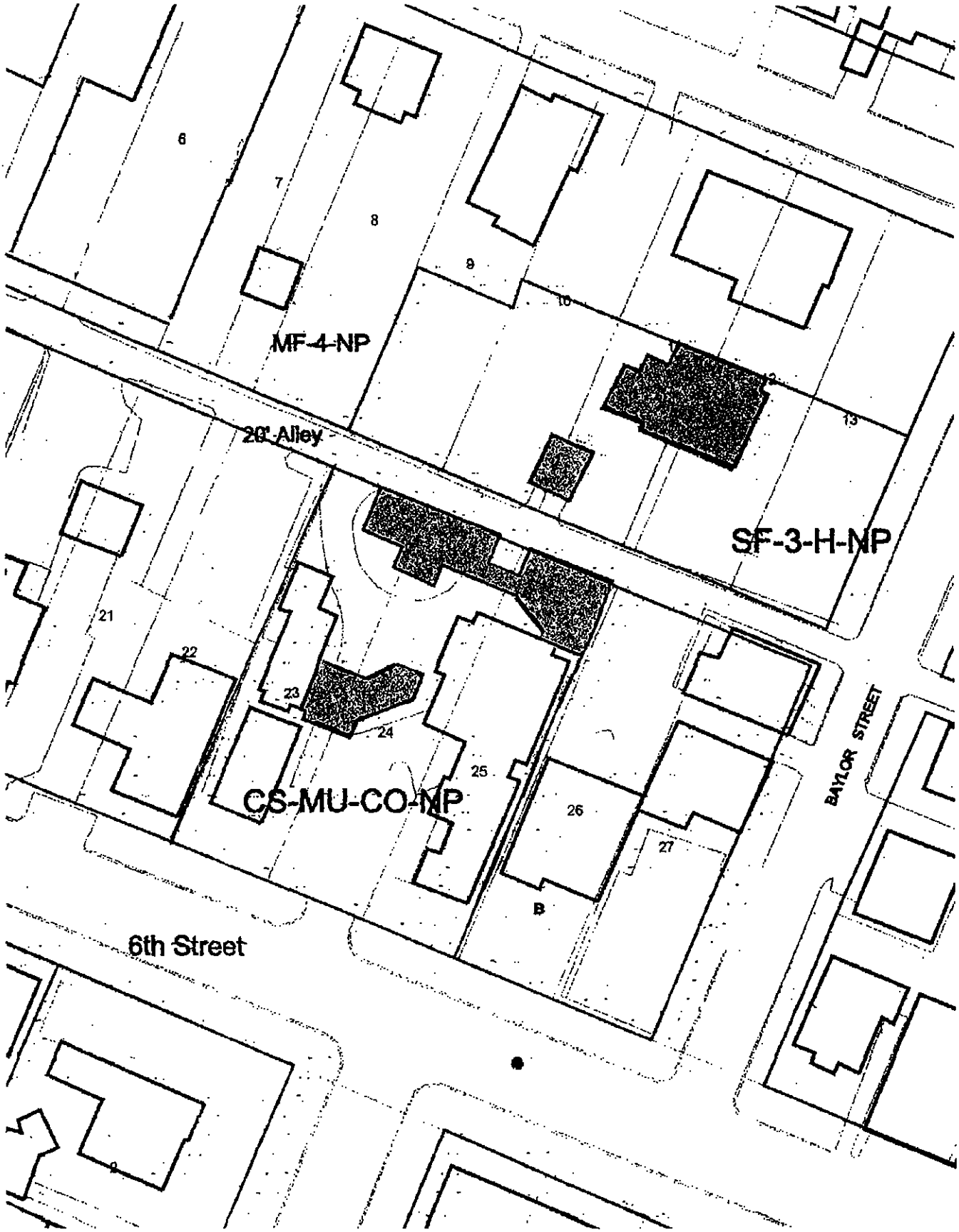


Facing Southeast

The proposed structure will have little effect on the property triggering compatibility, since it is behind a taller existing building. In this situation, City code would recognize that compatibility standards are unwarranted and allow them to be waived.

COMPATIBILITY HEIGHT WAIVER

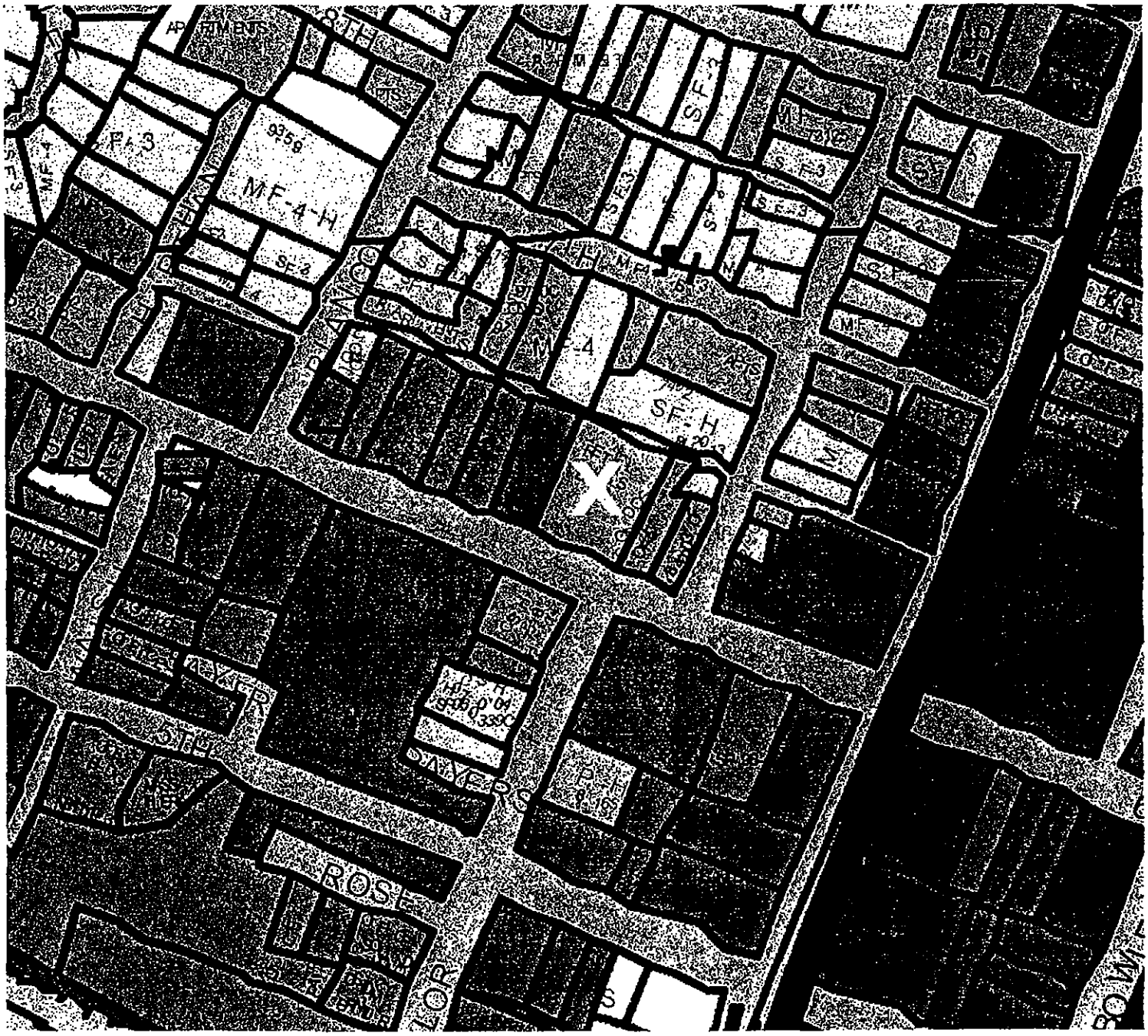
ENCINAL CONDOMINIUMS - 1106 W. 6th St, Unit 301

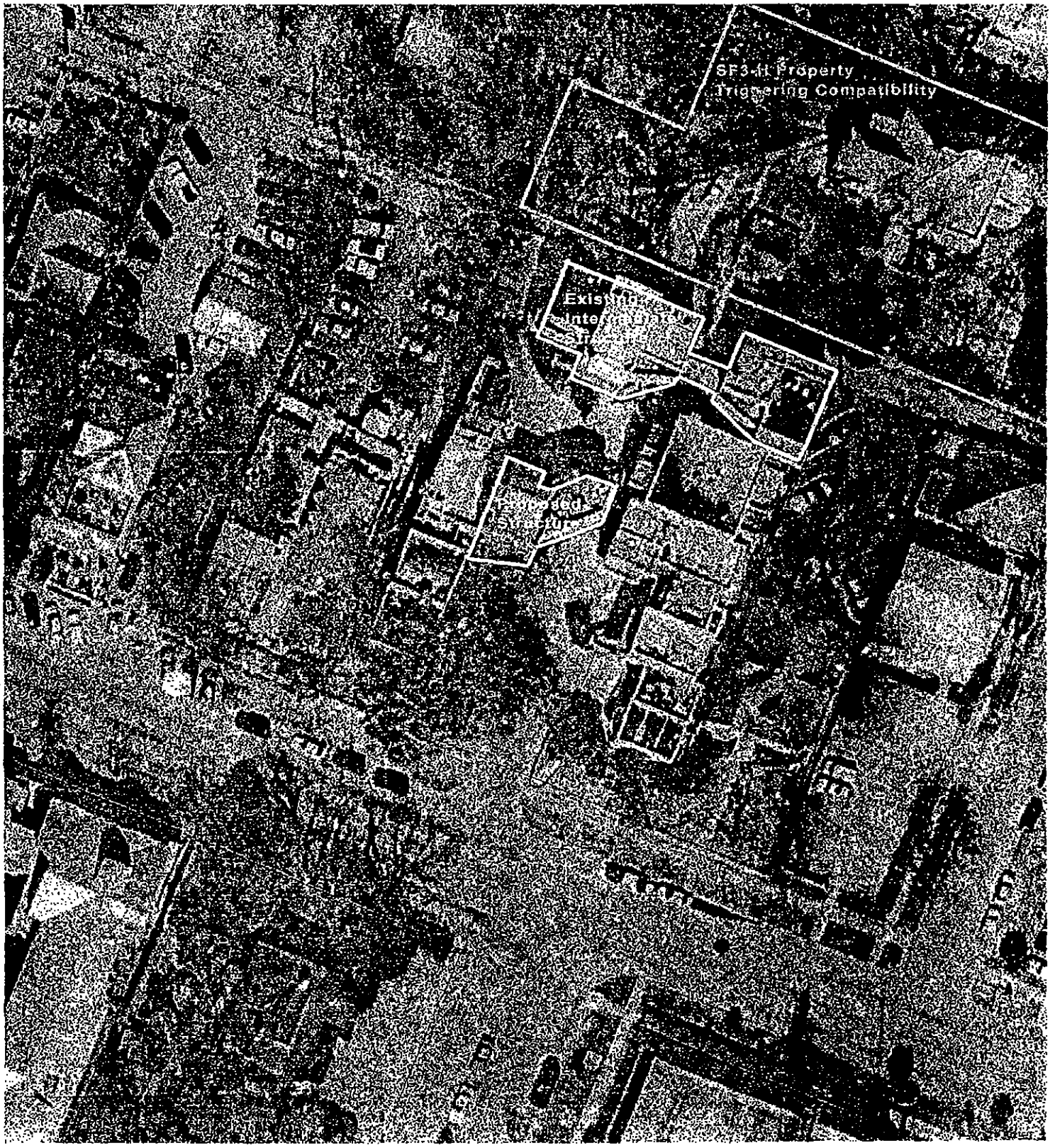


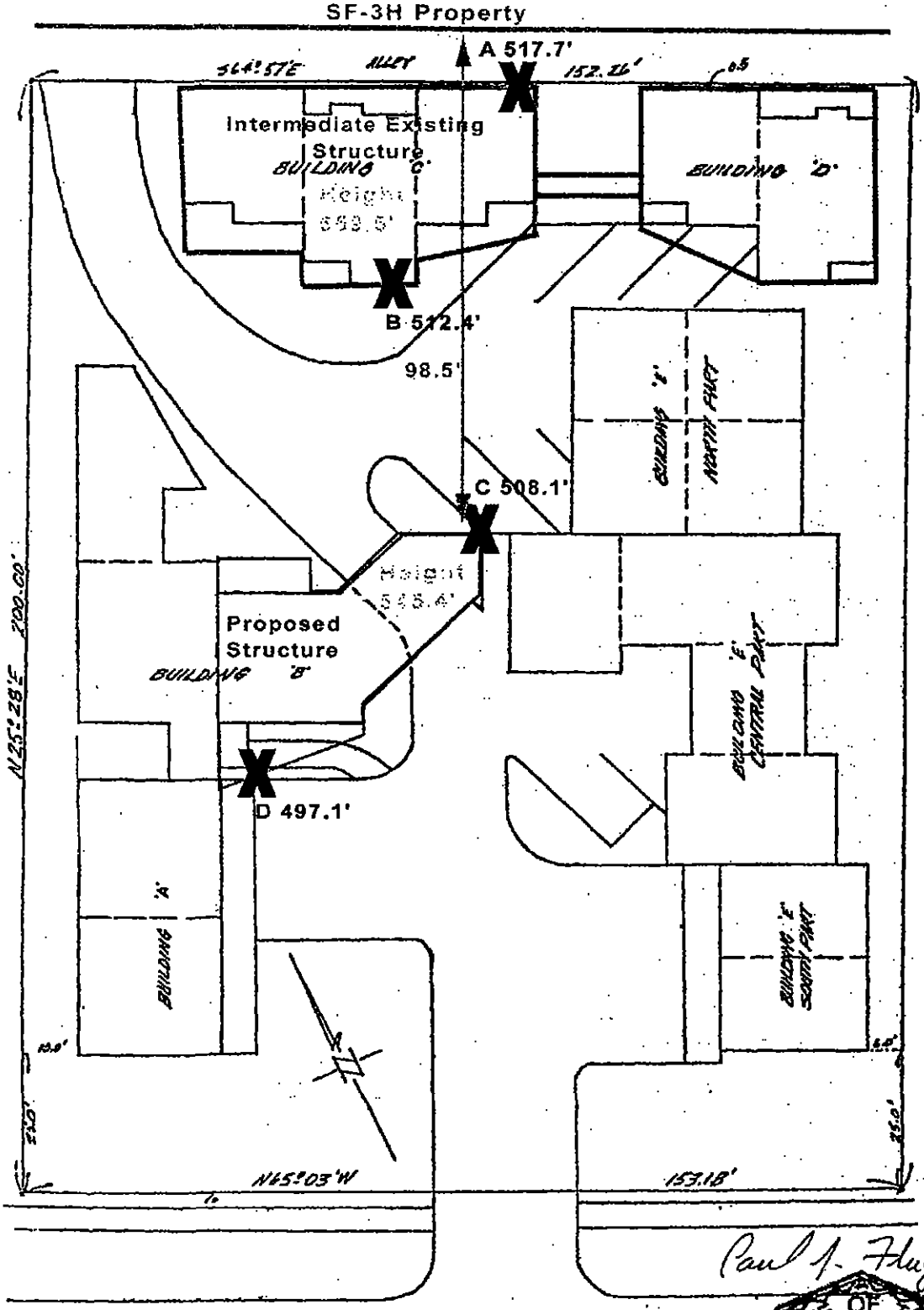
Base Zoning


SF-3
MF-4
SF-4A
MF-4
MF-4
MF-4
SF-3
MF-4
81-97
SHOPPING
BLANCO STREET
SP85-43
CS-1
PARKING
91-0100
RETAIL
PARKING
CS
SF-H
CONDOS
BAYLOR STREET
WEST 7TH STREET
CS
REST
AUTO REPAIR
OFFICE
CS
SP88-0273CS
CS
RETAIL
SAYERS STREET
H97-0004
SP96-0339C
OFFICE
SHOPPING
CENTER
SP-98-0073C
SP85-58
P-H
CS
PARKING
RETAIL
BOULEVARD

Land Use




SF3-H Property
Triggering Compatibility



Survey of Building Heights and Grade Point Elevations

Grade points A, B, & D are next to columns.
Grade point C is parking area next to the building.
Height of proposed structure is average height of gable roof.
Reference point elevation is Unit 105 finished floor (498.86')
as surveyed by James Lindsey in 1979 for condominium declaration.

May 27, 2004

Paul J. Flugel

STATE OF TEXAS
REGISTERED
PAUL J. FLUGEL
5096
PROFESSIONAL
LAND SURVEYOR

January 6, 2004

Mr. Melton West
1106 W 6th Street, Unit 301
Austin, TX 78703

Dear Mr. West:

This letter is to reiterate the discussion and general agreement reached in December meetings regarding the acceptable resolution of the illegal construction at Encinal Condominiums, Unit 301. The construction was performed without appropriate permits and without building code review. The construction also exceeded the allowable height permitted through Compatibility standards. To resolve these issues, Mr. West must:

1. Obtain a Planning Commission waiver of Compatibility height standards, according to the allowances and limitations in the Land Development Code section 25-2-1081;

2. Remove the 5th floor, such that no portion of the building exceeds 4 stories;

3. Install an NFPA 13-R residential sprinkler system in all parts of the condo unit, both new and existing.

4. Obtain a new building permit will be required for the work necessary to satisfy the building code aspects of this agreement.

Respectfully,

Janet Gallagher
Manger, Inspections and Review Division

TEAM Group Systems Inc.

JANUARY 5, 2004

MEMORANDUM

TO WHOM IT MAY CONCERN

FROM: JUDITH L. SMITH, MANAGER
ENCINAL HOMEOWNERS ASSOCIATION

RE: ENCINAL UNIT 301
MELTON WEST OWNER

PURSUANT TO REGULATIONS OF THE ENCINAL CONDOMINIUM HOMEOWNERS ASSOCIATION, OWNER'S ATTEMPTING TO MAKE MODIFICATIONS TO THEIR UNIT MUST SEEK APPROVAL FROM THE BOARD OF DIRECTORS OF THE ASSOCIATION AND/OR THE TOTAL MEMBERSHIP OF THE ASSOCIATION.

THE DRAWINGS AND PLANS FOR THE MODIFICATIONS OF UNIT 301 AT ENCINAL CONDOMINIUMS, 1106 WEST 6TH STREET, AUSTIN, TEXAS 78703, WERE ORIGINALLY APPROVED BY THE BOARD OF DIRECTORS AND THE MEMBERSHIP OF THE ASSOCIATION ON JANUARY 26, 2002. THIS VOTE WAS UNANIMOUS.

ON JULY 30, 2002, THE BOARD OF DIRECTORS APPROVED CHANGES TO THE ORIGINAL DRAWINGS AND SPECIFICATIONS. AS OUTLINED IN THE DECLARATIONS, ON AUGUST 6, 2002, A LETTER WAS SENT TO ALL MEMBERS OF THE ASSOCIATION ADVISING OF THE CHANGES MADE TO THE PLANS PREVIOUSLY APPROVED. THE MEMBERS WERE GIVEN 30 DAYS TO RESPOND IN WRITING IF THERE WERE OBJECTIONS. THERE WERE NO OBJECTIONS FILED TO THE CHANGES AND THE CHANGES WERE APPROVED UNANIMOUSLY.

IN ALL, THE BOARD OF DIRECTORS AND THE ASSOCIATION REVIEWED THE PLANS AND CHANGES ON THREE DIFFERENT OCCASIONS. EACH TIME THERE WAS UNANIMOUS APPROVAL FOR THE PLANS AND MODIFICATIONS SUBMITTED.

1709 San Antonio, Suite 4 Austin, TX 78701
(512) 476-9130
FAX (512) 476-0138

The Encinal Condominium Owners Association
Approved Building Modifications

The City Council should give serious consideration to the fact that the Encinal Condominium Owners Association (ECOA) approved the exterior building modifications. Exterior modifications to Unit 301 *were approved unanimously* by the ECOA on *three separate occasions over a two year period.*

The ECOA *represents the interests of 22 property owners who are the most affected by this project*. Their units buffer and shield the proposed construction from neighboring properties. Their property values will be most affected by having Unit 301 rehabilitated and also would be the most affected by denying a height waiver. The ECOA approved this project.

Unfortunately, a few property owners have voiced opposition to a height waiver:

1. Robert Floyd, 1106 W. 6th Street, Unit 103
2. Margaret Stephens, 1106 W. 6th Street, Unit 201
3. Martha Fitzwater, 1106 W. 6th Street, Unit 209

The majority of property owners have not opposed a height waiver:

4. Stroud Kelley, 1106 W. 6th Street, Unit 101
5. Stroud Kelley, 1106 W. 6th Street, Unit 102
6. Winn Wittman, 1106 W. 6th Street,, Unit 104
7. Tim Jarvis, 1106 W. 6th Street, Unit 105
8. Evelyn Pool, 1106 W. 6th Street, Unit 106
9. Denise Trevino, 1106 W. 6th Street, Unit 107
10. Lansing Bricknell, 1106 W. 6th Street, Unit 108
11. John McCray, 1106 W. 6th Street, Unit 202
12. Dennis Rea, 1106 W. 6th Street, Unit 203
13. James Innes, 1106 W. 6th Street, Unit 204
14. Thomas Campion, 1106 W. 6th Street, Unit 205
15. Austin Air Balancing, 1106 W. 6th Street, Inc., Unit 206
16. Becky Pestana, 1106 W. 6th Street, Unit 207
17. Douglas Marcella, 1106 W. 6th Street, Unit 208
18. Jeffrey Gorvetzian, 1106 W. 6th Street, Unit 210
19. Christopher Oakland, 1106 W. 6th Street, Unit 211
20. Christopher Oakland, 1106 W. 6th Street, Unit 212
21. Michael Murray, 1106 W. 6th Street, Unit 213
22. Melton West, 1106 W. 6th Street, Unit 301

Everyone at the Encinal is eager to see a resolution to this situation. Denying a waiver is not a solution. During the 16 months since construction stopped, no other feasible solutions have emerged.