

A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, June 22, 2006

#106PH

 Back**Zone Hearings/App Ordinances/Restrictive Covenants
RECOMMENDATION FOR COUNCIL ACTION**

Subject: C14-06-0074 - 200 Congress Avenue - Conduct a public hearing and approve an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 200, 202 and 208 Congress Avenue and 100, 102, 104 West Second Street (Town Lake Watershed) from central business district (CBD) district zoning to central business district-central urban redevelopment combining district (CBD-CURE) combining district zoning. Planning Commission Recommendation: To grant central business district-central urban redevelopment combining district-conditional overlay (CBD-CURE-CO) combining district zoning with conditions. Applicant and Agent: Second Congress, Ltd. (David Mahn). City Staff: Jorge Rousselin, 974-2975.

Additional Backup Material

(click to open)

☐ Staff Report**For More Information:** Jorge Rousselin, 974-2975.

ZONING REVIEW SHEET**CASE:** C14-06-0074**P. C. DATE:** May 9, 2006
May 23, 2006**ADDRESS:** 200, 202, 208 North Congress and 100, 102, 104 West 2nd Street**OWNER/AGENT:** Second Congress, Ltd. (David Mahn)**REZONING FROM:** CBD (Central Business District)**TQ:** CBD-CURE (Central Business District - Central Urban Redevelopment) combining district**AREA:** 0.677 Acres (29,490.12 square feet)**SUMMARY PLANNING COMMISSION RECOMMENDATION:***May 23, 2006:****APPROVED STAFF'S RECOMMENDATION FOR CBD-CURE-CO ZONING WITH CONDITIONS; SUBJECT TO DESIGN COMMISSION'S CONDITIONS & RECOMMENDATION; BY CONSENT.******[J.REDDY, K.JACKSON 2ND] (8-0) G.STEGEMAN - ABSENT******* REQUEST MADE BY COMMISSION THAT APPLICANT MEET WITH NEIGHBORHOOD HOUSING & COMMUNITY DEVELOPMENT DEPARTMENT TO ADDRESS AFFORDABLE HOUSING IN THE PROJECT.*****SUMMARY STAFF RECOMMENDATION:**

Staff recommends CBD-CURE-CO (Central Business District - Central Urban Redevelopment Conditional Overlay) combining district with conditions. The CURE combining district shall modify the floor to area ratio (FAR) from 8:1 to 25:1. The recommended conditional overlay shall restrict the daily vehicle trips to 4,850 trips per day. Furthermore, under a public restrictive covenant, the applicant shall submit an access study at the time of site plan in order to evaluate driveway functions for the proposed project; and participate, at owner's expense, in the Great Streets Program for portions of public right-of-way fronting the subject site that have not been improved to Great Streets standards.

The Staff recommendation is based on the following considerations:

- 1.) The proposed uses are compatible with existing CBD and commercial, office, retail, and mixed-use development along Congress Avenue
- 2.) The subject site lies within the designated Core Downtown District as identified by the Downtown Austin Design Guidelines;
- 3.) The Downtown Austin Design Guidelines recommend providing dense, multi-tenant, pedestrian-oriented development at street level while encouraging the densification of the downtown core;
- 4.) The subject property lies within the downtown CURE district;
- 5.) The proposed development will not be subject to compatibility standards; and
- 6.) Great Streets Program participation via a public restrictive covenant, at owner's expense, has been recommended and approved by the City Council on CURE projects in the downtown core.

DEPARTMENT COMMENTS:

The subject property consists of a 0.677 acre (29,490.12 square feet) site zoned CBD fronting Congress Avenue and West 2nd Street. The property is currently developed with vacant buildings and a parking lot. The application of the CURE combining district is proposed to modify the FAR from 8:1 to 25:1, yielding a maximum height of 700 feet. The proposed redevelopment of the property includes partial demolition of existing structures with development of a mixed-use tower with retail and condominiums. Approximately 250 condominium units are proposed and approximately 8,000 square feet of retail on the ground floor. This site is subject to the Congress Avenue Overlay [LDC 25-2-643]. Any desired modifications to zoning should also include any changes to height or materials that are specifically controlled in this overlay. The site is also located in the Congress Avenue National Registered Historic District. Review and evaluation of any proposal for modification or demolition of any existing structure will require review by the Historic Preservation Officer and the Historic Landmark Commission if applicable. Portions of the existing buildings with potential for historic designation will remain. Furthermore, a portion of this site is located in a Capitol View Corridor. Prior to any site plan approval, a Capitol View Corridor review will be required to evaluate the location and maximum heights for any proposed structures.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CBD	Vacant buildings / Parking lot
<i>North</i>	CBD	Offices / Hotel
<i>South</i>	CBD	Office building
<i>East</i>	CBD	Vacant building
<i>West</i>	CBD	Restaurant / Parking lot

WATERSHED: Town Lake**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** Yes**CONGRESS AVE. HISTORIC DISTRICT:** Yes**CURE DISTRICT:** Yes**EAST 6TH STREET / PECAN DISTRICT:** No**6TH STREET NATIONAL REGISTER
HISTORIC DISTRICT:** No**TIA:** Waived (See Transportation comments)**NEIGHBORHOOD ORGANIZATIONS:**

300--Terrell Lane Interceptor Assn.
 402--Downtown Austin Neighborhood Assn. (DANA)
 438--Downtown Austin Alliance
 511--Austin Neighborhoods Council
 623--City of Austin Downtown Commission
 742--Austin Independent School District
 744--Sentral Plus East Austin Coalition (SPEAK)
 767--Downtown Austin Neighborhood Coalition

SCHOOLS:

Austin Independent School District

- Matthews Elementary School
- O. Henry Middle School
- Austin High School

CASE HISTORIES: N/A**RELATED CASES:**

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14H-98-0005	CBD to CBD-H	07/21/98: APVD CBD-H BY CONSENT (8-0)	08/20/98: APVD CBD-H (4-0); 1ST RDG 12/03/98: APVD CBD-H (6-0) 2ND/3RD RDGS
C14-00-2207	CBD to CBD-CURE	11/14/00: APVD STAFF REC OF CBD-CURE (6-1-1, JM-NAY, RC-ABSTAIN)	11/30/00: APVD CBD-CURE W/CONDS (6-0); ALL 3 RDGS
C14-00-2208	CBD to CBD-CURE	11/14/00: APVD STAFF REC OF CBD-CURE (6-1-1, JM-NAY, RC-ABSTAIN) 05/21/01: HISTORIC LANDMARK COMMISSION: APVD DEMOLITION PERMITS FOR 401, 413, & 415-417 CONGRESS (9-0-1, LAKY-ABSTAIN) CONTINGENT UPON SDP FOR COUSINS STONE 4TH & CONGRESS PROJECT	11/30/00: APVD CBD-CURE W/CONDS (6-0); ALL 3 RDGS
C14-15-0165	CBD to CBD-CURE	10/18/05: ZAP APVD CBD-CURE-CO W/CONDS (7-1-1, JP-NO, MH-ABSTAIN).	11/17/05: APVD CBD-CURE (7-0); ALL 3 RDGS.

NAME	ROW	PAVEMENT	CLASSIFICATION	CAPITAL METRO	BICYCLE PLAN	SIDEWALKS
Congress Avenue	120'	60'	Arterial	Yes	No	Yes
2 nd Street	80'	60'	Collector	Yes	No	Yes

CITY COUNCIL DATE:

June 22, 2006

ACTION:

ORDINANCE READINGS: 1st

2nd

3rd

ORDINANCE NUMBER:

CASE MANAGER: Jorge E. Rousselin, NPZD

PHONE: 974-2975

E-MAIL: jorge.rousselin@ci.austin.tx.us

C14-06-0074

Legend

- Zoning
- Base
- Center Line

40 0 40 80 120 Feet

C14-06-0074

Town Lake

STAFF RECOMMENDATION

Staff recommends CBD-CURE-CO (Central Business District - Central Urban Redevelopment Conditional Overlay) combining district with conditions. The CURE combining district shall modify the floor to area ratio (FAR) from 8:1 to 25:1. The recommended conditional overlay shall restrict the daily vehicle trips to 4,850 trips per day. Furthermore, under a public restrictive covenant, the applicant shall submit an access study at the time of site plan in order to evaluate driveway functions for the proposed project; and participate, at owner's expense, in the Great Streets Program for portions of public right-of-way fronting the subject site that have not been improved to Great Streets standards.

The Staff recommendation is based on the following considerations:

- 1.) The proposed uses are compatible with existing CBD and commercial, office, retail, and mixed-use development along Congress Avenue
- 2.) The subject site lies within the designated Core Downtown District as identified by the Downtown Austin Design Guidelines;
- 3.) The Downtown Austin Design Guidelines recommend providing dense, multi-tenant, pedestrian-oriented development at street level while encouraging the densification of the downtown core;
- 4.) The subject property lies within the downtown CURE district;
- 5.) The proposed development will not be subject to compatibility standards; and
- 6.) Great Streets Program participation via a public restrictive covenant, at owner's expense, has been recommended and approved by the City Council on CURE projects in the downtown core.

BASIS FOR RECOMMENDATION

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

LDC 25-2-311:

(A) The purpose of a central urban redevelopment (CURE) combining district is to promote the stability of neighborhoods in the central urban area.

(B) A CURE combining district may be used:

- (1) for sustainable redevelopment of homes, multifamily housing, and small businesses;
- (2) to accommodate high priority projects that enhance the stability of urban neighborhoods including the development of affordable housing and small businesses along principal transportation routes that serve a neighborhood;
- (3) to improve the natural environment; and
- (4) to encourage high quality development with architectural design and proportion compatible with the neighborhood.

The proposed rezoning meets the purpose statement set forth in the Land Development Code. The subject property is located within the designated CURE District and lies within the Core Downtown District as identified by the Downtown Austin Design Guidelines.

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

The proposed change and recommended conditional overlay is compatible with the surrounding area as it is surrounded by CBD zoning and adjacent to mixed-use and commercial development compatible to the proposed uses.

EXISTING CONDITIONS

Site Characteristics

The subject property consists of a 0.677 acre (29,490.12 square feet) site zoned CBD fronting Congress Avenue and West 2nd Street. The property is currently developed with vacant buildings and a parking lot. This site is subject to the Congress Avenue Overlay [LDC 25-2-643]. Any desired modifications to zoning should also include any changes to height or materials that are specifically controlled in this overlay. The site is also located in the Congress Avenue National Registered Historic District. Review and evaluation of any proposal for modification or demolition of any existing structure will require review by the Historic Preservation Officer and the Historic Landmark Commission if applicable. Portions of the existing buildings with potential for historic designation will remain. Furthermore, a portion of this site is located in a Capitol View Corridor. Prior to any site plan approval, a Capitol View Corridor review will be required to evaluate the location and maximum heights for any proposed structures.

The application of the CURE combining district is proposed to modify the FAR from 8:1 to 25:1, yielding a maximum height of 700 feet. The proposed redevelopment of the property includes partial demolition of existing structures with development of a mixed-use tower with retail and condominiums. Approximately 250 condominium units are proposed and approximately 8,000 square feet of retail on the ground floor.

Transportation

1. No additional right-of-way is needed at this time.
2. The trip generation under the requested zoning is estimated to be 4,850 trips per day, assuming that the site develops to the maximum intensity allowed under the zoning classification and the proposed uses and sizes (without consideration of setbacks, environmental constraints, or other site characteristics).
3. The traffic impact analysis for this site was waived because no improvements have been identified by DPWT or WPDRD for the surrounding area. The applicant has agreed and is required to submit an access study at the time of site plan in order to evaluate driveway functions for the proposed project. The site is also limited to an unadjusted trip rate of 4,850 trips per day. These two conditions should be included in a conditional overlay.

Environmental

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Town Lake 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.
2. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.
3. 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.

4. According to flood plain maps, there is no flood plain within the project area.
5. At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.
6. 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

1. The site is currently served with City of Austin water and wastewater utilities.
2. If water or wastewater utility improvements, or offsite main extension, or system upgrades, or utility adjustments, or utility relocation are required, the landowner, at own expense, will be responsible for providing. Also, the utility plan must be reviewed and approved by the Austin Water Utility.
3. The plan must be in accordance with the City design criteria.
4. The water and wastewater utility construction must be inspected by the City.
5. The landowner must pay all associated and applicable City fees.

Site Plan

1. This site is subject to the Congress Avenue Overlay LDC 25-2-643. Any desired modifications to zoning should also include any changes to height or materials that are specifically controlled in this overlay.
2. This site is located in a National Registered Historic District. Review and evaluation of any proposal for modification or demolition of any existing structure will require review by the Historic Preservation Officer and possibly by the Historic Landmark Commission.
3. A portion of this site is located in a Capitol View Corridor. Prior to any site plan approval, a Capitol View Corridor review will be required to evaluate the location and maximum heights for any proposed structures. This is a separate application from the site plan.



Benchmark
DEVELOPMENT

6001 W. William Cannon
Bldg. 2, Suite 201
Austin, Texas 78749
(512) 472-7455
FAX: (512) 472-7499

April 26, 2006

Jorge Rousselin
City of Austin
Neighborhood Planning and Zoning Department
505 Barton Springs Road, 5th Floor
Austin, Texas 78701

Re: 200 N. Congress Avenue (C14-06-0074)

Dear Jorge:

In response to our meeting on April 13, 2006 for the 200 N. Congress Avenue project, the following information is being provided.

1. This project is requesting a floor to area ratio (FAR) of 25 to 1.
2. Anticipated height for the project is approximately 700 feet.
3. It is our understanding that Great Streets improvements are required for this project as a condition of rezoning. The project will comply with Great Streets requirements along Congress Avenue and 2nd Street.
4. For this property, the Capitol View Corridor and the Congress Avenue overlay coincide. Attached is a figure documenting these areas in relation to the site. This project plans to adhere to both the Capitol View Corridor and the Congress Avenue overlay.
5. Currently, we have been in discussions with Steve Sadowsky about the existing building on the site. It is our understanding that his review of the site may affect the timing of the project at Planning Commission. We will continue to work with Steve Sadowsky on this project and will keep you apprised of our progress.

Thank you for your time and consideration. If you have any questions, comments, or need additional information, please do not hesitate to contact me.

Sincerely,

David Mahn
Second Congress, Ltd.

Enclosure

CONSIDERATIONS

CAPITOL VIEW CORRIDOR

- The Capitol view corridor establishes protected views to the State Capitol Building of Texas. The corridor effects the site along Congress Avenue and establishes a 60' setback at a point referenced to an elevation 574' above sea level. The elevation of this setback is restricted to 90' height due to the more restrictive the Congress Avenue Overlay





Benchmark
DEVELOPMENT

4001 W. William Cannon
Bldg. 2, Suite 201
Austin, Texas 78749
(512) 472-7455
FAX: (512) 472-7499

May 3, 2006

Jorge Rousselin
City of Austin
Neighborhood Planning and Zoning Department
505 Barton Springs Road, 5th Floor
Austin, Texas 78701

Re: 200 N. Congress Avenue (C14-06-0074)

Dear Jorge:

We respectfully request that our scheduled appearance for the above project on May 9, 2006 before the Planning Commission be postponed and rescheduled for May 23, 2006, if possible.

For your information, Emily Little, a restoration architect, and I met with Steve Sadowaky today regarding the preservation of a building on our site. The meeting went well and he will schedule us to appear on the May 22 Historic Land Commission agenda for consideration of a plan addressing that building.

Thank you for your assistance in this matter.

Sincerely,

David Mahn
Second Congress, Ltd.



RECEIVED

MAY 09 2006

May 8, 2006

Neighborhood Planning & Zoning

Planning Commissioners and Chairman Riley:

RE: Letter of Support for the proposed 200 N. Congress Avenue Project (Rezoning Case No. C14-06-0074) on your May 9, 2006 Agenda (Item # 11)

Please let this letter serve as indication of the Downtown Austin Neighborhood Association's (DANA's) support of the requested rezoning from CBD to CBD-CURE, and the demolition and/or re-use of (regarded) historic structures (on 2nd Street side of site).

The DANA Steering Committee have met with the developer's representatives, and we feel that the requested zoning change will allow for a significant addition to the residential stock of Downtown Austin, especially in a mixed-use building with retail development at street level on the all-important 2nd Street Retail District. We also support the developer's efforts to re-use the façade or a portion of (what can be considered) a historic building at their site's southwest corner (on 2nd Street); and the demolition of the warehouse building next door, more in the center of their site (which is in much worse shape than the corner building, and is of very dubious historical value, in our opinion) necessary to redevelop their site.

We are especially enthusiastic about the "design competition" the developer had in choosing the design architect for this project, inviting 5 "world-class" architecture firms to propose building designs, and choosing the imminently qualified Zeigler-Cooper firm. This 200 block of Congress deserves a "world-class" building, and we believe the developer has proposed one. Congress Avenue is the "show-case" street of Austin, and indeed of the State of Texas; and also this site is one of the precious few blocks in Downtown Austin with no height restrictions. The height proposed is very appropriate, and we hope this is the first building of many of this height coming to Congress Avenue and Downtown Austin.

Please approve the requested zoning change, allowing this site (which has long laid "fallow", as a surface parking lot and a couple of small warehouses in very deteriorated condition) to accommodate the "world-class" building the developers propose. It will be an exciting addition to our great Congress Avenue.

Sincerely,

Andrew Clements (via e-mail)

Andrew Clements
President
Downtown Austin Neighborhood Association



RECEIVED

MAY 09 2006

May 8, 2006

Neighborhood Planning & Zoning

Planning Commissioners and Chairman Riley:

RE: Letter of Support for the proposed 200 N. Congress Avenue Project (Rezoning Case No. C14-06-0074) on your May 9, 2006 Agenda (Item # 11)

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Sincerely,

Andrew Clements (via e-mail)

Andrew Clements
President
Downtown Austin Neighborhood Association



City of Austin

Downtown Commission

Jeb Boyd, Chair

Parks and Recreation Board

Stan Haas, Vice Chair

R/UDAT (ALA)

Tina Balderama Kubicek, PhD, Secretary

Women's Chamber of Commerce

Andrew Clements

Urban Transportation Commission

Teresa Ferguson

Music Commission

Tim Finley

Downtown Austin Alliance

Richard Halpin

Human Service Providers

Carl Huntley

*Capital City African-American
Chamber of Commerce*

Linda Johnston

Old Mexico

Robert Knight

Urban Land Institute

Daniel Leary

Historic Landmark Commission

Perry Lorenz

Design Commission

Joe Moreno

Hispanic Chamber of Commerce

Craig Nasso

Downtown Residents

Chris Riley

Planning Commission

Beth Ann Sprengel

Greater Austin Chamber of Commerce

Bruce Willenzik

Arts Commission

Bob Woody

E. 6th Street Merchants and Residents

June 7, 2006

Mayor Will Wynn & Council Members

PO Box 1088

Austin, TX 78767

**Subject: Downtown Commission Recommendation -
Second and Congress (C14-06-0074)**

Dear Mayor Wynn and Council Members:

At our May 17, 2006 meeting, the Downtown Commission received a presentation on Second and Congress (C14-06-0074). By a unanimous 14-0 vote the Commission voted to support the requested zoning change from CBD to CBD-CURE with a 25:1 FAR.

Respectfully,

Jeb Boyd

Chairman, Downtown Commission

ORDINANCE NO. _____

1 AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE
2 PROPERTY LOCATED AT 200, 202, AND 208 NORTH CONGRESS AVENUE,
3 AND 100, 102, AND 104 WEST 2ND STREET FROM CENTRAL BUSINESS
4 DISTRICT (CBD) DISTRICT TO CENTRAL BUSINESS DISTRICT-CENTRAL
5 URBAN REDEVELOPMENT-CONDITIONAL OVERLAY (CBD-CURE-CO)
6 COMBINING DISTRICT.

7
8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
9

10 PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to
11 change the base district from central business district (CBD) district to central business
12 district-central urban redevelopment-conditional overlay (CBD-CURE-CO) combining
13 district on the property described in Zoning Case No. C14-06-0074, on file at the
14 Neighborhood Planning and Zoning Department, as follows:

15
16 Lots 1, 2, 3, and 4, Block 19, Original City of Austin, according to the map or plat
17 of record in the General Land Office of the State of Texas, and more particularly
18 described by metes and bounds in an instrument recorded in Document No.
19 2005228751, of the Official Public Records of Travis County, Texas (the
20 "Property").

21
22 locally known as 200, 202, 208 North Congress Avenue, and 100, 102, and 104 West 2nd
23 Street, in the City of Austin, Travis County, Texas, and generally identified in the map
24 attached as Exhibit "A".
25

26 PART 2. The site development regulations for the Property within the boundaries of the
27 CURE combining district established by this ordinance are modified as follows:

28
29 Development of the Property may not exceed a floor-to-area ratio (F.A.R.) of 25.0 to
30 1.0.
31
32
33
34
35
36

1 **PART 3.** The Property within the boundaries of the conditional overlay combining district
2 established by this ordinance is subject to the following conditions:

3
4 A site plan or building permit for the Property may not be approved, released, or
5 issued, if the completed development or uses of the Property, considered cumulatively with
6 all existing or previously authorized development and uses, generate traffic that exceeds
7 4,850 trips per day.

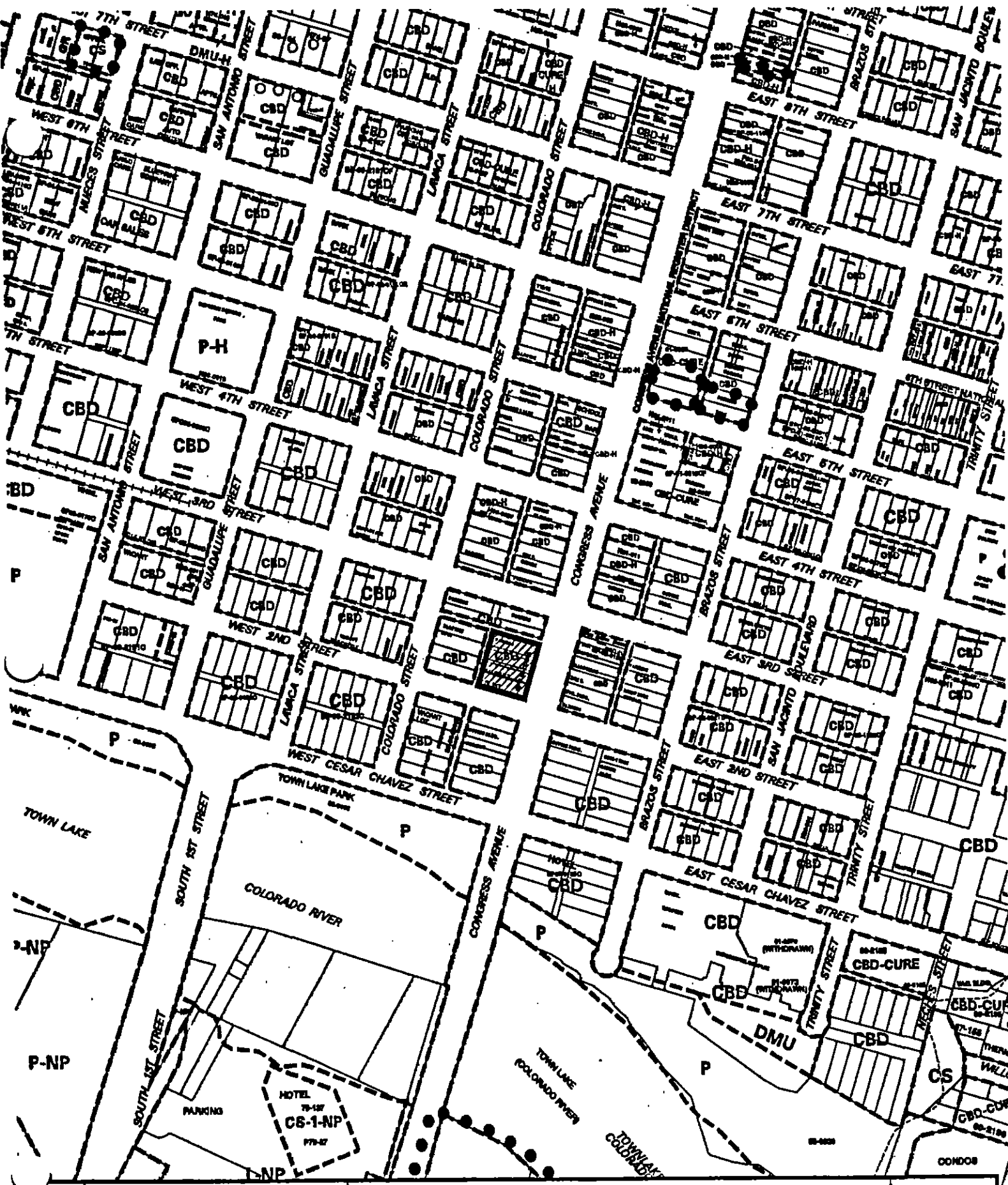
8
9 Except as specifically restricted under this ordinance, the Property may be developed and
10 used in accordance with the regulations established for the central business district (CBD)
11 base district and other applicable requirements of the City Code.

12
13 **PART 4.** This ordinance takes effect on _____, 2006.

14
15
16 **PASSED AND APPROVED**

17
18 _____, 2006 §
19 §
20 §
21
22 Will Wynn
23 Mayor

24
25 **APPROVED:** _____ **ATTEST:** _____
26 David Allan Smith Shirley A. Gentry
27 City Attorney City Clerk



SUBJECT TRACT
PENDING CASE
ZONING BOUNDARY
CASE MGR: J.ROUSSELIN

CASE #: C14-06-0074
ADDRESS: CONGRESS AVE AND W 2ND
SUBJECT AREA (acres): 0.677

DATE: 06-04
INTLS: SM

1" = 400'

ZONING EXHIBIT A

**CITY GRID
REFERENCE
NUMBER**
J22

RESTRICTIVE COVENANT

OWNER: Second Congress, Ltd., a Texas limited partnership

ADDRESS: 6001 West William Cannon, Building 2, Suite 201, Austin, Texas 78749

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Lots 1, 2, 3, and 4, Block 19, Original City of Austin, Travis County, Texas, according to the map or plat on file at the General Land Office of the State of Texas, and more particularly described by metes and bounds in an instrument of record in Document No. 2005228751, Official Public Records, Travis County, Texas.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. The Owner shall design and construct streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on June 22, 2006. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
2. At the time of site plan, the Owner shall submit to the Transportation Review Section of the Watershed Protection and Development Review Department an access study that provides an evaluation of driveway functions for the proposed project on the Property.
3. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at 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, and to collect damages for such actions.
4. 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.

5. If at any time the City of Austin fails 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.
6. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2006.

OWNER:

**Second Congress, Ltd.,
a Texas limited partnership**

By: Second Congress GP, Inc.,
a Texas corporation,
its General Partner

By: _____
David C. Mahn,
Vice President

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2006, by David C. Mahn, Vice President of Second Congress GP, Inc., a Texas corporation, on behalf of the corporation, and the corporation acknowledged this instrument as General Partner, on behalf of Second Congress, Ltd., a Texas limited partnership.

Notary Public, State of Texas