Citizen Comm.
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McDill Engineering

Engineering Consultants 5811 Southwest Parkway, # 1, Austin, TX, 78734
(512) 288-2392

April 20, 2010

Dora E. Anguino & Betty Baker, Chair
Zoning and Platting Commission Coordinator
City of Austin
PO Box 1088
Austin, Texas 78704

Re Courtyard Park site plan, **Case # SP-2008-0398C**

Dear Ms. Anguino & Ms. Baker, Chair:

Thank you for hearing my explanation of the situation I have run into while processing the above referenced project. My specific request, for an agenda item at your first meeting in march, is to support the interpretation of the SOS Redevelopment Exception rule as depicted in Jeff Howard's opinion letter and to provide guidance as to ways to rectify direct conflicts between the SOS Redevelopment ordinance and the Hill Country Road Ordinance (HCRO). I have attached Mr. Howard's short, but comprehensive, letter in my request to appear at this meeting so as to answer any preliminary questions. After 8-10 months of guidance on a variance request, staff produced a letter two months after time had expired. In the letter staff recommended requesting a variance from HCRO from this P & Z Commission, but then sent the entire issue package to the Planning Commission. After the last planning Commission, Pat Murphy suggested that the HCRO issues were zoning and should go before this Commission.

I will be specifically requesting:

1) A recommendation that the Hill Country Road Ordinance (HCRO) conflict issue be worked out with staff, or provide a P & Z Commission variance or, establish a process to purchase 1/4 acre of mitigation land to more than make up for 900 sq. feet of driveway extension to meet the HCRO, or provide additional 990 sq. ft. as per the one time site plan exception as submitted.

2) A recommendation that a requested time extension, of 250 days, be granted by City Council because there was no HCRO variance guidance provided by staff despite several written and verbal requests and that staff failed to process the project although all SOS exception requirements were met and staff did not provide their position on the issue until 2-3 months after time had expired. There were several promises to provide the clarification 6-8 months before time had expired and there was no disqualification explanation at any time during the 6 month zoning case that occurred during the regular review period.

The timing of staff's determination was so belated, and apparently purposefully untimely, that there was no opportunity to present this situation to this Commission or Council until two months after the review period expired. I am also requesting some recommendation as to an extension of review time frames. The process to correct a conditional overlay (the drive through) took over 5 months and staff

failed to provide their viewpoint during that time. After opposing the original zoning, supported by all neighbors and neighborhood organizations, and speaking against the drive through correction, staff then refused to provide the requested clarifications during several meetings. Their untimely reading of the rule was unfair and actually way off base. At your first March meeting speakers will describe their role in the rule creation process and demonstrate that this project should not have been delayed and then denied, because of these staff rules interpretations.

Thank you

Tom McDill, P.E.

M&H
McLEAN & HOWARD, L.L.P.

1004 Mopac Circle
Suite 100
Austin, TX. 78746
512.328.2008
512.328.2409

October 2, 2009

Ms. Sue Edwards
Asst. City Manager
City of Austin
Uniform Services
2001 East 5th Street
Austin, Texas 78702

Via Hand Delivery

RE: Section 25-8-27 of the Austin City Code
Redevelopment Exception in the Barton Springs Zone

Dear Ms. Edwards:

I am writing with regards to the above-referenced matter to indicate my disagreement with a legal interpretation apparently made by City staff concerning the application of Section 25-8-27(A) of the Austin City Code (the "**Code**"). Specifically, it is my understanding that the City's Law Department has determined that property with existing residential uses, but commercially zoned, is precluded from redeveloping under that section of the Code. I am not writing you as an attorney for any party affected by this determination, but rather as a concerned citizen and land use law attorney, who served approximately 15 months on the citizen's taskforce that helped develop this section of the Code. I served on that taskforce as RECA's representative, and I am personally and deeply aware of the intent, motivations and aspirations of the ordinance passed by Council.

While it is true that Section 25-8-27(A) of the Code does state that the section applies to property "with existing commercial development," that provision is an unfortunate hold over from early discussions about the content of the redevelopment ordinance and was not intended to actually be in the Code. I was at nearly every meeting on this subject matter for many months. There were early discussions about limiting this ordinance to commercial development because there were some on the taskforce that felt redevelopment should not extend the life of existing residential units or encourage additional units to be constructed over the aquifer. However, others subsequently maintained that some residential redevelopment could be desirable. As a result, the redevelopment ordinance – despite Section 25-8-27(A) – was written to actually *allow* it to apply to residential uses on a limited basis as well as commercial uses. The concerns over redevelopment of residential sites were addressed through limitations in the Code, and the limited application stated in 25-8-27(A) should have been deleted.

Specifically, Section 25-8-27(F)(5) contemplates "*multifamily redevelopment*" (as opposed to multifamily *new* development) is allowable under the ordinance. In addition, Section 25-8-27(G) of the Code contemplates residential redevelopment by providing that redevelopment that "includes more than 25 *dwelling* units" must be approved by Council (whereas, the clear implication that if there are fewer than 25 dwelling units Council approval is not required). These sections clearly establish the intent of Council that residential land could also be redeveloped. At the very least these sections create an ambiguity, in which case, rules of statutory construction require that the City look to legislative intent.

As a participant in all of the task force meetings and all of the public hearings on this issue, I can assure you that no one contemplated or intended that the a commercially zoned tract that happened to have residential uses located on it, would be precluded from redeveloping with commercial uses. In fact, the intent was to allow just this sort of redevelopment. Even the objections of those concerned with residential redevelopment are not implicated in that case given it does not extend the life of existing residential uses and it does not increase the extent of residential uses through redevelopment. There is simply no reason to preclude this type of redevelopment and such preclusion would be entirely antithetical to everything on which we labored many, many months. At the very least, the City could interpret "existing commercial development" broadly to include property with *any* commercial development and property that is commercially zoned.

I hope the City will re-consider its legal interpretation, and perhaps consider correcting the ordinance.

Thank you for your attention to this matter.

Sincerely,

Jeffrey S. Howard