

C12  
1

## ZONING CHANGE REVIEW SHEET

**CASE:** C14-2011-0060 – West Gibson Commercial    **P.C. DATE:** July 12, 2011

**ADDRESS:** 108 West Gibson Street

**OWNER/APPLICANT:** SC Investors, LLC., (Peter Barlin)

**AGENT:** Alice Glasco Consulting (Alice Glasco)

**ZONING FROM:** CS-MU-V-CO-NP

**TO:** CS-MU-V-CO-NP

**AREA:** 1.54 acres (67,082 ft<sup>2</sup>)

**SUMMARY STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request to CS-MU-CO-NP (General Commercial Services – Mixed Use – Conditional Overlay – Neighborhood Plan) district zoning to amend certain provisions of the conditional overlay

**DEPARTMENT COMMENTS:** This 1.54 acre site was zoned for commercial services in 2006 intended for a condominium residential use (ord. 20060831-053) and is currently developed with a church. The applicant is proposing a commercial development that will repurpose the existing church building for uses as agreed to by the Bouldin Neighborhood Association. The applicant seeks to amend the following to the existing conditional overlay on the property:

1. Increase the allowable commercial use to 20,000 square feet. A parking structure shall not be included in the calculation of building coverage.
2. Allow for surface parking for the existing improvements only to provide parking for the existing improvements and to provide parking for the structures to be developed on lot 19.
3. Allow personal improvement service, financial services, food preparation, food sales, general retail (convenience) and general retail sales (general) as a permitted use on the property.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	CS-MU-V-CO-NP	Church
<i>North</i>	CS-MU-V-CO-NP, SF-3, SF-4A	Motel, Single Family
<i>South</i>	CS-MU-V-CO-NP, CS-MU-CO-NP	Condominium, Retail
<i>East</i>	CS-MU-V-CO-NP, CS-MU-CO-NP	Restaurant, Motel, Parking
<i>West</i>	SF-3-NP	Single Family

**NEIGHBORHOOD PLAN:** Bouldin Creek Neighborhood Plan

**TIA:** Waived

**WATERSHED:** East Bouldin Creek

C12  
/2

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** No

**HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Neighborhoods Council

South Central Coalition

Bouldin Creek Neighborhood Association

Greater South River City Combined Neighborhood Association

**CASE HISTORIES**

NUMBER	REQUEST	COMMISSION	COUNCIL
C14-02-0031	Bouldin Creek Neighborhood Plan	Approved 3/27/02; (6-0)	Approved 5/23/2002; (7-0)
C14-06-0080	MF-4-NP to CS-MU- CO-NP	Approved 5/23/2006; (7-0)	Approved 8/31/2006; (6-0)

**BASIS FOR RECOMMENDATION**

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

The requested rezoning will not change the base zoning of the property. The applicant seeks to amend the existing conditional overlay on the property and will provide for uses allowed under general commercial services district zoning.

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

The proposed development will utilize and repurpose an existing structure for commercial uses.

C12/3

## EXISTING CONDITIONS

### Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the East Bouldin 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.

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.

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

Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

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

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

### Water and Wastewater

If the landowner intends to serve the site with City of Austin water and wastewater utilities, the landowner, at own expense will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocations and or abandonments required. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

### Stormwater Detention

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

C12  
4

**Transportation:**

No additional right-of-way is needed at this time.

The Transportation Review Section has no objections to the proposed rezoning amendment.

A traffic impact analysis was not required for this case because the traffic generated by the proposal does not exceed the threshold of 2,000 vehicle trips per day. [LDC, 25-6-113]

Capital Metro bus service (Routes No. 9, 1L, 1M, 101, 483, and 486) is available along South Congress Avenue.

South Congress Ave. is classified in the Bicycle Plan as Bike Route No. 47. Newton Street is classified in the Bicycle Plan as Bike Route No. 347.

There are existing sidewalks along both sides of South Congress Ave., Gibson St., James St., and Newton St.

**Existing Street Characteristics:**

Name	ROW	Pavement	Classification	ADT	Bike Route	Capital Metro
Congress Avenue	114'	MAD-6	Major Arterial	25,465	Yes	Yes
Gibson Street	64'	30"	Local Street	N/A	No	No
James Street	70'	30'	Local Street Local	487	No	No
Newton Street	82'	30'	Street	426	Yes	No

**Site Plan:**

Should the applicant need a site plan application for future development, any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

The site is subject to compatibility standards. Along all property lines adjacent to single family, the following standards will apply with any future development:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- A landscape area is required along 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

C12/5

**CITY COUNCIL DATE:**

**ACTION:**

**ORDINANCE READINGS:** 1st

2<sup>nd</sup>

3<sup>rd</sup>

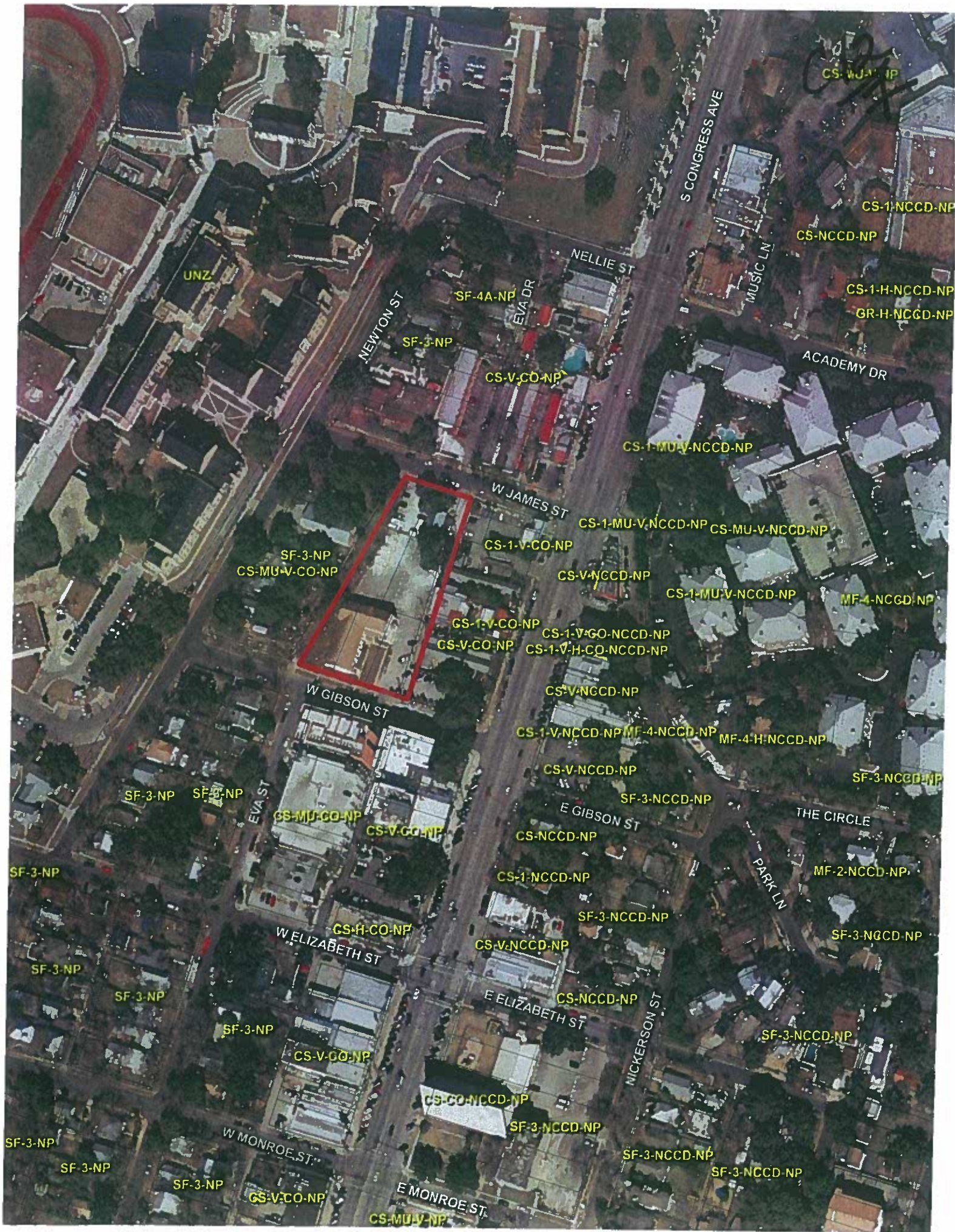
**ORDINANCE NUMBER:**

**CASE MANAGER:** Stephen Rye

**PHONE:** 974-7604  
[stephen.rye@ci.austin.tx.us](mailto:stephen.rye@ci.austin.tx.us)









# Alice Glasco Consulting

5117 Valburn Court, Suite A  
Austin, TX 78731  
aliceglasco@mindspring.com  
512-231-8110 • 512-857-0187 Fax

C12/8

June 9, 2011

Greg Guernsey, Director  
Planning and Development Review Department  
505 Barton Spring Road, Suite 500  
Austin, Texas 78704

RE: Rezoning of 108 West Gibson Street

Dear Greg:

I represent SC Investors LLC, the owner of 108 West Gibson Street. The site is currently zoned CS-MU-CO-NP and was intended to be redeveloped as condos. My client intends to keep the old church building and remodel it for commercial uses as agreed to by the Bouldin Neighborhood Association. The purpose of the rezoning request is modify the conditional overlay (**ordinance # 20060831-053 - Case C14-06-0080**) as follows:

1. Part 3, paragraph 2 should read: A commercial use may not exceed 4,000 square feet of gross building coverage, except of the existing improvements.
2. Part 3, paragraph 3 should read: A personal improvement service use and a personal services use are not permitted in the area beyond 100 feet of the east property line, except for the existing improvements.
3. Part 3, paragraph 4 should read: On-site surface parking is prohibited, except as parking for the existing improvements and to provide parking for the structures built on lot 19.
4. Part 3, paragraph 5 should be amended to delete the following prohibited uses:  
**General retail sales, Agricultural sales and services, Monument retail sales, and plant Nursery.**



C12/9

Greg Guernsey  
Rezoning of 108 West Gibson Street  
Page 2 of 2

5. Part 3, paragraph 6 should be amended as follows:

- A. The maximum building coverage is 80%
- B. The maximum impervious cover is 85%
- C. The maximum building height is 60 feet within 50 feet of the eastern property line.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Alice Glasco". The signature is fluid and cursive, with the first name "Alice" and last name "Glasco" clearly distinguishable.

Alice Glasco, President  
AG Consulting

) URP 1100FH0MFR# P 100V/SUQ11FP  
6 HQM) UCD 11-XCH1111111111111111\$0  
7 R115\ H116 VSK-HQ  
6 XEN#FMT111: 11" 11EVRQ16V8 SCDNG&RQGRQD12 YH11A

C12  
10

Stephen,

Below is an update to the conditional overlay for 108 Gibson Street.

The purpose of the rezoning request is modify the conditional overlay (ordinance # 20060831-053 - Case C14-06-0080) as follows:

1. **Part 3, paragraph 2** should read: A commercial use may not exceed 20,000 square feet of gross building coverage. A parking structure is not included in the calculation of building coverage.
2. **Delete Part 3, paragraph 3, which reads:** A personal improvement service use and a personal services use are not permitted in the area beyond 100 feet of the east property line, except for the existing improvements.
3. **Part 3, paragraph 4 should read:** On-site surface parking is prohibited, except as parking for the existing improvements and to provide parking for the structures built on lot 19.
4. **Part 3, paragraph 5 should be amended to delete the following prohibited uses:**
  - A) Financial services
  - B) Food preparation
  - C) Food sales
  - D) General Retail (convenience)
  - E) General retail sales (Gene real)

Please let me know if you have any questions or need additional information.

Alice Glasco, President  
AG Consulting

**From:** Guernsey, Greg  
**Sent:** Friday, June 17, 2011 6:39 PM  
**To:** Rusthoven, Jerry; Rye, Stephen  
**Subject:** Fwd: Neighborhood Petition Relating to 108 W. Gibson Street

C12  
11

**Attachments:** 108 West Gibson St Petition and Signatures.pdf; ATT2553702.htm; Amended Restrictive Covenant June 16.pdf; ATT2553703.htm  
FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Dorsey, John" <[REDACTED]>  
**To:** "greg.guernsey@ci.austin.tx.us" <greg.guernsey@ci.austin.tx.us>  
**Cc:** "Cameron, Jim" <[REDACTED]>  
**Subject:** Neighborhood Petition Relating to 108 W. Gibson Street

Dear Mr. Guernsey:

Our law firm represents Ryan Allen and Caleb Kramer, the owners of Unit 406 of the condominiums located at 1401 Eva Street, Austin, TX 78704. 1401 Eva Street is directly across the street from 108 W. Gibson Street.

We understand that an application for rezoning has been filed with the City by the owner of 108 W. Gibson Street, SC Investors, LLC, and that SC Investors is also seeking to amend a restrictive covenant affecting that property, as shown in the attached draft Amended Restrictive Covenant.

I am writing to respectfully inform you that as of today approximately 22 neighbors of 108 West Gibson Street (including our clients) have signed a petition, a copy of which is attached and available here <http://www.ipetitions.com/petition/108westgibsonstreetpetition/> <<http://www.ipetitions.com/petition/108westgibsonstreetpetition/>>, expressing their concerns regarding the changes sought by SC Investors and the Bouldin Creek Neighborhood Association (BCNA) in the Amended Restrictive Covenant and the manner in which it has been drafted. The signatures and comments of those neighbors are available here <http://www.ipetitions.com/petition/108westgibsonstreetpetition/signatures> (and also attached).

If you require any further information or would like to discuss this matter, please feel free to contact us.

Thank you for your courtesies.

Best regards,

John

John M. Dorsey • Strasburger & Price, LLP

7/6/2011 2:58 PM

600 Congress, Suite 1600, Austin, TX 78701  
Tel 512.499.3646 • Cell [REDACTED] Fax 512.536.5733  
Strasburger.com <blocked::http://www.strasburger.com/>

C12  
12

---

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Strasburger & Price, LLP immediately -- by replying to this message or by sending an email to postmaster@strasburger.com -- and destroy all copies of this message and any attachments. Thank you.

---



Home &gt; Categories &gt; Other &gt; 108 West Gibson Street Petition

## 108 West Gibson Street Petition

Sign Blog Signatures Email friends

Like

Sign Up to see what your friends like.

## The Petition

To: City of Austin, Planning and Review Department  
 Residents of the Bouldin Creek Neighborhood  
 Bouldin Creek Neighborhood Association (BCNA)  
 Brad Patterson, BCNA Zoning Committee Chair  
 Nikelle Meade, Attorney for the BCNA  
 AG Consulting/Alice Glasco, Agent for Peter Barlin/SC Investors, LLC

We, the undersigned residents of the Bouldin Creek Neighborhood and concerned members of the community, oppose the proposal put forth by the BCNA and Peter Barlin/SC Investors, LLC to amend the Restrictive Covenant dated August 31, 2006, covering the property located at 108 West Gibson Street, Austin, Texas 78704 for the following reasons:

- Lack of Neighborhood Input. The proposed amendment appears to have been negotiated exclusively between the BCNA Zoning Committee (acting through Brad Patterson and the BCNA attorney, Nikelle Meade of Browne McCarroll, LLP) and Mr. Barlin/SC Investors, LLC (and/or his agent) without the input of the other affected Bouldin Creek Neighborhood property owners.
- Excessive Commercial Development. The proposed amendment increases the permitted commercial use of the property to 20,000 square feet (from 4,000 square feet under the existing Restrictive Covenant) and also allows up to 10,000 square feet of retail use on the property. We believe that the increase in permitted commercial and retail use should be capped at a much lesser amount of square feet.
- Excessive Commercial Uses. The proposed amendment allows general retail sales and food sales, and we are concerned that this may permit restaurant and bar establishments to be located on the property.
- Excessive Height of Buildings. The proposed amendment allows any new or replacement structure to be as tall as the existing church building. This height standard is vague because it does not specify the height of the existing church building. We believe that the height should be specified and that the permitted height of structures on the property should be no greater than the height of the existing church building and that this maximum height restriction should apply to the property in its entirety.
- Excessive Size of Buildings. The proposed amendment allows additions to be constructed to the north or east of the existing church building or any replacement structure. The provisions regarding additions are vague and need to be clarified.
- Excessive Height of New Parking Structure. The proposed amendment allows a new parking structure to be built "one level above grade". The phrase "one level above grade" is vague and needs to be rewritten to include a specific maximum height limitation, which is 12 vertical feet above grade in the existing Restrictive Covenant.
- Surface Parking. The proposed amendment allows surface parking on the property. We believe that surface parking should be limited to a certain number of square feet of the property or should not be permitted, as provided in the existing Restrictive Covenant.
- Noise Pollution. The amendment permits "outdoor amplified sound" with the written approval of the "Neighboring Owners" whose properties are "adjacent to" the property and the BCNA. The phrase "adjacent to" the property is vague and should be defined to specify all neighboring properties and the term "outdoor amplified sound" should be defined by reference to a specific decibel level.
- Mobile Food Sales. The amendment permits mobile food sales, seasonal food sales and temporary food sales as long as the owners of the properties to the West of the property consent. No such food sales should be permitted unless the owners of all neighboring properties consent.
- General. The draft amendment contains numerous vague terms and inconsistencies and

## Sponsor

(No Sponsor Information)

## Links

## Sponsored links

AdChoices ▶

C.H.O.I.C.E.  
Petition

Voice your  
 Choice by signing  
 our petition to  
 congress on  
 obesity.  
[www.MyChoiceCampai..](http://www.MyChoiceCampai..)

The views expressed in this petition are solely those of the petition's sponsor and do not in any way reflect the views of iPetitions. iPetitions is solely a provider of technical services to the petition sponsor and cannot be held liable for any damages or injury or other harm arising from this petition. In the event no adequate sponsor is named, iPetitions will consider the individual account holder with which the petition was created as the lawful sponsor.

C12  
14

needs further review and revision by legal counsel to make it a logical and comprehensible document.

We, the undersigned, categorically reject and refuse to consent to the proposed amendment to the Restrictive Covenant dated August 31, 2006 prepared by the BCNA and Peter Bariln/SC Investors, LLC.

The proposed amendment has not been drafted with input from all affected Bouldin Creek Neighborhood property owners entitled to vote on the amendment<sup>(1)</sup>. The terms of the Restrictive Covenant specifically state that the instrument may only be amended by the joint action of (a) 75% percent of the real property owners within 300 feet of 108 Gibson Street, (b) the BCNA and (c) the owner of 108 West Gibson Street.

We will not consent to any amendment to the Restrictive Covenant unless we have had the opportunity to negotiate, review and revise the instrument and until it is drafted in a form that is satisfactory to us.

The undersigned further object to any proposed rezoning of 108 West Gibson Street that has not been negotiated, reviewed and approved by the undersigned.

<sup>(1)</sup> These include but are not limited to the individual owners of condominiums at 1401 Eva Street, Austin, Texas 78704 and other neighboring property owners on Eva Street, Newton Street and Congress Avenue.

#### Sign petition

Fields marked with \* are required

Name *	<input type="text"/>
Email *	<input type="text"/>
Comments	<input type="text"/>

- Display options
- ☒ Show my name in the online signature list
  - ☐ Let iPetitions notify me on similar petitions



Home &gt; Categories &gt; Other &gt; 108 West Gibson Street Petition

## 108 West Gibson Street Petition

Sign Blog Signatures Email friends

## Signatures

22 TOTAL

Sign Petition

Page: 1

Now!

Name: Ralph Brocato And Kathy Harris on Jun 14, 2011  
 Comments: We are owner of Unit 105 at 1401 Eva Street

1

Sponsored links

AdChoices

Name: Ryan Allen on Jun 14, 2011  
 Comments: 1401 Eva Street, Unit 406, Austin, Tx 78704

2

**Join Mike  
 Huckabee &  
 Sign**

Name: Caleb Kramer on Jun 14, 2011  
 Comments: 1401 Eva St, Unit 406, Austin, TX 78704

3

The Official  
 Petition to  
 Congress To  
 Repeal

Name: Peter Roy on Jun 14, 2011  
 Comments: I am a resident of the 04 Lofts, Unit 405

4

Obamacare Now!  
[www.repealhealthcare...](http://www.repealhealthcare...)

Name: Susan J. Holand on Jun 14, 2011  
 Comments: 1401 Eva St. #101 and #201

5

Name: Gillian Roy on Jun 15, 2011  
 Comments: 1401 Eva St. #405 Austin, TX 78704 Living in the "04" condo complex across the street and voicing strong objections to any proposed rezoning of 108 Gibson St. Gillian Roy

6

Name: Anna Martin on Jun 15, 2011  
 Comments: I completely agree with this petition with a few exceptions: Parking needs to be a major emphasis of any growth item in this area and should not be limited, and I have no problem with restaurant and bar establishments as well as mobile food sales or outdoor amplified sound (restricted to 10 pm) in the area.

7

Name: Melody Snow on Jun 15, 2011  
 Comments: 1401 Eva Street #403 Austin

8

Name: Emma Roy on Jun 15, 2011  
 Comments:

9

Name: Bebe E. Olufsen on Jun 15, 2011  
 Comments: I live @1401 Eva Street #401

10

Name: Jim Snow on Jun 15, 2011  
 Comments: My wife and I own apartment #403 at 04 Lofts, 1401 Eva Street.

11

12

C12/15

C12  
16

Name: Kathy Harris on Jun 15, 2011  
Comments: We live in the 1401 Eva Street Complex.

Name: AUDREY BERGE on Jun 15, 2011  
Comments:

13

Name: AUDREY & GREG BERGE on Jun 15, 2011  
Comments:

14

Name: Molly Manewal on Jun 16, 2011  
Comments: I live at 1303 Newton Street. I back up to the alley running from Gibson to James and am concerned about the change in my back yard experience.

15

Name: Renee Weller on Jun 16, 2011  
Comments: I oppose the proposal put forth by the BCNA and Peter Barin/SC Investors, LLC

16

Name: Craig Weller on Jun 16, 2011  
Comments: I oppose the proposal put forth by the BCNA and Peter Barin/SC Investors, LLC

17

Name: Ylon Schwartz on Jun 16, 2011  
Comments:

18

Name: Ylon Schwartz on Jun 16, 2011  
Comments:

19

Name: Andy Wigginton on Jun 16, 2011  
Comments: Our address is: 1401 Eva St #306 Austin Tx 78704 There are a number of specific mentions we disagree with, both in the amended covenant and in the specifics of the petition. But I agree with the main assertion that we have not been included in the ongoing conversations, and the wording is too vague.

20

Name: Sara E Moore on Jun 16, 2011  
Comments:

21

Name: Molly Roy on Jun 17, 2011  
Comments:

22



C12  
17

**ORDINANCE NO. 20060831-053**

**AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 108 WEST GIBSON STREET IN THE BOULDIN CREEK NEIGHBORHOOD PLAN AREA FROM MULTIFAMILY RESIDENCE MODERATE HIGH DENSITY-NEIGHBORHOOD PLAN (MF-4-NP) COMBINING DISTRICT TO GENERAL COMMERCIAL SERVICES-MIXED USE-CONDITIONAL OVERLAY-NEIGHBORHOOD PLAN (CS-MU-CO-NP) COMBINING DISTRICT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from multifamily residence moderate high density-neighborhood plan (MF-4-NP) combining district to general commercial services-mixed use-conditional overlay-neighborhood plan (CS-MU-CO-NP) combining district on the property described in Zoning Case No. C14-06-0080, on file at the Neighborhood Planning and Zoning Department, as follows:

Lots 28-32, Nora Eck Resubdivision, west portion of Block 13 and Block 2A, Swisher Addition, an addition in the City of Austin, plus the vacated alley out of the Newning Resubdivision of Block 13, and 2A, as shown on a plat of record in Volume 3, Page 228, Travis County Plat Records (the "Property"),

locally known as 108 West Gibson Street, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "A".

**PART 2.** Except as specifically provided in Part 3 and Part 4, the Property may be developed and used in accordance with the regulations established for the general commercial services (CS) base district and other applicable requirements of the City Code.

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

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 1,400 trips per day.

C12/18

AMENDED RESTRICTIVE COVENANT

This Restrictive Covenant (the "Restrictive Covenant"), is executed this 31st day of August, 2006, (the "Effective Date") by ~~The Southside Church of Christ~~ SC Investors, LLC, Austin, Texas, a Texas ~~non-profit~~ limited liability company ~~corporation~~ (hereinafter referred to as the "Owner") and is as follows:

GENERAL RECITALS:

- A. Owner is the owner of those certain tracts of land (hereinafter, the "Property") described in Exhibit "A" attached hereto and made a part hereof for all purposes.
- B. The term "Owner" means, individually, and the term "Owners" means, collectively, The Southside Church of Christ, Austin, Texas, a Texas non-profit corporation and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Owner or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- C. The term "Neighboring Properties" means any and all real property any portion of which lies within three hundred feet (300') of the Property.
- D. The term "Neighboring Owners" means any and all owners of Neighboring Properties and their heirs, successors and assigns.
- E. The term "Neighborhood Association" means the Bouldin Creek Neighborhood Association, a Texas unincorporated neighborhood association in Austin, Travis County, Texas.
- F. Owner has filed a rezoning application (the "Rezoning") with the City of Austin for the purpose of rezoning the Property to CS-MU-CO-NP General Commercial Services Mixed Use Conditional Overlay zoning district.
- G. Owner has sought the support of the Neighboring Owners and the Neighborhood Association for the Rezoning.
- H. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, the Neighboring Owners, the Neighborhood Association, and the Neighboring Properties.
- I. In reliance on Owner's Agreement to impose these covenants and conditions, the Neighborhood Association and certain Neighboring Owners have agreed to not object to Rezoning of the Property.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the land and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs,

C12/19

successors, and assigns and shall inure to the benefit of the Owner and Neighboring Owners, deed or conveyance of any kind conveying any portion of the Property, but any such conveyance shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are not mere recitals but are terms of and incorporated into this Restrictive Covenant for all purposes.
2. Definition of Uses. Definitions for all uses named in this Restrictive Covenant shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date.
3. Limitation on Off-Site Accessory Parking Use. Off-site accessory parking use shall only be permitted in connection with and as an accessory use for the development upon that certain portion of the Property comprised of those certain tracts of land legally described as Lots 12, 13, 14, 15, 16, 17, 18, and 19, Block 13, Newning Resubdivision of blocks 13 and 2A, Swishers Addition, City of Austin, Volume 1, Page 44C, P.R.T.C.T.
4. ~~Limitation Concerning Personal Improvement Services Use and Personal Services Use. No personal improvement services use or personal services use shall be permitted on any part of the Property beyond one hundred feet (100') from the eastern boundary line of the Property.~~
5. ~~No Above-Ground Parking Facilities Structures.~~ No above-ground parking structures or surface parking lots shall be permitted on the Property except as follows:
  - a. ~~four one-car residential garages (the "Permitted Garages") shall be permitted in the general location shown in Exhibit "B" if and only if said garages are necessary to residential units on the same lot as that on which the garage is located~~ Surface parking shown on the as-built survey of the Property attached hereto as Exhibit "B" (the "Survey") is the only surface parking permitted on the Property, and such parking is permitted if, and only if, the existing church building shown on the Survey (the "Existing Church Building") remains on the property in the location and same footprint as that shown in the Survey. If the Existing Church Building is ever partially or fully demolished or destroyed, Owner shall cease the use of all surface parking on the Property. If Owner reconstructs the Existing Church Building in the same footprint as and of the same height as the Existing Church Building, Owner shall be permitted to construct or resume use of surface parking on the Property.

C12/20

- b. ~~a parking structure may extend for a maximum distance of twelve feet (12') vertical along the eastern boundary line of the Property~~ a parking structure one level above grade level is permitted north of Lot 24, Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas, so long as it does not exceed an elevation of five hundred twenty-seven (527) feet above sea level at any point.
6. Permitted Uses. Development and use of the Property shall be limited to the following uses:
- a. Administrative and Business Office
  - b. Art Gallery
  - c. Art Workshop
  - d. Condominium Residential
  - e. Counseling Services
  - f. Hotel/Motel
  - g. Off-site Accessory Parking restricted in accordance with Paragraph 3 above
  - h. Personal Improvement Services ~~restricted in accordance with Paragraph 4 above~~
  - i. Personal Services ~~restricted in accordance with Paragraph 4 above~~
  - j. Professional Offices
  - k. Religious Assembly
  - l. Software Development
  - m. Townhouse Residential; ~~and~~
  - n. Single-Family Residential, excluding Duplexes;
  - o. financial services;
  - p. general retail sales (convenience);
  - q. general retail sales;
  - r. food sales; and
  - s. food preparation.-



C12  
21

6.a. In addition to those uses listed in Paragraph 6 above, Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use is a permitted use on the Property if, and only if, the owners of Lots 21, 22, 23, 24, 25, and 26 of the Nora Eck Resubdivision of West Portion of Blocks 13 and 2A Swishers Addition to the City of Austin recorded in Volume 3, Page 228 of the Plat Records of Travis County, Texas (the "Adjacent Property Owners") approve each such use in writing signed by all such Adjacent Property Owners. Notwithstanding the provisions set forth in this Paragraph 6.a. and regardless of approval by the Adjacent Property Owners, no individual Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales use may exist on the Property for a period longer than 3 consecutive days, and the property may not be used for Mobile Food Vendor, Mobile Food Sales, Seasonal Food Sales, or Temporary Food Sales more than 15 days annually. Further, notwithstanding the provisions set forth in this Paragraph 6.a., at no time shall there be more than five (5) of such uses (including Mobile Vendor, Mobile Food Sales, Seasonal Food Sales, and Temporary Food Sales) on the Property.

6.b. No more than ten thousand (10,000) square feet of Retail use is permitted on the Property.

Definitions for the above uses shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date of this Amendment.

7. Maximum Vehicle Trips. No use or combination of uses shall be permitted on the Property if such use or combination of uses generates more than one thousand four hundred (1400) vehicle trips per day.
8. Restriction on Site Development Regulations. The site shall be developed and used in compliance with the following site development regulations:
  - a. minimum lot width shall be fifty feet (50');
  - b. minimum street side yard setback shall be ten feet (10');
  - c. maximum building coverage shall not exceed sixty percent (60%) of the total square footage of the Property;
  - d. maximum impervious cover shall not exceed seventy-five percent (75%) of the total square footage of the Property;
  - e. floor to area ratio, as defined in the City Code of the City of Austin, shall not exceed 1.25:1;
  - f. no lot on the Property shall be smaller than five thousand seven hundred fifty (5,750) square feet in size;

C12  
22

- g. no structure on the Property shall be taller in height than the lesser of either fifty feet (50') or the height allowed according to the applicable compatibility standards as set for in the City code of the City of Austin in height;
  - h. minimum front yard setback shall be ten feet (10'); and
  - i. no structure of any kind, including but not limited to balconies, is permitted within nine feet (9') (the "Buffer Area") of the western boundary line of the Property, except as set forth in Paragraph 9 below.
9. Vegetative Buffer and Retaining Wall Required. Within the Buffer Area, Owner shall construct and maintain a vegetative landscape buffer (the "Landscape Buffer") with an average of five feet (5') in width with a minimum of no less than three feet (3') along the western boundary line of the Property. Owner shall also construct and maintain a retaining wall (the "Retaining Wall") along the western boundary line of the Property sufficient to minimize erosion along said western boundary line of the Property and along the boundary line of all tracts of land adjacent to the Property along the western boundary line of the Property. The Landscape Buffer shall consist of native vegetation and shall be sufficient to screen the Project from view by all Neighboring Properties zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. The Retaining Wall shall be no taller than forty-four inches (44") above the grade of the alley adjacent to the Property to the west. Both the Landscape Buffer and the Retaining Wall are permitted within the Buffer Area.
- Further, no vehicular access ways, including but not limited to drives, loading docks, parking spaces, and emergency access drives.
10. Non-residential Development. No more than ~~four~~ twenty thousand (20,000) gross square feet (4,000') of non-residential use and development may ~~take place exist~~ on ~~and or~~ be constructed on the Property, excluding off-site parking, which square feet is inclusive of the Existing Church Building and all other buildings (the "Other Existing Buildings" shown on the Survey).
- 10.a. No additions to the Other Existing Buildings.
- 10.b. Additions to the Existing Church Building are permitted on the Property if and only if such additions are attached to and extend either north or east of the Existing Church Building.
- 10.c. Maximum height of buildings on the property is the height of the Existing Church Building as such building exists on the Effective Date hereof.
- 10.d. No new freestanding building may be constructed. All new constructed must be additions attached to the Existing Church Building. No additions are permitted to the Other Existing Buildings.

C12  
23

11. Mechanical Equipment. No exterior mechanical equipment, including but not limited to HVAC equipment, ventilation fans, and fresh air intake and exhaust equipment, shall be within fifty feet (50') of any property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. Further, all exterior mechanical equipment installed within one hundred feet (100') of property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation shall be screened with masonry or another method to buffer sound generated by the equipment as of the Effective Date. Roof parapets, masonry housing, or other acoustic buffers shall be designed to provide acoustic dampening of the rooftop mechanical equipment. Excluding, but not limited to, surrounding development and traffic on Congress Avenue, the combined running of any mechanical equipment on the Property shall not exceed fifty-five (55) decibels, measured at the boundary line of any Neighboring Property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date.
12. Ventilation. No ventilation or exhaust from the parking garage shall be directed in any manner toward any property or structure zoned or used as a residence.
13. Waste Disposal and Pick-Up. Trash and recycling pick-up between the hours of 10:00 o'clock p.m. central standard time and 7:00 o'clock a.m. central standard time is strictly prohibited. No waste receptacle shall be within fifty feet (50') of the western boundary line of the Property or within fifty feet (50') of the boundary line of the Property adjacent to James Street. Further, any waste receptacle within one hundred feet (100') of the boundary line of the Property shall be screened with a masonry wall at least the height of the receptacle.
14. Rooftop Terraces. Any rooftop terraces along the western side of the Property to which occupants of the Property have access shall be designed with walls, vegetation or other methods (the "Terrace Barriers") to prevent persons from directly overlooking the Neighboring Properties located to the west of the Property. Such Terrace Barriers shall be constructed such that they leave no accessible space within ten feet (10') of the edge of the building on which the terrace is located.
15. Restricted Second-Floor Balconies. There shall be no balconies facing the western boundary line of the Property on any second floor living space.
16. Existing Church Building Permitted. Notwithstanding the provisions set forth in Paragraph 8 of this Restrictive Covenant, the Existing Church Building buildings that constitute the Southside Church of Christ as of the Effective Date hereof shall not be deemed to be in violation of Paragraph 8 (Restrictions on Site Development Regulations) above.
17. Additional Height Restriction on Building. Notwithstanding the provisions set forth in this Restrictive Covenant, no structure on the Property shall be taller

C12  
24

than two (2) stories and twenty-five feet (25') which shall include the parapet wall above the average grade adjacent to the building, within fifty feet (50') directly East of the Eastern boundaries of the Southern most thirty feet (30') of Lot 24 and Lots 25, 26 & 27 of the Nora Eck Resubdivision.

18. Tree Guarantee. Owner guarantees the life of all trees larger than twenty-five (25) caliper inches in diameter ("Protected Trees"). The Protected Trees shall be insured by a Letter of Credit or Surety Bond in the amount of thirty thousand dollars (\$30,000.00) per tree that is over forty (40) caliper inches and fifteen thousand dollars (\$15,000.00) per tree that is between twenty-five (25) and forty (40) caliper inches. The Protected Trees shall be monitored by a tree expert approved by the Neighborhood Association during the construction and/or relocation phase outlined in Paragraph 19. Should any Protected Tree fail to survive for the first three (3) years after the certificate of occupancy is granted, if the tree is not relocated as set forth in Paragraph 19, or for the first three (3) years after relocation, as set forth in Paragraph 19, then Owner shall pay to the Neighborhood Association the applicable amount(s) as stated in the Letter of Credit or Surety Bond for the affected tree(s) and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
19. No tree larger than twenty-five (25) caliper inches in diameter may be removed from the Property, with the exception of the live oak tree located on the northern boundary of the Property line which may be removed only under the following conditions:
  - a. the tree is relocated to another site (the "Tree Relocation Site") by a company approved by the Neighborhood Association within the boundaries of the Bouldin Creek Neighborhood Association (as such boundaries are set forth in the records of the City Clerk of the City of Austin); and
  - b. the Tree Relocation Site is a site approved by the Neighborhood Association; and
  - c. the success of the relocation and subsequent life of the relocated tree is guaranteed or insured as set forth in Paragraph 18.
  - d. the conditions above are contingent upon the physical ability to relocate the tree. If the City of Austin and a certified Arborist determines the tree cannot be relocated, then Owner is permitted to remove the tree and Owner shall pay to the Neighborhood Association the applicable amount as stated in the Letter of Credit or Surety Bond for the affected tree(s), referenced in Paragraph 18, and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
20. Great Streets. A twelve foot (12') wide sidewalk along Gibson Street and an eight foot (8') sidewalk along James Street shall be provided and include trees planted

C12  
25

every forty feet (40') on center.

- 20.a. Outdoor Amplified Sound Prohibited. All outdoor amplified sound is prohibited unless Owner secures written approval from all of those Neighboring Owners whose properties are adjacent to the Property and of the Neighborhood Association expressly approving the use of outdoor amplified sound.
- 20.b. Notwithstanding the other provisions set forth in this Restrictive Covenant, any newly-constructed building or portion of a building constructed in the same footprint and of the same height as either the Existing Church Building or the Other Existing Buildings shall be deemed to be the Existing Church Building and the Other Existing Buildings, respectively, for purposes of the restrictions, obligations, and covenants set forth herein.
21. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant shall entitle the Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations shall not affect in any manner any other rights or remedies which the Owner may have hereunder by reason of any breach of this Restrictive Covenant.
22. General Provisions.
- A. Inurement. This Restrictive Covenant and the restrictions created hereby shall inure to the benefit of the Owner and Neighboring Owners, and shall be binding upon the Owner, and its successors and assigns. If Owner conveys all or any portion of the Property so long as the terms of this Restrictive Covenant are included in any documents of conveyance, Owner shall thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- B. Duration. Unless terminated in accordance with Paragraph 22(I) below, this Restrictive Covenant shall remain in effect in perpetuity.
- C. Non-Merger. This Restrictive Covenant shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.
- E. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be



C12  
26

disregarded in the construction and interpretation of this Restrictive Covenant.

- F. Governing Law: Place of Performance. This Restrictive Covenant and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- G. Notices. Any Notice to the Owner shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- H. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Restrictive Covenant, the Neighborhood Association, any of the Neighboring Owners, or an organization representing such Neighboring Owners may prosecute proceedings at law, or in equity, and recover reasonable attorney's fees, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by any of those persons entitled to enforce it or their heirs, successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
- I. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; (b) the Neighborhood Association; and (c) the Owner. Should the Neighborhood Association not be in existence, as evidenced by a resolution so stating filed with the Texas Secretary of State, such modification, amendment, or termination shall be effective if executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; and (b) the Owner.

Executed to be effective this 31<sup>st</sup> day of August, 2006.

DECLARANT:

---

C12  
27

THE STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this 31<sup>st</sup> day of August, 2006, by Josue Villa, President of Southside Church of Christ, a Texas non-profit corporation.

\_\_\_\_\_  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

Nikelle Meade  
Brown McCarroll, L.L.P.  
111 Congress Avenue, Suite 1400 Austin, Texas 78701

C12  
28

Exhibit "A"

LOTS 28-32 NORA ECK RESUBDIVISION, WEST PORTION OF BLOCK 13 AND BLOCK 2A, SWISHER ADDITION TO THE CITY OF AUSTIN, PLUS THE VACATED ALLEY OUT OF THE NEWNING RESUBDIVISION OF BLOCK 13, AND 2A, AS SHOWN ON THE PAT OF RECORD IN VOLUME 3, PAGE 228.

C12  
29

JAMES STREET  
(60' ROA)

PERMITTED RESIDENTIAL  
GARAGES

NORA ECK SUBDIVISION OF  
WEST PORTION OF BLOCKS 13 & 2A  
SWISHERS ADDITION TO THE CITY OF AUSTIN  
VOL. 3, PG. 228  
P.R.T.C.

16' ALLEY - VACATED BY  
ORDINANCE NO. 77020-A  
VOL. 3785 PG. 78  
CAPTAIN J. DEB  
VOL. 3784 PG. 1087  
CAPTAIN J. DEB  
VOL. 3815 PG. 123  
CAPTAIN J. DEB  
VOL. 3815 PG. 123  
D.R.T.C.

BLOCK 13

NEWMING'S RESUBDIVISION OF BLOCKS 1  
SWISHERS ADDITION TO THE CITY OF  
VOL. 1, PG. 44, P.R.T.C.

108 GIBSON

16' ALLEY

314.61'  
S16°36'36"W

BOUNDARY LINE AGREEMENT  
VOL. 522, PG. 124

140.00'

342.87'

GIBSON STREET  
(80' 5.0.5.)

**Carter::Burgess**

Consultants In Engineering, Architecture,  
Construction Management and Related  
Services  
Carter and Burgess, Inc.  
Main Office  
2705 Bore Cary Road, #200  
Austin, Texas 78746  
TEL: 512.311.1100 FAX: 512.311.1106

108 GIBSON

WINSTON CAPITAL

EXHIBIT B

DATE: Aug. 29, 2006 SCALE: 1"=50'

DRAWN BY: kendole

PROJECT No. 050729

C12/30

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2006 Sep 01 03:39 PM 2006170549

FERGUSONLL \$56.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.