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**SITE PLAN APPEAL TO PLANNING COMMISSISON  
REVIEW SHEET**

**CASE NUMBER:** SP-05-1542CT **HEARING DATE:** April 10, 2012

**PROJECT NAME:** South Congress Cafe

**ADDRESS:** 1600 S. Congress Ave.

**NEIGHBORHOOD PLAN:** Bouldin Creek

**OWNER:** Mueller Family, Ltd. (Roberta Mueller)  
4014 Medical Pkwy.  
Austin, TX 78756

**APPLICANT:** Armbrust & Brown (Amanda Morrow)  
100 Congress Ave., Suite 1300  
Austin, TX 78701

**APPELLANT:** Mueller Family, Ltd. (Neal Meinzer)  
c/o Hohmann, Taube & Summers, L.L.P.  
100 Congress Ave., Suite 1800  
Austin, TX 78701

**CASE MANAGER:** George Zapalac Phone: 974-2725  
[george.zapalac@austintexas.gov](mailto:george.zapalac@austintexas.gov)

**APPEAL:**

Mr. Neal Meinzer, representing the owner of the South Congress Cafe ("Applicant"), has appealed the Director's suspension of a released site plan for an outdoor deck which was constructed at the rear of the restaurant. The Applicant alleges that, because staff previously approved off-site parking, the prior approval should stand and the Commission should overturn the suspension order.

The Director's suspension order is authorized by City Code Section 25-1-412 (*Suspension of a Released Site Plan*); the Applicant's appeal to the Commission is authorized by City Code Section 25-1-461 (*Appeal*)

**PROPOSED DEVELOPMENT:**

The applicant requested a site plan to authorize post-construction, a 2,025 square foot outdoor deck that was built in 2005 without proper permits. The site plan also provides for 22 off-site parking spaces at 1800 South Congress Ave (1 space designed for disabled patrons and 21 other spaces).

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends denial of the appeal and upholding the Director's suspension of the site plan until adequate provision has been made for on-site parking for the disabled, or until a variance from this requirement has been obtained from the Board of Adjustment.

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# **PROJECT INFORMATION**

<b>SITE AREA</b>	6904 square feet	0.1585 acres	
<b>EXISTING ZONING</b>	CS-V-CO-NP		
<b>WATERSHED</b>	East Bouldin Creek (Urban)		
<b>WATERSHED ORDINANCE</b>	Comprehensive Watershed Ordinance (Urban)		
<b>TRAFFIC IMPACT ANALYSIS</b>	Not required		
<b>CAPITOL VIEW CORRIDOR</b>	None		
	<b>Allowed/Required</b>	<b>Existing</b>	<b>Proposed</b>
<b>FLOOR-AREA RATIO</b>	2:1	0.55:1	0.55:1
<b>BUILDING COVERAGE</b>	95%	55%	55%
<b>PARKING</b>	22	0	22 off-site

## **BACKGROUND:**

A restaurant was established in the existing building at this location in 1995. At that time a variance was obtained from the Board of Adjustment to exempt the restaurant from all parking requirements that would have normally applied.

In 2005, the Applicant constructed an outdoor deck with additional seating without obtaining the required approvals, including a site plan and building permits. The addition of the deck increases the number of required parking spaces. The Applicant would have been required to provide additional parking spaces or receive an additional parking variance before beginning construction on the deck. The Applicant was cited for work without a permit, and enforcement action was initiated.

The site plan was submitted on September 15, 2005. In the fall of 2005, the Applicant attempted to obtain an additional parking variance from the Board of Adjustment, but the request was denied by the Board in February, 2006. The Board declined to reconsider the request in March, 2006.

In March, 2006, the City and the Applicant entered into an agreement requiring the Applicant to stop using the deck until all City permits had been obtained and to obtain the necessary permits by dates specified in the agreement. The City agreed to "reasonably work with the [Applicant] to come into compliance with the City Code development regulations and meet all application deadlines...."

In May 2006, the Applicant submitted an updated site plan that provided for off-site parking at Hudson's Meat Market at 1800 S. Congress Ave. Staff initially approved the site plan for parking at this location, but withheld release of the site plan pending submittal of final documents. During this time, it came to staff's attention that the Land Development Code, Sec. 25-6-501 prohibits providing disabled parking spaces off-site "unless the director determines that existing conditions preclude on-site parking."

Staff re-evaluated the application and withheld release of the site plan because the deck could not be considered an "existing condition" justifying off-site parking for the disabled because it was built without a permit. The Director therefore rescinded approval of the site plan before it was released because it did not comply with the Land Development Code.

The City and the Applicant have been in litigation over this deck and the parking since 2007. The Court recently declared the City's prior action of rescinding the approved site plan void, but the

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Court made no ruling the merits of the Applicant's arguments regarding the deck or the City's prior approval of off-site parking. As a result, the Applicant was placed back into the position it was in prior to the rescission, which is that the Applicant had an approved, but not released, site plan.

On March 9, 2012, after the Court had overturned the prior rescission, the Director released the site plan and suspended the site plan the same day because it does not comply with the Land Development Code due to failure to provide for "on-site" disabled parking. The Applicant has appealed that suspension order to the Commission under City Code Section 25-1-461 (*Appeals*).

#### **SUMMARY COMMENTS ON SITE PLAN:**

##### **Land Use:**

The restaurant property is currently zoned CS-V-CO-NP, which allows up to 60 feet of height, 95% impervious cover, and a 2:1 FAR. The proposed development includes the existing one-story structure with 95% impervious cover and a 0.55:1 FAR.

Surrounding development includes commercial properties to the north and south. Across Congress Ave. to the east is a church parking lot. To the west are single-family properties zoned SF-3-NP.

The deck on the rear of the building is separated from single-family residences by a paved alley approximately 20 feet wide. There is a solid wooden fence along the rear property line in accordance with compatibility standards.

The off-site parking at 1800 S. Congress is also zoned CS-V-CO-NP. It contains an existing building and parking with an overall impervious cover of 95%. No construction is proposed at the off-site location except for restriping of the parking spaces.

##### **Transportation:**

The site is located at the intersection of S. Congress Ave. and Monroe St. There is presently no on-site parking on the property, although back-in on-street parking is available along Congress and parallel on-street parking is available along Monroe.

The off-site accessory parking is located at S. Congress Ave. and West Annie St., approximately 700 feet from the entrance of the restaurant. Off-site parking is allowed within 1000 feet of the use it serves under Sec. 25-6-501. The parking lot has a driveway entrance off Congress and an exit to the alley at the rear of the property. The existing parking lot is proposed to be restriped to provide 21 regular spaces and 1 space for the disabled.

The Applicant has a lease agreement with the owner of the off-site parking to use the lot only during the hours of 2:00 PM to midnight on Monday through Thursday, 12:00 PM to midnight on Friday, and all day on Saturdays and Sundays. These are hours in which the business at the off-site location is not open, and therefore the parking is available for use by the restaurant. The Applicant has also filed a public restrictive covenant limiting the use of the deck to the same hours.

Sec. 25-6-501 of the Code states that a required space for parking for the disabled may not be located in an off-site location unless existing conditions preclude on-site parking. Staff has determined that the deck which has been constructed at the rear of the restaurant should not be considered an existing condition because it was built without proper permits.

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Sidewalks are existing along Congress between the restaurant and the parking. Sidewalks along Monroe currently end at the rear of the restaurant building but will be extended to the alley by the applicant in conjunction with the site plan. The City is also undertaking a project to reconstruct the sidewalks at the intersections along Congress to create "bulb-outs" or expanded pedestrian zones, thereby reducing the distance a pedestrian will have to interface with vehicular traffic when crossing the street.

Bus service is available on several Capital Metro routes along S. Congress Ave.

**Environmental:** This site is located in the Bouldin Creek Watershed and subject to Urban Watershed regulations.

#### EXISTING ZONING AND LAND USES

	ZONING	LAND USES
<i>Site</i>	CS-V-CO-NP	Restaurant (General)
<i>North</i>	CS-V-CO-NP	Commercial
<i>South</i>	CS-V-CO-NP	Commercial
<i>East</i>	CS-MU-V-NP	Parking lot
<i>West</i>	SF-3-NP	Single-family residential

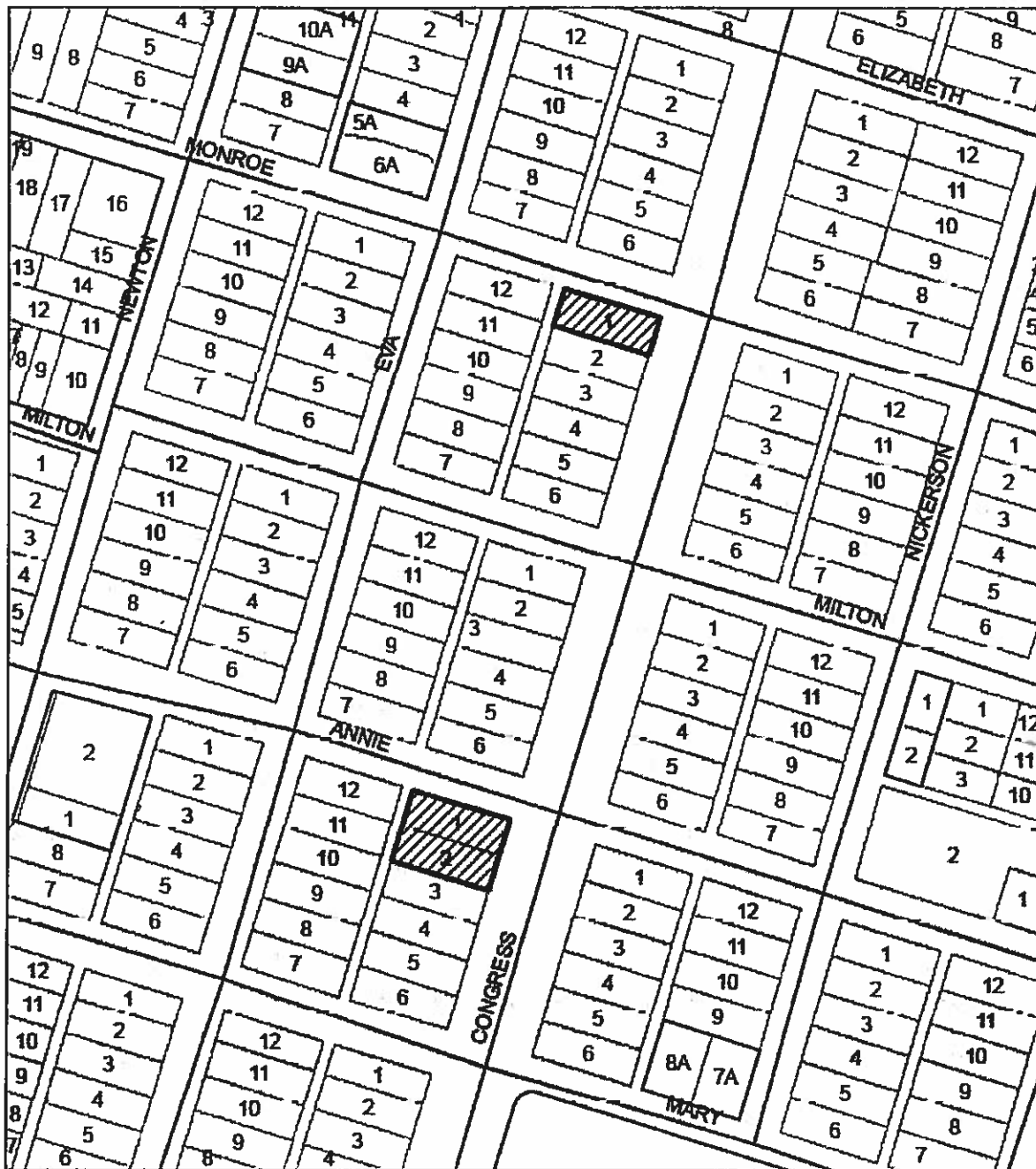
#### ABUTTING STREETS



Street	Right-of-Way Width	Pavement Width	Classification
S. Congress Ave.	120 ft	90 ft	Arterial
Monroe St.	60 ft.	34 ft.	Local

#### NEIGHBORHOOD ORGANIZATIONS:

South Central Coalition  
 Homeless Neighborhood Association  
 SoCo-South First St.  
 Homebuilders Association of Greater Austin  
 South River City Citizens  
 Austin Monorail Project  
 Austin Heritage Tree Foundation  
 Super Duper Neighborhood Objectors and Appealers Organization  
 Bouldin Creek Neighborhood Planning Team  
 South Congress Merchants Association  
 Greater South River City Combined Neighborhood Planning Team  
 Bouldin Creek Neighborhood Association  
 Sierra Club  
 League of Bicycling Voters  
 Real Estate Council of Austin

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 Subject Tract  
 Base Map

CASE#: SP-05-1542CT  
 LOCATION: 1800 S Congress Avenue  
 OFF SITE PARKING: 1800 S Congress Avenue















This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



### LEGEND

- |   |   |   |   |
|---|---|---|---|
| WIRE TO BE RETAINED   | WIRE TO BE REMOVED  | PROPOSED REMAINING CONTOUR  | EXISTING REMAINING CONTOUR  |
|  |  |  |  |
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[illegible]

Parking Calculations 1800 South Congress Avenue - South Congress Club with Office Parking at 1800 South Congress Avenue									
Legal	Description	Lot	Number of Spaces	Area (sq. ft.)	Parking Required	Existing Capacity	Other spaces @ 500 ft. from Negative is 1000	Net Required	Net Available
	South								
	Club Room								
Lot 1, Block 22	Office			3,100	100	0	0	0	0
Lot 2, Block 22	Compass								
	100 Automobiles								
Lot 1, Block 20	Club Outdoor			0.020	175 total 200	20	20	20	20
	100 Automobiles								
Lot 2, Block 20	Club			0.040	275 total 200	20	20	20	20
Lot 2, Block 20	Swimming			0.040	275 total 200	20	20	20	20
Lot 2, Block 20	Swimming			0.040	275 total 200	20	20	20	20

~~ACCESSIBLE ROUTE~~ ~~OFF-SITE PARKING~~

[illegible]



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

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## SITE PLAN APPEAL

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

CASE NO. SP-05-01542CT

DATE APPEAL FILED March 23, 2012

PROJECT NAME South Congress Cafe

YOUR NAME Neal Meinzer

SIGNATURE \_\_\_\_\_

PROJECT ADDRESS 1600 South Congress Ave.

YOUR ADDRESS 100 Congress Ave. Suite 1800  
Austin, Texas 78701

APPLICANT'S NAME Mueller Family, Ltd.

YOUR PHONE NO. (512) 472-5997 WORK

CITY CONTACT \_\_\_\_\_

(512) 472-5997 HOME

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

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

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

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

**DECISION TO BE APPEALED\*:** (Check one)

- |   |   |
|---|---|
| <input type="checkbox"/> Administrative Disapproval/Interpretation of a Site Plan             | Date of Decision: _____                 |
| <input type="checkbox"/> Replacement site plan  | Date of Decision: _____                 |
| <input type="checkbox"/> Planning Commission Approval/Disapproval of a Site Plan              | Date of Decision: _____                 |
| <input type="checkbox"/> Waiver or Extension  | Date of Decision: _____                 |
| <input type="checkbox"/> Planned Unit Development (PUD) Revision                              | Date of Decision: _____                 |
| <input checked="" type="checkbox"/> Other: <u>Denial of Appeal of Suspension of Site Plan</u> | Date of Decision: <u>March 20, 2012</u> |

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

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

See attached letter

(Attach additional page if necessary.)

Applicable Code Section: 25-1-461



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**HOHMANN, TAUBE & SUMMERS, L.L.P.**

**ATTORNEYS AT LAW**

100 CONGRESS AVENUE, 18TH FLOOR

AUSTIN, TEXAS 78701

TELEPHONE (512) 472-5997

FAX (512) 472-5248

[www.hts-law.com](http://www.hts-law.com)

March 23, 2012

Ms. Betty Baker, Chair  
City of Austin Zoning and Platting Commission  
City Hall  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 78701

*(Via Certified Mail, RRR and  
E-mail at [bbaker5@austin.rr.com](mailto:bbaker5@austin.rr.com))*

Mr. Dave Sullivan, Chair  
City of Austin Planning Commission  
City Hall  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 78701

*(Via Certified Mail, RRR and  
E-mail at [sully.jumpnet@sbcglobal.net](mailto:sully.jumpnet@sbcglobal.net))*

Re: South Congress Café SP-05-1542CT (the "Site Plan"); Notice of Appeal of Denial  
of Appeal of Suspension of Released Site Plan

Dear Ms. Baker and Mr. Sullivan:

This firm represents and this letter is submitted on behalf of Mueller Family, Ltd., (the "Applicant"), in the above-referenced matter. On March 9, 2012 the City of Austin ("City") released the above referenced site plan. Also On March 9, 2012 the City issued a letter to suspend the Site Plan citing that the site plan was issued in error (the "Suspension"). Pursuant to Section 25-1-461 of the City of Austin Land Development Code (the "Code"), the Applicant appealed the Suspension on or about March 12, 2012 (the "First Appeal"), which was denied on March 20, 2012 by the attached letter of that date by Gregory I. Guernsey, Director (the "Denial of First Appeal").

Pursuant to Section 25-1-461 of the Code, Applicant hereby appeals the City's Denial of First Appeal and thus the decision to suspend the Site Plan. This letter is being submitted as an attachment to the Site Plan Appeal form prescribed by the City of Austin's Planning and Development Review Department. Further, this Appeal is being submitted to both of you due to our understanding that the "Land Use Commission" as that term is used in Section 25-1-461 of the Code does not formally exist but rather is bi-furcated into a Planning Commission and a Zoning and Platting Commission, of which you are the respective "presiding officers".

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Land Use Commission  
March 23, 2012  
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It is our understanding that Mr. Sullivan is the correct person to submit this Appeal to, but we are submitting this Appeal to both of you out of an abundance of caution. Please direct this Appeal to the correct person. If neither of you are the correct person to receive this Appeal, please let me know immediately.

The following information is provided in compliance with Article 10, Division 4, of Chapter 25-1, Section 25-1-461 of the Code, for an Appeal.

1. **The name, address, and telephone number of the appellant is:**  
Mueller Family, Ltd. c/o Hohmann, Taube & Summers, LLP, Attn: Neal Meinzer, 100 Congress Avenue, Suite 1800, Austin, Texas 78701, ph. (512) 472-5997.
2. **The name, address, and telephone number of the agent for the appellant is:**  
Hohmann, Taube & Summers, LLP, Attn: Neal Meinzer, 100 Congress Avenue, Suite 1800, Austin, Texas 78701, ph. (512) 472-5997.
3. **A statement of facts is as follows:**  
On March 29, 2006 the City of Austin and Trudy's Texas Star, Inc ("Trudy's") entered into a Rule 11 Agreement to obtain approvals and permits for a deck that was constructed at 1600 South Congress Avenue. On September 15, 2005 Trudy's filed site plan SP-05-1542CT for off-site parking which provided for off-site accessible parking. The City approved the Site Plan on May 17, 2006, however shortly thereafter on July 11, 2006 the City rescinded the Site Plan. After years of litigation, on November 1, 2011 the District Court of Travis County (the "Court") made its Final Judgment and declared the City's rescission of the Site Plan to be *ultra vires*, void *ab initio*, and ineffective. Furthermore the Court ordered that the parties shall be deemed to be in the same place that they were prior to the purported rescission wherein Trudy's is deemed to still have an approved site plan and all of the deadline lines under the Rule 11 Agreement were extended to June 2, 2012.

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On March 9, 2012 the City released the Site Plan and issued a site development permit. Simultaneously the City issued a letter to suspend the Site Plan. As a result the First Appeal was timely filed. The City, through the March 20, 2012 letter of Director Gregory I. Guernsey, denied the First Appeal and upheld the Suspension of the Site Plan. As a result, this Appeal of the Denial of the First Appeal (and thus the underlying suspension of the Site Plan) followed.

4. **The decision being appealed is described as follows:**  
The Denial of First Appeal of the suspension of the Site Plan (and thus the underlying suspension of the Site Plan).
5. **The reason the decision should be set aside is described as follows:**  
A Final Judgment was issued by the District Court of Travis County on November 1, 2011 which declared the City's rescission of the Site Plan to be *ultra vires*, void *ab initio*, and ineffective. The Court ordered that the parties shall be deemed to be in the same place that they were prior to the purported rescission wherein Trudy's is deemed to still have an approved site plan, which such site plan proposed accessible off-site parking. On March 9, 2012 the City issued a site development permit but failed to release the Site Plan. Concurrently with the issuance of the site development permit the City issued a letter to suspend the Site Plan. Offsite accessible parking was previously approved and the approval should stand with this Site Plan. The Director already made the determination that existing conditions preclude onsite parking.

Upon receipt of this letter and pursuant to Section 25-1-461 we hereby request a hearing on this Appeal at the next regularly scheduled meeting of the Land Use Commission (or the Planning Commission or the Zoning and Platting Commission as the case may be).

Per Section 25-1-461, a copy of this Appeal is also being timely served upon the "accountable official" (Mr. Gregory I. Guernsey).

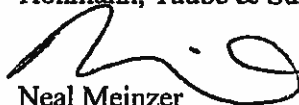
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Land Use Commission  
March 23, 2012  
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Thank you for your attention to this matter and please do not hesitate to contact me if you need further information regarding this appeal.

Very truly yours,

Hohmann, Taube & Summers, LLP



Neal Meinzer  
For the Firm

BNM/tg

Enclosure

cc: Gregory I. Guernsey  
Sue Edwards  
Patricia Link  
George Zapalac  
Eric Taube  
Richard Suttle, Jr.  
Stephen Truesdell  
Amanda Morrow



City of Austin  
Founded by Congress, Republic of Texas, 1839  
Planning and Development Review Department  
One Texas Center, 505 Barton Springs Road  
P.O. Box 1088, Austin, Texas 78767

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March 20, 2012

Mr. Richard Suttle, Jr.  
Armbrust & Brown, PLLC  
100 Congress Avenue, Suite 1300  
Austin, TX 78701-2744

Re: South Congress Café, SP-05-1542CT  
Notice of Appeal of Suspension of Released Site Plan

Dear Mr. Suttle:

I am writing in response to your letter dated March 12, 2012 regarding the suspension of the released site plan for the South Congress Café. I appreciate the position expressed by Mr. Eric Taube and Ms. Amanda Morrow on your behalf at the meeting that occurred last Friday, March 16, 2012 regarding the project, its history and your client's intent to comply with the City Code.

Based on the information I have been provided, I am denying your request and upholding the suspension of the released site plan because I have determined that the site plan was approved in error. I would be willing to lift the suspension if the site plan is revised to address the City requirements for disabled parking.

Please contact me at (512) 974-2387 if you have any questions or would like to discuss this matter further.

Sincerely,

Gregory I. Guernsey, AICP  
Director

cc: Ms. Patricia Link, Assistant City Attorney  
Mr. George Zapalac, Development Services Manager, PDRD  
Mr. Eric Taube  
Ms. Amanda Morrow

**Zapalac, George**

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**From:** [REDACTED]  
**Sent:** Saturday, March 31, 2012 5:18 PM  
**To:** Zapalac, George  
**Subject:** Case SP-05-1542CT

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As the homeowner at 1510 Eva St. Please accept this as my opposition to the project for South Congress Cafe.

The parking spaces being built are still too few to allow for their existing business, much less a 2,000 ft expansion.

This is still a family friendly neighborhood, and I would appreciate the city's consideration in this matter.

I request that any expansion be enclosed so as to not impose the noise from South Congress cafe upon its neighbors.

Thank you,

Brian Corley

**Zapalac, George**

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**From:** Adele Riffe [redacted]  
**Sent:** Monday, April 02, 2012 11:42 AM  
**To:** Zapalac, George  
**Subject:** site plan appeal #SP-05-1542CT

Mr. Zapalac -

I write in reference to the site plan appeal that I received in the mail for South Congress Cafe, to allow them to construct a 2000+ sq. ft. deck at 1600 S. Congress. Is this ANOTHER deck that they want to build or is it the deck that they have already built behind the restaurant - without a permit or approval from the City? (In fact, they continued to work on the deck, even after the City inspectors told them to stop!) I went to the City website and there is no specific information related to this permit.

Please respond.

Thank you,  
Adele Riffe  
1511 Rva Street  
Austin, Texas

4/2/2012

**Zapalac, George**

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**From:** Tim Rotunda [REDACTED]  
**Sent:** Tuesday, April 03, 2012 9:30 PM  
**To:** Zapalac, George  
**Subject:** Case Number: SP-05-1542CT

Written Comments regarding the above case:

My name is: Tim Rotunda  
My address is: 1605 Eva St., Austin, Texas 78704  
Today's date is: 03-Apr-2012  
My Daytime #: 512.656.7813  
My Comments are: I Object to the above application.

This application should be rejected based on the owners disregard for our neighborhood, lack of participation in solutions to the parking issues they create that seriously negatively impact our neighborhood and cause many RPP to have been implemented. Off site parking is simply a loophole in the code and should not be allowed to be used in this case. Their garbage cans take up 4 feet of the alley width and smell bad. Their delivery trucks park in the middle of Monroe and create a dangerous situation for those trying to move through the area. This business needs to remove the deck and utilize as efficiently as possible, the space taken up by their illegally built deck, for parking, trash container placement, loading dock, sidewalk, and other things that a business such as theirs require.

Please do NOT allow this travesty to continue any longer. I will encourage all my neighbors to submit this form to you encouraging you to deny this application.

Tim

4/4/2012