

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



**AGENDA ITEM NO.: 54**  
**AGENDA DATE: Thu 10/20/2005**  
**PAGE: 1 of 1**

**SUBJECT:** C14-05-0103 - Jefferson Unit 101 - Approve second/third readings of an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 3500 Jefferson Street, Unit 101 (Shoal Creek Watershed) from general commercial services (CS) district zoning to commercial liquor sales-conditional overlay (CS-1-CO) combining district zoning. First reading approved on September 29, 2005. Vote 7-0. Applicant: Live Oak Development, Inc. (Daniel W. Herd). Agent: Joe Wyman. City Staff: Jorge Rousselin, 974-2975.

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

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

**ZONING REVIEW SHEET****CASE:** C14-05-0103**Z.A.P. DATE:** September 6, 2005  
September 20, 2005**ADDRESS:** 3500 Jefferson Street Unit 101**OWNER:** Live Oak Development, Inc.  
(Daniel W. Herd)**AGENT:** Joe Wyman**REZONING FROM:** CS (General Commercial Services district)**TO:** CS-1 (Commercial Liquor Sales district)**AREA:** 1,557 square feet (0.03 Acres)**ZONING AND PLATTING RECOMMENDATION:**

September 20, 2005:

**APPROVED CS-1-CO ZONING.**

- 300 VEHICLE TRIPS PER DAY;
- PRIVATE RESTRICTIVE COVENANT:
  - ROLLBACK TO CS ZONING IF USE CEASES;
  - LIMIT HOURS OF OPERATION; 8:00 A.M. TO 9:00 P.M. MONDAY – SAT.; 12:00 P.M TO 7:00 P.M SUNDAY;
  - LIMIT ALCOHOL SALES TO ONLY BEER AND WINE;
  - NO 3<sup>RD</sup> READING OF THE ORDINANCE UNTIL THE RESTRICTIVE COVENANT HAS BEEN FILED AND ON RECORD.

[K.J; J.M 2<sup>ND</sup>] (8-1) B.B – NAY**SUMMARY STAFF RECOMMENDATION:**

Staff recommends commercial liquor sales - conditional overlay (CS-1-CO) combining district zoning. The recommended conditional overlay will limit the vehicle trip generation to 300 trips per day.

**ISSUES:**

Since the Zoning and Platting Commission meeting of September 6, 2005, the applicant's representative has clarified their intention to sell beer and wine for both on-site and off-site consumption. The Staff supports the applicants proposed development and has modified its recommendation to allow liquor sales. As provided in a comment response from the Zoning Chair of the Bryker Woods Neighborhood Association, the neighborhood has offered support for this proposed development excluding the sale of liquor and limiting the hours of operation. A conditional overlay cannot restrict the sale of specific alcoholic beverages served at a cocktail lounge or sold at a liquor store (i.e. hard liquors vs. beer or wine). The Staff would not object to a private restrictive covenant between the property owners of the

subject property and the neighborhood which will address the issues of alcoholic beverages served and hours of operation.

### **DEPARTMENT COMMENTS:**

The subject rezoning area is a 1,557 square feet lease space on the ground floor within the 35<sup>th</sup> at Jefferson Shopping Center. This portion of the shopping center fronts West 35<sup>th</sup> Street and Lawton Avenue. The applicant proposes to rezone the lease space to commercial – liquor sales (CS-1) district and occupy the lease space with a delicatessen-cocktail lounge that includes the sale of wine and beer (exceeding 51% alcohol sales) and thus falls under the cocktail lounge and liquor store uses. Staff recommends CS-1-CO zoning based on the following considerations:

- 1) The proposed use is compatible with the surrounding uses within the retail center and its corresponding CS zoning and other commercial development along West 35<sup>th</sup> Street;
- 2) Access will be taken to one arterial roadway;
- 3) Vehicle trip generations are recommended to not exceed 300 per day. Parking requirements will be met using the existing shopping center parking garage and reflected on the site plan process through the conditional use permit.

A conditional use permit for a cocktail lounge is pending for this property under case No. SPC-05-0016A.

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	CS	35 <sup>th</sup> at Jefferson Shopping Center
<i>North</i>	LO / CS	Doctor's Office / Shopping Center
<i>South</i>	LO / CS	Apartments / Gym
<i>East</i>	CS	Shopping Center / Offices / Cleaners / Service Sta.
<i>West</i>	LR	Print Shop / Souvenirs

**AREA STUDY:** N/A

**TIA:** Not required

**WATERSHED:** Shoal Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** N/A

### **NEIGHBORHOOD ORGANIZATIONS:**

185--Oakmont Heights Neighborhood Assn.  
 344--M.K. Hage  
 511--Austin Neighborhoods Council  
 742--Austin Independent School District

### **SCHOOLS:**

Austin Independent School District

- Bryker Woods Elementary School
- O. Henry Middle School
- Austin High School

**RELATED CASES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-85-115	SF-3 to CS	06/04/85: PC Approved recommendation of CS with conditions. CO: Dedication of 35' of R.O.W. from centerline of W. 35 <sup>th</sup> Street and agreements between applicant and the Oakmont Heights and Bryker Woods Neighborhood Associations. (5-0);	09/26/85: Approved CS on all 3 RDGS.

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-72-140	O & A to C-2 & GR to allow for a package liquor store.	07/11/72: Approved Staff recommendation of C-2 and GR subject to a maximum area of 2, 500 square feet. (8-0)	08/03/72: Approved C-2 and GR subject to a maximum area of 2, 500 square feet. (5-0)
C14-96-0069	SF-3 to GR-MU-CO	07/23/96: PC Approved staff recommendation of GR-MU-CO. (6-0)	08/15/96: Approved GR-MU-CO. CO: No vehicular access to Kerby Ln.; Vehicular access to alley for emergency vehicles only; 2,000 vehicle trip limitation per day; Following uses prohibited: <ul style="list-style-type: none"> <li>- Automotive rentals</li> <li>- Automotive repair services</li> <li>- Automotive washing</li> <li>- Business or trade school</li> </ul>

			<ul style="list-style-type: none"> <li>- Commercial off-street parking</li> <li>- Communication services</li> <li>- Exterminating Services</li> <li>- Funeral Services</li> <li>- Hotel-motel</li> <li>- Indoor entertainment</li> <li>- Indoor sports &amp; recreation</li> <li>- Outdoor entertainment</li> <li>- Outdoor sports &amp; recreation</li> <li>- Pawn shop services</li> <li>- Research services (general)</li> <li>- Theater</li> <li>- Hospital services (general)</li> <li>- Drop-off recycling collection facility</li> </ul> <p>Permitted as a conditional use:</p> <ul style="list-style-type: none"> <li>- Community recreation (private, public)</li> <li>- Hospital services (limited)</li> <li>- Restaurant (drive-in, fast food)</li> </ul>
C14-99-0107	LO to LR-CO	08/03/99: PC Approved LR-CO excluding lot 4. (6-0)	<p>09/02/99: Approved LR-CO with conditions.</p> <p>Prohibited uses:</p> <ul style="list-style-type: none"> <li>- Guidance services</li> <li>- Communications services</li> <li>- Consumer repair services</li> <li>- Financial services</li> <li>- Food sales</li> <li>- General retail sales (convenience)</li> <li>- Off-site accessory parking</li> </ul>

			<ul style="list-style-type: none"> <li>- Personal services</li> <li>- Pert services</li> <li>- Plant nursery</li> <li>- Restaurant (drive-inn, fast food)</li> <li>- Restaurant (limited)</li> <li>- Service station</li> </ul>
C14-00-2233	SF-3 to LO	07/20/04: Approved Staff recommendation of NO-MU-CO by consent. (6-0)	01/18/01: Approved NO-MU on all 3 readings. (6-0)

**ABUTTING STREETS:**

NAME	ROW	PAVEMENT	CLASSIFICATION
35 <sup>th</sup> Street	70'	Varies	Arterial
Lawton Avenue	50'	30'	Collector

**CITY COUNCIL DATE:** September 29, 2005**ACTION:** September 29, 2005, approved CS-1-CO district zoning with conditions, on 1<sup>st</sup> Reading on consent (7-0).**ORDINANCE READINGS:**1<sup>st</sup>2<sup>nd</sup>3<sup>rd</sup>**ORDINANCE NUMBER:****CASE MANAGER:** Jorge E. Rousselin, NPZD**PHONE:** 974-2975**E-MAIL:** [jorge.rousselin@ci.austin.tx.us](mailto:jorge.rousselin@ci.austin.tx.us)



SUBJECT TRACT  
 PENDING CASE  
 ZONING BOUNDARY  
 CASE MGR: T.BOLT

CASE #: C14-05-0103

ADDRESS: 3500 JEFFERSON ST UNIT

SUBJECT AREA (acres): 1.126

ZONING

DATE: 05-07

INTLS: SM

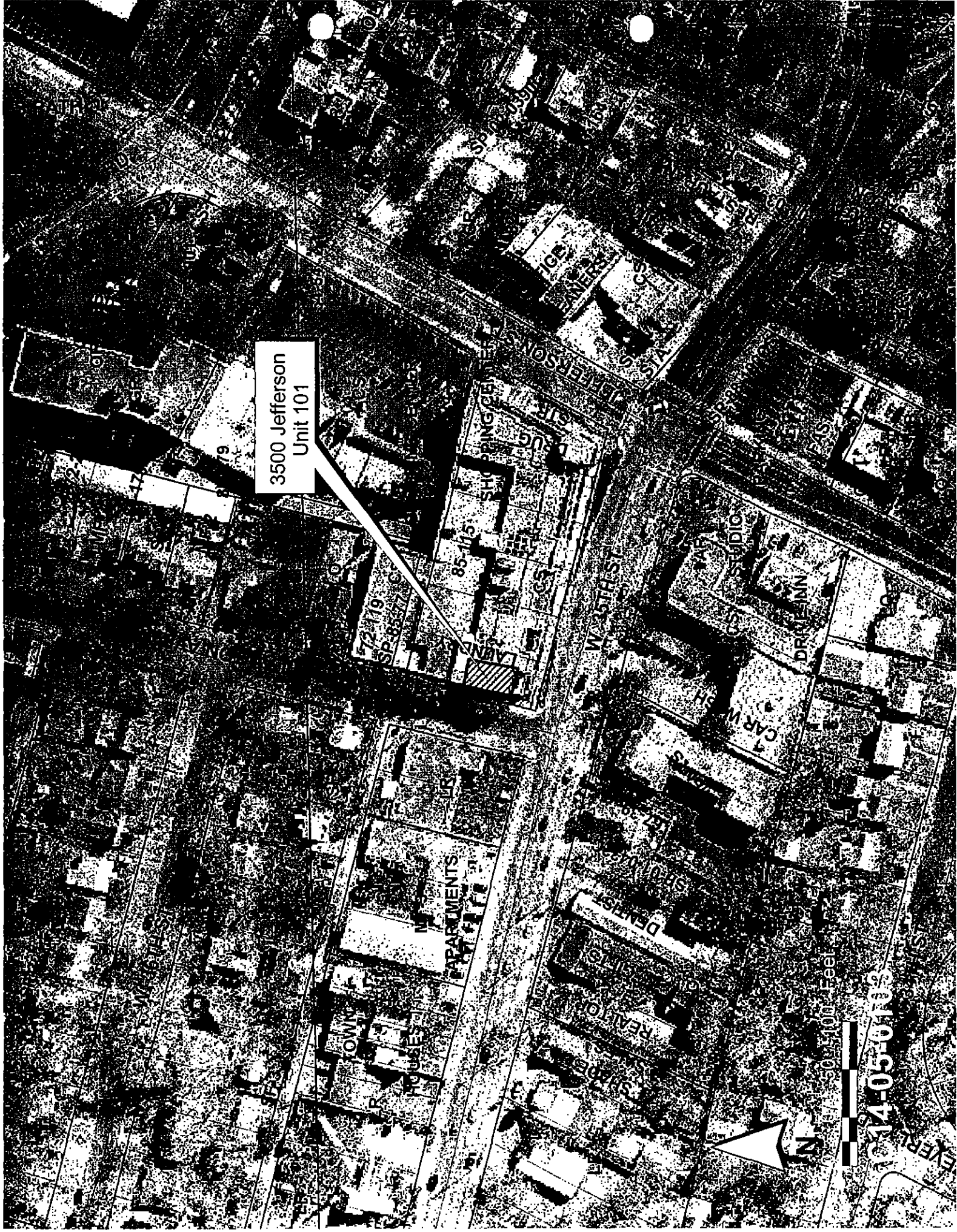
CITY GRID  
 REFERENCE  
 NUMBER  
 H25

N MO-PAC NB EXPY

3500 Jefferson  
Unit 101

50 foot scale

C-14-05-0103



## STAFF RECOMMENDATION

Staff recommends commercial liquor sales - conditional overlay (CS-1-CO) combining district zoning. The recommended conditional overlay will limit the vehicle trip generation to 300 trips per day.

## BASIS FOR RECOMMENDATION

### ***1. The proposed zoning should be consistent with the purpose statement of the district sought.***

*Commercial-liquor sales (CS-1) district is the designation for a commercial or industrial use of a service nature that has operating characteristics or traffic service requirements that are incompatible with residential environments. Liquor sales is one of the permitted uses in a CS-1 district.*

The proposed rezoning meets the purpose statement set forth in the Land Development Code. The subject property is part of an existing commercial shopping center with multiple CS uses and is compatible with existing commercial uses along West 35<sup>th</sup> Street.

### ***2. The proposed zoning should promote consistency, and orderly planning.***

The proposed change and recommended conditional overlay is compatible with the surrounding area by encouraging commercial uses to establish near major intersections and at commercial nodes where a variety of commercial uses are established. Furthermore,

- 1) The proposed use is compatible with the surrounding uses within the retail center and its corresponding CS zoning and other commercial development along West 35<sup>th</sup> Street;
- 2) Access will be taken to one arterial roadway;
- 3) Vehicle trip generations are recommended to not exceed 300 per day. Parking requirements will be met using the existing shopping center parking garage and reflected on the site plan process through the conditional use permit.

Parking requirements will be met using the existing shopping center parking garage and reflected on the site plan process through the conditional use permit.

## EXISTING CONDITIONS

### **Site Characteristics**

The subject rezoning area is a 1,557 square feet lease space within the 35<sup>th</sup> at Jefferson Shopping Center. This portion of the shopping center is on the ground floor and fronts West 35<sup>th</sup> Street and Lawton Avenue. Parking requirements will be met using the existing shopping center parking garage.

### **Impervious Cover**

Maximum building cover and impervious cover is 95%. Maximum floor area ratio is 2:1. No changes to the allocated impervious cover are contemplated with the rezoning application

### **Transportation**

- 0. No additional right-of-way is needed at this time.
- 0. The trip generation under the requested zoning is estimated to be 636 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification (without consideration of setbacks, environmental constraints, or other site characteristics). The proposed development of a 1,500sf Lounge/Deli will generate approximately 198 trips per day.
- 0. Because the access for this site is off of Lawton Avenue a residential collector it is recommended that the trips for the site be limited to 300 trips per day.
- 0. Capital Metro bus service is available along 35<sup>th</sup> Street.
- 0. 35<sup>th</sup> Street is classified in the Bicycle Plan as a Priority 1 bike route.
- 0. There are existing sidewalks along 35<sup>th</sup> Street and Lawton Avenue.

### **Environmental**

- 0. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Shoal Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.
- 0. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.
- 0. This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.
- 0. According to flood plain maps, there is no flood plain within the project area.
- 0. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

**Water and Wastewater**

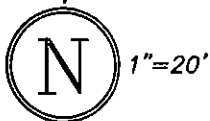
WW 1. The site is served with City water and wastewater utilities. If water or wastewater utility improvements, or system upgrades, or utility adjustment, or relocation are required, the landowner, at own expense, will be responsible for providing. Also, the water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. The plan must be in accordance with the City design criteria. The utility construction must be inspected by the City.

**Site Plan and Compatibility Standards**

0. The site is subject to compatibility standards. Along the west property line, the following standards apply:
  - No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
  - In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
  - Additional design regulations will be enforced at the time a site plan is submitted.
1. Cocktail lounge or restaurant with late-hours permit will require a conditional use permit site plan.

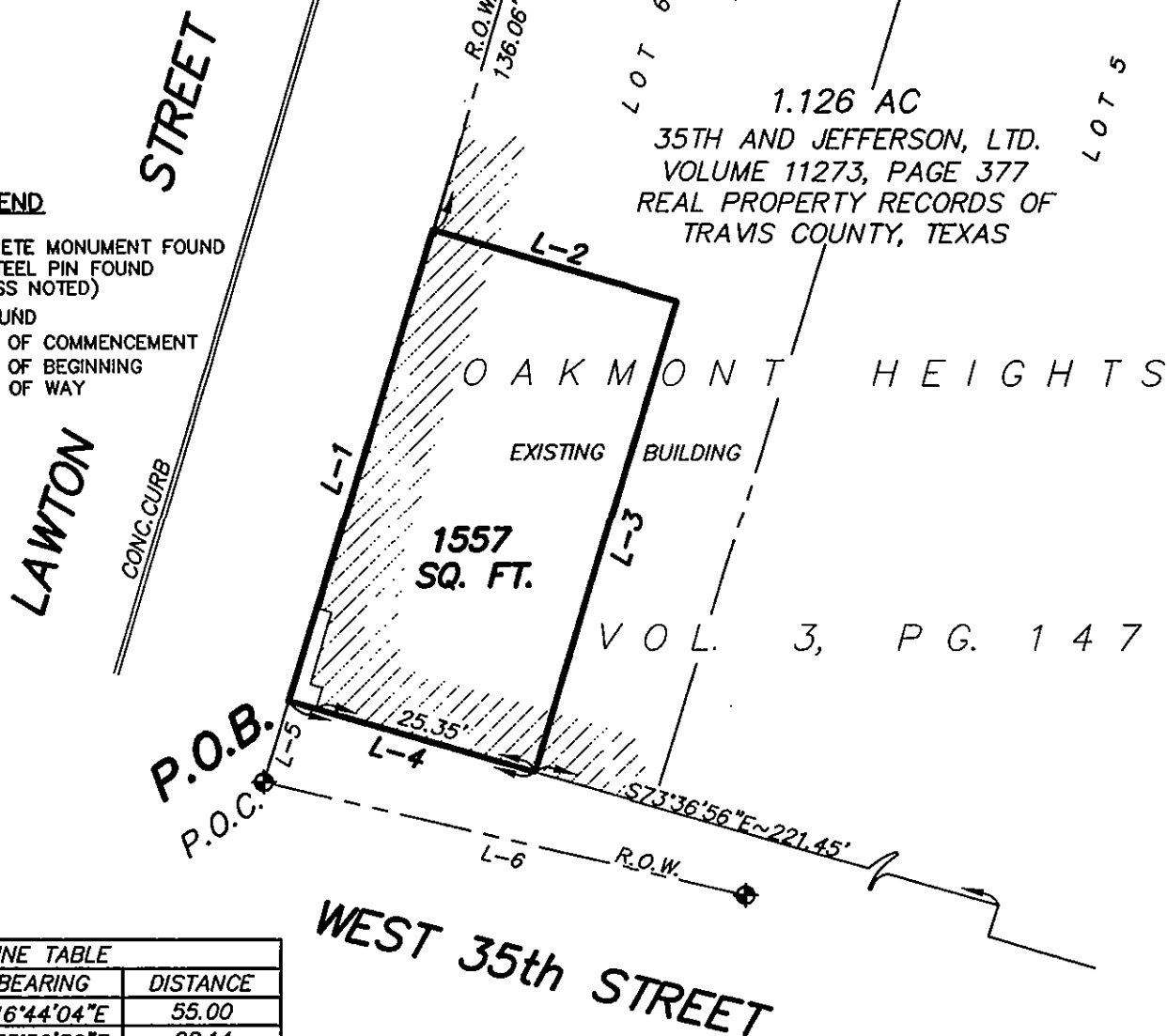
# MAP TO ACCOMPANY FIELD NOTES

SCALE:



## LEGEND

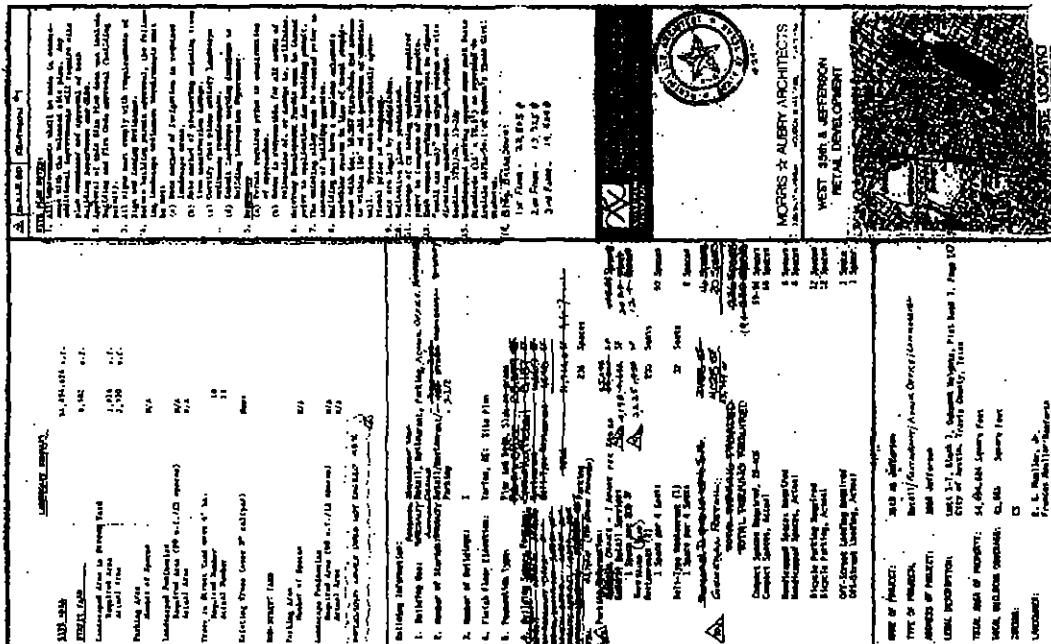
- CONCRETE MONUMENT FOUND
- 1/2" STEEL PIN FOUND (UNLESS NOTED)
- ⊕ 'X' FOUND
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- R.O.W. RIGHT OF WAY



LINE TABLE		
LINE	BEARING	DISTANCE
L-1	N16°44'04"E	55.00
L-2	S73°36'56"E	28.14
L-3	S16°23'04"W	55.00
L-4	N73°36'56"W	28.48
L-5	N16°44'04"E	9.54
L-6	S76°27'52"E	54.81

PREPARED BY:  
**LENZ & ASSOCIATES, INC.**  
 1714 FORT VIEW ROAD, SUITE 101  
 AUSTIN, TEXAS 78704

PAGE 1 OF 1

[illegible]

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

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

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

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

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

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

Case Number: C14-05-0103

Contact: Jorge Rousselin, (512) 974-2975

Public Hearing:

September 6, 2005 Zoning and Platting Commission

Joyce Basoliano Zoning Commission

Your Name (please print) Beyla, R. W. N.A.

1907 W 34th ST Austin 78703

Your address(es) affected by this application

Joyce M. Basoliano

Signature

Date

9/5/05

Comments: After speaking with Jorge Rousselin, NP2D, Ron Golding (Live Oak Development, Inc.) Nick Grunzles (Chenworth Consulting) and Karen Deak, (Chin bar owner and applicant) the Byker & Wards N.A. will favor this rezoning request if the applicant offered conditional overlays limiting the sale of alcoholic beverages to wine and beer (NO LIQUOR!) and setting a 9 PM business closing hour are placed on this property (Suite 101 3500 Jefferson).

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

City of Austin

Neighborhood Planning and Zoning Department

Jorge Rousselin

P. O. Box 1088

Austin, TX 78767-8810

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

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

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

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

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

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

Case Number: C14-05-0103

Contact: Jorge Rousselin, (512) 974-2975

Public Hearing:

September 6, 2005 Zoning and Platting Commission

HELEN MISKELL

Your Name (please print)

1802 WEST 36TH ST, AUSTIN, TX 78731

Your address(es) affected by this application

Helen Miskell 9-2-05

Signature

Date

Comments: THE ZONING CHANGE TO A CS-1

COMMERCIAL - LIQUOR SALES DISTRICT

WOULD BE INCOMPATIBLE WITH THE

NEIGHBORHOOD ENVIRONMENT. THERE

IS AN ELEMENTARY SCHOOL NOT FAR

AWAY FROM THE PROPOSED LOCATION

OF THE PROPOSED ZONING CHANGE.

THE OAKMONTS HEIGHTS IS A LOVELY,

QUIET NEIGHBORHOOD. DON'T

RUIN IT. THE PROPOSED CHANGE

WOULD LOWER PROPERTY VALUES.

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

City of Austin ON 05TH

Neighborhood Planning and Zoning Department ST. IS

Jorge Rousselin ALREADY

P. O. Box 1088 CONGESTED.

Austin, TX 78767-8810 RESTRICT THE

LIQUOR STORE TO

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

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

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

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

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

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

OCT 03 2005

Case Number: C14-05-0103

Contact: Jorge Rousselin, (512) 974-2999

Public Hearing:

September 6, 2005 Zoning and Platting Commission

WALTER F. BUELL

Your Name (please print)

1710 W. 34

Your address(es) affected by this application

Walter F. Buell

Signature

9-28-05

Date

Comments:

Like any owner of a residence in Brykerwoods I am shocked that the city would consider allowing a liquor store within a few blocks of an elementary school. This is appalling.

WFR

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

City of Austin

Neighborhood Planning and Zoning Department

Jorge Rousselin

P. O. Box 1088

Austin, TX 78767-8810

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE  
2 PROPERTY LOCATED AT 3500 JEFFERSON STREET UNIT 101 FROM  
3 GENERAL COMMERCIAL SERVICES (CS) DISTRICT TO COMMERCIAL  
4 LIQUOR SALES-CONDITIONAL OVERLAY (CS-1-CO) COMBINING  
5 DISTRICT.

6  
7 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

8  
9 **PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to  
10 change the base district from general commercial services (CS) district to commercial-  
11 liquor sales-conditional overlay (CS-1-CO) combining district on the property described in  
12 Zoning Case No. C14-05-0103, on file at the Neighborhood Planning and Zoning  
13 Department, as follows:

14  
15 A 1,557 square foot tract of land, more or less, out of Lot 6, Oakmont Heights  
16 Subdivision, the tract of land being more particularly described by metes and  
17 bounds in Exhibit "A" incorporated into this ordinance (the "Property"),

18  
19 locally known as 3500 Jefferson Street Unit 101 in the City of Austin, Travis County,  
20 Texas, and generally identified in the map attached as Exhibit "B".

21  
22 **PART 2.** The Property within the boundaries of the conditional overlay combining district  
23 established by this ordinance is subject to the following conditions:

24  
25 A site plan or building permit for the Property may not be approved, released, or  
26 issued, if the completed development or uses of the Property, considered cumulatively with  
27 all existing or previously authorized development and uses, generate traffic that exceeds  
28 300 trips per day.

29  
30 Except as specifically restricted under this ordinance, the Property may be developed and  
31 used in accordance with the regulations established for the commercial-liquor sales (CS-1)  
32 base district and other applicable requirements of the City Code.  
33  
34  
35  
36  
37

1 **PART 3.** This ordinance takes effect on \_\_\_\_\_, 2005.

2  
3  
4 **PASSED AND APPROVED**

5  
6  
7  
8 \_\_\_\_\_, 2005

§  
§  
§

Wynn  
Mayor

9  
10  
11  
12  
13 **APPROVED:**

**ATTEST:**

14 David Allan Smith  
15 City Attorney

Shirley A. Brown  
City Clerk

EXHIBIT A  
FIELD NOTES TO ACCOMPANY MAP OF SURVEY  
1557 SQUARE FEET OF LAND  
CITY OF AUSTIN  
TRAVIS COUNTY, TEXAS

FIELD NOTES DESCRIPTION OF 1557 SQUARE FEET OF LAND LOCATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS AND BEING A PORTION OF LOT 6, OAKMONT HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 3, PAGE 147 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, THE SAID LOT 6 BEING A PORTION OF THAT CERTAIN TRACT CALLED 1.126 ACRES IN A DEED TO 35TH AND JEFFERSON, LTD. RECORDED IN VOLUME 11273, PAGE 377 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS. THE SAID 1557 SQUARE FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, at an "X" found cut in a concrete walk at the intersection of the north right-of-way line of West 35th Street with the east right-of-way line of Lawton Street, said right-of-way lines being established and described in that certain Correction Street Deed recorded in Volume 9608, Page 511 of the Real Property Records of Travis County, Texas and being at the southwest corner of the said 35th and Jefferson, Ltd. tract, from which, another "X" found cut in the concrete walk bears S 76°27'52" E, 54.81 feet;

THENCE, N 16°44'04" E, a distance of 9.54 feet along the east right-of-way line of Lawton Street, as established in the said Correction Street Widening Deed recorded in Volume 9608, Page 511, to a point for the **PLACE OF BEGINNING** of the herein described tract;

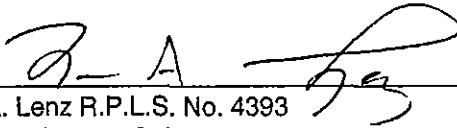
THENCE, N 16°44'04" E, a distance of 55.00 feet along the east right-of-way line of Lawton Street to a point, from which a ½ inch diameter steel pin found at the northwest corner of the said 1.126 acre tract bears N 16°44'04" E, 136.06 feet;

THENCE, S 73°36'56" E, a distance of 28.14 feet to a point in the interior of the said Lot 6;

THENCE, S 16°23'04" W, a distance of 55.00 feet to a point on an existing building wall, from which an interior corner of the said building bears S 73°36'56" E, 221.45 feet;

THENCE, N 73°36'56" W, along the said existing wall, passing an exterior corner of the said building at 25.35 feet and continuing a total distance of 28.48 feet to the **PLACE OF BEGINNING**, containing 1557 square feet of land, more or less.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS DESCRIPTION WAS PREPARED FROM AN ACTUAL SURVEY PERFORMED ON THE GROUND, UNDER MY SUPERVISION IN MAY, 1998 AND FROM INFORMATION OBTAINED FROM ARCHITECTURAL PLANS PROVIDED BY OTHERS. THIS SURVEY WAS PREPARED FOR ZONING AND OR PERMITTING PURPOSES ONLY.

  
Timothy A. Lenz R.P.L.S. No. 4393  
LENZ & ASSOCIATES, INC.  
1714 Fort View Road, Suite 104  
Austin, Texas 78704  
(512) 443-1174  
(980418A.doc)

6-30-05  
Date



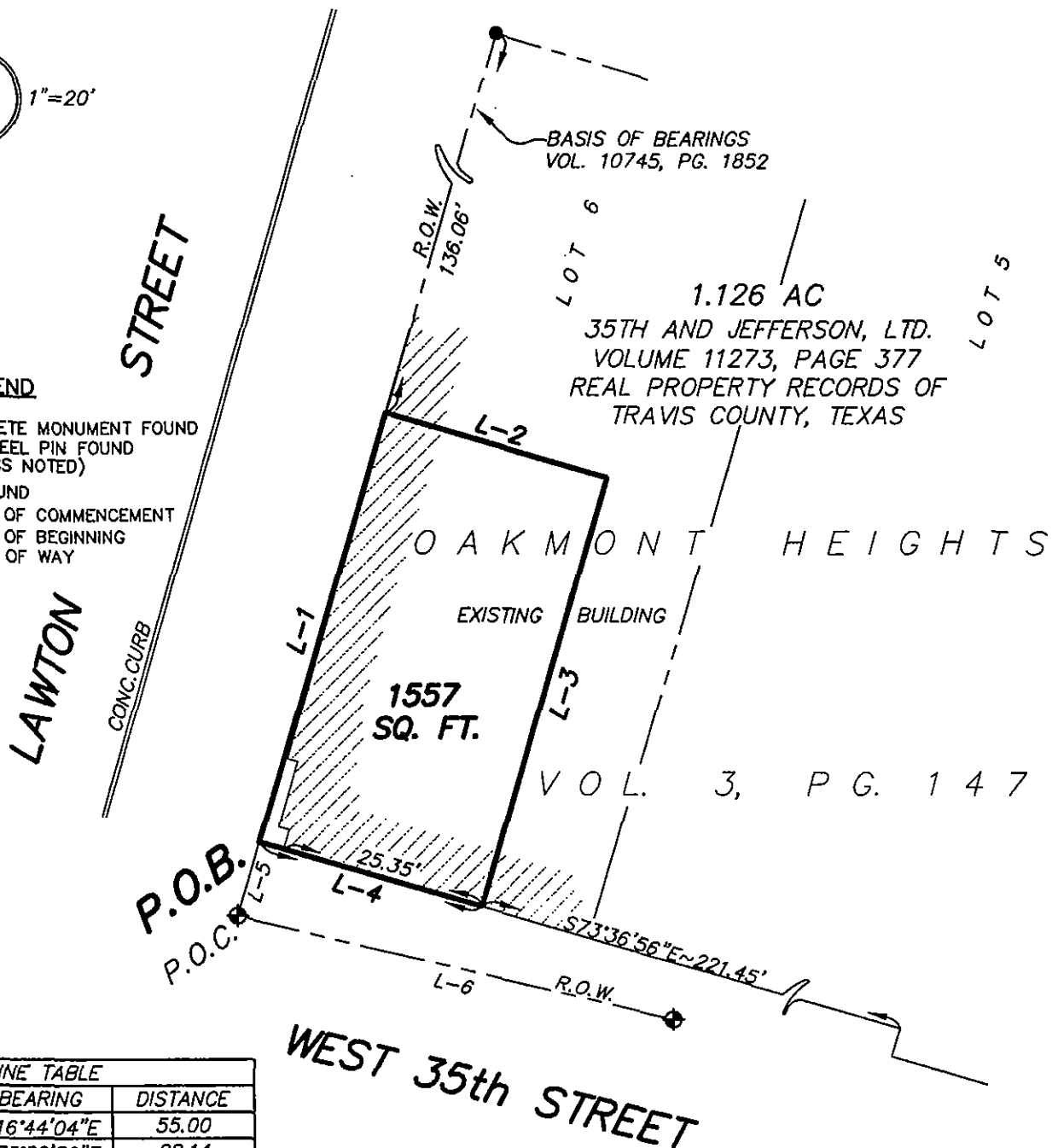
# MAP TO ACCOMPANY FIELD NOTES

SCALE: 1"=20'



## LEGEND

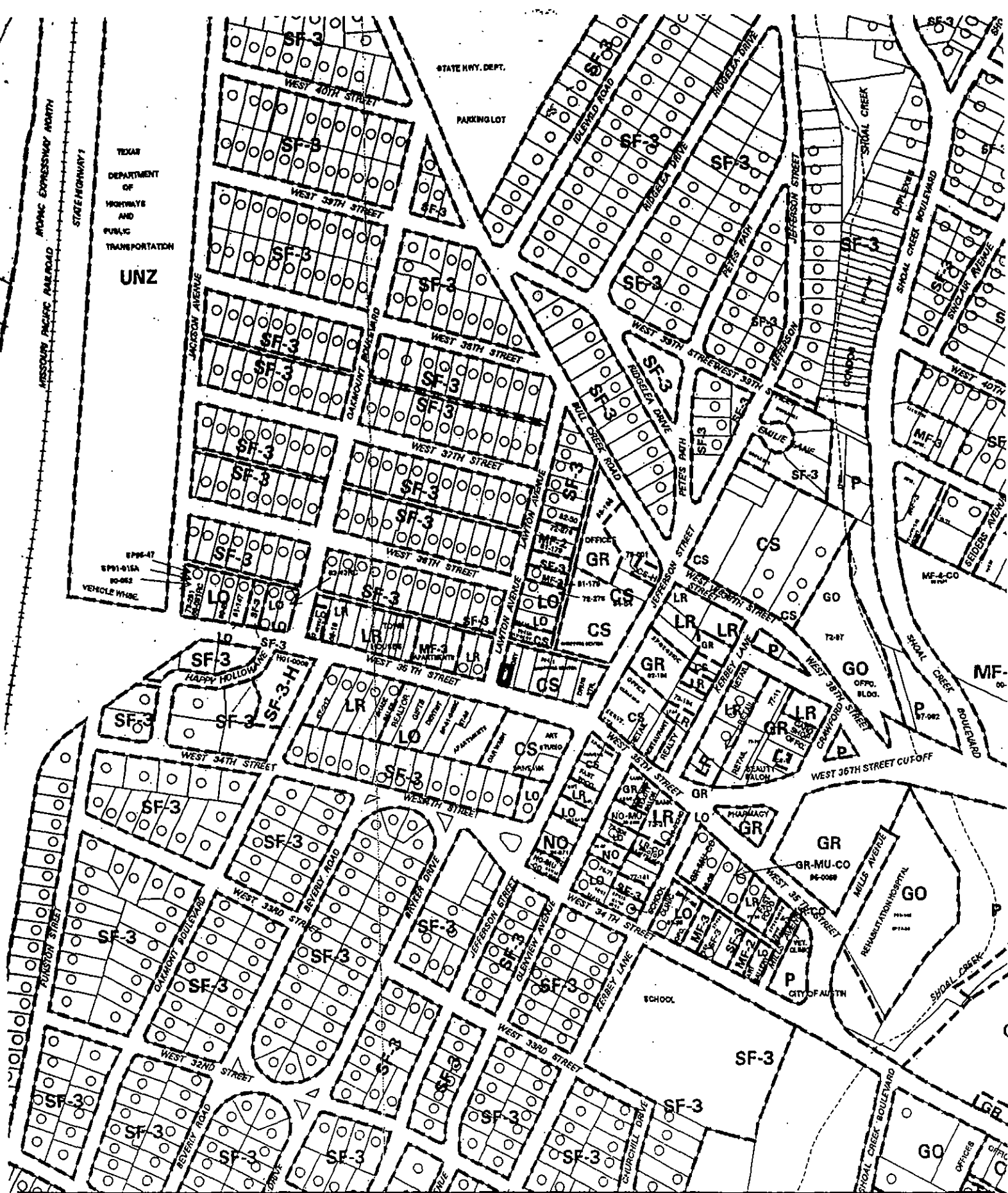
- CONCRETE MONUMENT FOUND
- 1/2" STEEL PIN FOUND (UNLESS NOTED)
- ⊕ 'X' FOUND
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- R.O.W. RIGHT OF WAY



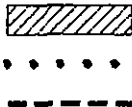
LINE TABLE		
LINE	BEARING	DISTANCE
L-1	N16°44'04"E	55.00
L-2	S73°36'56"E	28.14
L-3	S16°23'04"W	55.00
L-4	N73°36'56"W	28.48
L-5	N16°44'04"E	9.54
L-6	S76°27'52"E	54.81

PREPARED BY:  
**LENZ & ASSOCIATES, INC.**  
1714 FORT VIEW ROAD, SUITE 101  
AUSTIN, TEXAS 78704

PAGE 1 OF 1



SUBJECT TRACT  
 PENDING CASE  
 ZONING BOUNDARY  
 CASE MGR: T.BOLT



CASE #: C14-05-0103

ADDRESS: 3500 JEFFERSON ST UNIT

101  
 SUBJECT AREA (acres): 1.126

ZONING EXHIBIT B

DATE: 05-07

INTLS: SM

CITY GRID  
 REFERENCE  
 NUMBER

H25

1" = 400'

2-17

## RESTRICTIVE COVENANT

ORIGINAL  
FILED FOR RECORD

Owner: 85th and Jefferson, Ltd

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid or performed by the Oakmont Heights Neighborhood Association and others, the receipt and sufficiency of which is acknowledged.

Property: Lots 1-7, Block 7, Oakmont Heights, a subdivision in the City of Austin, Texas, according to the map or plat thereof filed in Plat Book 3, Page 147, Plat Records of Travis County, Texas locally known as 3500 Jefferson Ave., Austin, Texas 78703.

Restricted Portion: That area of the property constituting the finished space in the southwest corner of the building and commonly known as Suite 101, 35th @ Jefferson, 3500 Jefferson Ave., Austin, TX 78703 and more specifically described in the survey attached hereto and incorporated herein as Attachment A.

Beneficiaries: The Oakmont Heights Neighborhood Association and the Bryker Woods Neighborhood Association, their successors and assigns, and the owners of the properties locally known as 1801 W. 36th St., 1802 W. 36th St., 1813 W. 36th St., and 1916 W. 40th St, Austin, Texas, their heirs, successors and assigns. These properties are more fully described as:

1801 W. 36th St.: Lot 24 BLK 1, Oakmont Heights, a subdivision in the City of Austin, Texas, according to the map or plat thereof filed in Plat Book 3, Page 147, Plat Records of Travis County, Texas

1802 W. 36th St.: Lot 2 BLK 4, Oakmont Heights, a subdivision in the City of Austin, Texas, according to the map or plat thereof filed in Plat Book 3, Page 147, Plat Records of Travis County, Texas.

1813 W. 36th St.: Lot 18 and east 10' of Lot 17 BLK 1, Oakmont Heights, a subdivision in the City of Austin, Texas, according to the map or plat thereof filed in Plat Book 3, Page 147, Plat Records of Travis County, Texas

1916 W. 40th St.: Lot 8 Oakmont Heights Annex No. 3 section 1, a subdivision in the City of Austin, Texas, according to the map or plat thereof filed in Plat Book 5, Page 142, Plat Records of Travis County, Texas.

WHEREAS, 85th and Jefferson, Ltd attests that it is the sole owner of the Property and agrees that the interests of Beneficiaries and the use and value of their property will be affected by the Property's use and that, therefore, the Property should be impressed with certain covenants, restrictions and servitudes, set forth below, the imposition of which will benefit the property owned by Beneficiaries or in the case of the neighborhood associations, property owned by it's members:

WHEREAS, Owner intends to lease the Restricted Portion to Karen Dante and Myrna Sherman or an entity controlled by them for the operation of a wine bar for which purpose the

Owner has taken steps to have the Restricted Portion re-zoned from CS zoning district to CS-1 zoning district. It is the Owner's intention to maintain the CS-1 zoning for only such time as either or both Karen Dante and Myrna Sherman own or operate a business in the Restricted Portion.

NOW THEREFORE, 35th and Jefferson, Ltd (sometimes referred to as the Owner) for the consideration described above shall hold, sell, lease and use the Property subject to the following covenants, restrictions and servitudes hereby impressed upon the Property which covenants, restrictions and servitudes shall run with the land, and shall be binding on the Owner of the property, and the Owner's heirs, successors, lessees, and assigns, as follows, to wit:

1. No alcohol of any type shall be served or sold in or from the Restricted Portion of the Property without all legally required permits, licenses, approvals and zoning.
2. No alcohol, specifically including but not limited to distilled spirits, shall be served or sold in or from the Restricted Portion of the Property except for beer and wine, which may be served and sold between the hours of 8 o'clock a.m. and 9 o'clock p.m., if otherwise permitted by law.
8. When Karen Dante and Myrna Sherman both cease to own or operate a business in the Restricted Portion, then Owner, its heirs, successors, lessees or assigns, shall within a reasonable period of time (and, in any event, prior to the operation of another business in the Restricted Portion) take all necessary steps to apply to the City of Austin to have the zoning district of the Restricted Portion re-zoned to CS zoning from CS-1 zoning (or if the zoning districts are renamed or numbered by the City of Austin prior to that date, then to the zoning district that corresponds to CS zoning) and shall use its best efforts to obtain such re-zoning for the Restricted Portion.

If any person or entity shall violate or attempt to violate the terms of this Restrictive Covenant, it shall be lawful for the Beneficiaries, their heirs, successors or assigns or any of them to bring a proceeding in law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions or to compel compliance with same and the necessity for a bond is expressly waived by Owner, which waiver is binding as well on Owner's heirs, successors, lessees and assigns. Any party subject to this Restrictive Covenant who violates or threatens to violate same, shall be responsible for the reasonable and necessary attorneys fees incurred by any Beneficiary who brings a proceeding in accordance with this paragraph.

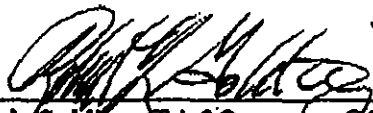
If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement and such remaining portion of this agreement shall remain in full effect.

If at any time the Beneficiaries, their heirs, successors or assigns or any of them shall fail to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

This agreement may be modified, amended or terminated only by agreement of the Owner or the Owner's heirs, successors or assigns and all of the Beneficiaries, their heirs, successors or

assigns as defined above. Agreement by the neighborhood associations means agreement by their Executive Committees, Boards of Directors, or duly authorized officers, as the case may be.

Executed this the 28 day of Sept. 2005.

  
Rob Golding, Chief Operating Officer  
for Live Oak Development, Inc., General  
Partner of 85<sup>th</sup> and Jefferson, Ltd., Owner

STATE of TEXAS  
COUNTY of TRAVIS

This instrument was acknowledged before me on this the 28 day of Sept., 2005 by  
Rob Golding, as Chief Operating Officer of 85th and Jefferson, Ltd.



  
Notary Public, State of Texas

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



2005 Sep 28 03:33 PM 2005180406

SIFUENTEZY \$24.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS