

Zoila Vega-Marchena

From: Zoila Vega-Marchena [redacted]
Sent: Tuesday, September 27, 2011 12:55 PM
To: PC Alfonso Hernandez; PC Chair Dave Sullivan; PC Danette Chimenti; PC Dave Anderson; City PC Donna Tiemann; City PC Jean Stevens; PC Mandy Dealey; mnrghatfield@yahoo.com; PC Sandra Kirk
Cc: City Arborist Michael Embesi; CM Laura Morrison; CM Kathie Tovo; CM Bill Spelman; CM Chris Riley; CA Shannon Halley; CA Lewis Leff; CA Leah Bojo; CA Heidi Gerbracht; CA Barbara Rush
Subject: please, grant postponement for Bowie St case or deny HT variance
 PC Commissioners,

Please, grant us a postponement of 2 weeks regarding the Bowie St Ht variance request. We ask for this postponement because it is customary to extend this courtesy to the applicant as well as those who are opposing the variance, and the applicant was granted a postponement; and because we need more time to review the applicant's architect plans. After the last PC meeting, Will Marsh, applicant's representative, informed us that the applicants hired an architect to design a plan around the heritage tree, and that this architect was almost done with the plan. Will said that they were planning to submit the plan to the PC a week ahead of time for your review. We asked for a copy of the plan, and for a presentation or meeting to discuss the plan, but Will told us that he needed to ask his bosses. We have not heard from the applicant and we have not seen any architect plans from the applicant. Since the spirit of the ordinance is to try to design to save the tree and apply for all variances, exemptions, etc. to save the tree, we asked Will if we could meet to discuss tradeoffs, but Will said that they were not going to discuss trade-offs with us, that they would discuss those at the PC meeting this evening.

If you deny the postponement, we ask that you deny the variance request, and that the heritage tree be preserved. The applicant has not met the 3 conditions required to grant a variance. The applicant has not shown any effort at all to try to design to save the tree, and there has been no discussion of potential trade-offs to save the tree.

As shown in the slide attached, the HT ordinance requires that 3 conditions be met before granting a variance. These 3 conditions apply also for the public process. City legal has told you that the PC has latitude to grant a variance because it is a public process, but the ordinance requires that the 3 conditions be met. There is no latitude to not follow city code just because it is a public process. Actually, the community asked for a public process to ensure transparency and that the HT ordinance be followed as written, as is required by law, without latitude and interpretations that are not allowed by law.

The 3 conditions are that: 1) The case meets the criteria as determined by the City's arborist, and the city's arborist report states that the case does NOT meet the criteria. 2) There is a design to save the tree ("removal not caused by method chose to develop property"), 3) That all variances, exemptions, etc. that can save the tree be applied for. The spirit of the HT ordinance is to try to save the heritage tree by designing around it, and to investigate potential exemptions, etc. to save the tree.

The applicants have refused to design around the tree because they think that this will reduce their density, which will reduce tax revenue. The applicant plans to build a 5 story parking garage with a slender 30 story tower above it. The tower will not be affected by the space allowed for a small pocket park to save the tree. The pocket park will affect only the parking garage, and the density lost by the pocket park can be made up by adding a 6th parking story. Applicant states that "studies have shown that people don't like driving up a 6th parking story", so they are not willing to consider this option. But all of the high rise buildings downtown have more than 5 stories of parking garage.

The discussion can NOT proceed to mitigation because the applicant has NOT met the 3 conditions of the HT ordinance. Applicant has NOT provided a plan that shows that they tried to design around the tree but couldn't, or that it would cost this much and cause X to occur. Applicant has NOT even shown a design at all. All that is available is a simple sketch of the first parking story.

However, if you do proceed to discuss mitigation, there are mitigation rules in the city code that apply for variances of HTs in the public process. I'm attaching a copy of these. The city rules state that **mitigation for tree removals can be considered only after all feasible design alternatives to preserve trees have been exhausted**. The rules also state that contributions to the Urban Forest Replenishment Fund (Tree Mitigation Fund) can only be made after all other feasible mitigation efforts have been exhausted. The rules also state that the mitigation funds can only be used for off-site tree planting and maintenance, promoting tree care and preservation, urban forest conservation, and enforcement of City tree protection and mitigation regulations.

The City Case Manager states, in the PC backup material, that this case does NOT meet the approval criteria for the City Arborist. **City staff recommends against tree removal**. The City Case Manager states that if PC were to consider mitigation, that this money be directed to the Watershed Shoal Creek project, to be used for vegetation that provides water quality control, heat abatement, moderate stream temperature, etc. However, city code rules clearly state that **mitigation funds have to go to the Tree Mitigation Fund**, and thus, can't go to a city project such as the Shoal Creek trail project (unless that project applies for a grant, to plant trees, to the Tree Mitigation Fund). Further more, city code states that the **Tree Mitigation Fund can only be used for planting trees and other projects that relate directly to recuperating the ecosystem benefits lost**. The Tree Mitigation Fund can NOT be used for planting vegetation other than trees and understories, and can NOT be used for water quality control, heat abatement, etc. unless these result from the trees that were planted. In addition, tree mitigation funds can NOT be assigned to the Shoal Creek Trail project because no trees can be planted in that section of the trail due to the trail design. In fact, all of the trees by the bank of the trail will be removed to install the trail.

Last, the HT ordinance requires that the removal of a heritage tree not be based on a condition caused by the method chosen by the applicant to develop the property UNLESS the removal of the heritage tree will result in a design that will allow for the maximum provision of ecological services, historic and cultural value of the trees on the site. This indicates that the value of a heritage tree is not only the ecological services provided by the tree, but also the historic and cultural (community) values of the tree. And ecological services include the ecosystem benefits, the aesthetic value, the wildlife value, etc.

It is difficult to define the value of a tree. What is not difficult is to understand that the community in Austin wants to preserve heritage trees, in public and private land, including areas of high density development such as downtown. In fact, all of the plans, the Downtown Austin Plan, the Imagine Austin plan, etc. and all of the regulations like CURE, high density bonuses, etc. are aimed at increasing open green spaces and preserving trees. It is not an issue of high density vs. a tree, the high density could be obtained by discussing trade-offs. It is not an issue of private vs public land. The heritage tree ordinance was developed for all of Austin and applies to all of Austin, including private and public land, including high density areas. It is an issue of listening to the majority of the community and NOT to special interests. We want to preserve more heritage trees, we want more green open spaces, we want high density as well as a good quality life. We want a LIVEABLE COMMUNITY.

Best regards,
Zoila

Zoila Vega, Ph.D.
Austin Heritage Tree Foundation

To: Members of the Planning Commission

CC: Don Perryman, Senior Planner

Date: September 26, 2011

Amendment: C20-2011-011

Changes in flag lot requirements for residential subdivision applications.

Thank you for the opportunity to comment. We have first-hand knowledge of the impact of proposed resubdivision that would not be allowed under private deed restrictions. The resubdivision application process has been very costly for the City of Austin and for property owners who oppose the application for multiple reasons. The proposed new sections would have simplified the review and decisions.

Definitions: ... minimum lot width not less than 20-feet wide
SUPPORT THE INCREASED MINIMUM WIDTH.

Proposed new sections:

- (A) ... must submit a driveway plan and a utility plan for review and approval with the final plat application.

SUPPORT INCLUSION OF DRIVEWAY PLAN AND UTILITIES PLAN. STEPS SHOULD BE TAKEN TO ENSURE THAT FUTURE ISSUANCE OF BUILDING PERMITS BE BASED UPON THAT SPECIFIC FINAL PLAT APPROVAL.

- (B) ...addresses must be displayed at street.

SUPPORT DISPLAY OF ADDRESS.

- (C) ...may not be approved if it is in violation of private deed restrictions against resubdivisions.

SUPPORT WITH FOLLOWING LANGUAGE ADDED.

“...MAY NOT BE APPROVED IF IT IS IN VIOLATION OF PRIVATE DEED RESTRICTIONS AGAINST RESUBDIVISIONS THAT DO NOT MEET SPECIFICALLY DEFINED MINIMUM LOT WIDTH AND OTHER SPECIFICATIONS AS OUTLINED IN THE SECTION OF DEED RESTRICTIONS THAT SPEAKS TO RESUBDIVISION.” MANY SUBDIVISIONS THAT HAVE PRIVATE DEED RESTRICTIONS HAVE BEEN ANNEXED. THE CITY WAS AWARE OF THE RESTRICTIONS AT THE TIME OF ANNEXATION AND HAS THE CAPABILITY TO HONOR RESUBDIVISION SPECIFICATIONS. RESIDENTS UNDERSTAND THAT NOT ALL COMPONENTS OF THE PRIVATE RESTRICTIONS CAN OR SHOULD BE ENFORCED BY THE CITY. HOWEVER, RESUBDIVISION IS OF CRITICAL IMPORTANCE TO BOTH THE CITY, THE OWNER, AND TO OTHERS WHO OWN PROPERTY IN THE SUBDIVISION. WHEN ORIGINAL DEED RESTRICTIONS CONTAIN SPECIFIC LANGUAGE REGARDING RESUBDIVISION, THE LAND USE CONTEMPLATED IN THE RESUBDIVISION APPLICATION TO THE CITY OF AUSTIN SHOULD BE REQUIRED TO BE COMPATIBLE WITH THE DEED RESTRICTIONS. WHEN THE CITY HAS APPROVED A RESUBDIVISION, ENFORCEMENT OF THE DEED RESTRICTION THROUGH PRIVATE LEGAL ACTION BECOMES MUCH MORE COMPLICATED AND MORE COSTLY.

(D) ... fire lane for access for emergency responders.

SUPPORT WITH CHANGE. DUE TO MULTIPLE DWELLINGS BEING BUILT IN CLOSE PROXIMITY, THERE IS A GREATER RISK. FOR RESUBDIVIDED LOTS OF LARGER SQUARE FOOTAGE AND FURTHER DISTANCE FROM THE STREET, THERE IS SUBSTANTIAL RISK OF FIRE EQUIPMENT NOT BEING ABLE TO ACCESS THE DWELLING. CONSIDER "RESIDENTIAL FLAG LOT DESIGNS WHICH INCLUDE **FIVE OR MORE UNITS OR WHERE UNITS ARE LOCATED MORE THAN XX FEET FROM THE NEAREST STREET ACCESS** MUST BE CONSTRUCTED WITH A FIRE LANE FOR ACCESS FOR EMERGENCY RESPONDERS. " SAFETY OF FUTURE RESIDENTS SHOULD BE A PRIORITY FOR THE DEVELOPER, WITHOUT REGARD TO COST OF THE FIRE LANE.

(E) ... sprinkled for fire protection.

AGREE WITH STAFF RECOMMENDATION DUE TO LIMITATIONS OF STATE LAW.

Respectfully,

Douglas and Marie Moore
12202 Conrad Road
Austin, Texas 78727
512-258-5633
MooreMD10@aol.com

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

Commission is required to approve the subdivision by State law if no variances are required, and if it meets all requirements. A board or commission's decision on a subdivision may only be appealed if it involves an environmental variance. A variance may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision. A notice of appeal must be filed with the director of the responsible department no later than 14 days after the decision. An appeal form may be available from the responsible department.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (it may be delivered to the contact person listed on a notice); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

For additional information on the City of Austin's land development process, visit our web site: www.ci.austin.tx.us/development.

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

Case Number: C8-2010-0105.0A
 Contact: Don Perryman, (512) 974-2786 or
 Yolanda Parada, (512) 974-2784
 Public Hearing: September 13, 2011, Planning Commission

LEONARD FRIESENHART
 Your Name (please print)

I am in favor
 I am object

1109 RED LICE DE
 Your address(es) affected by this application

Handwritten Signature
 Signature

9/22/11
 Date

Daytime Telephone: 471-1600

Comments: BUILDING TWO OR THREE SINGLE-FAMILY HOUSES ON ONE LOT IS COMPLETELY OUT OF CHARACTER WITH THE NEIGHBORHOOD. THE CITY SHOULD NEVER HAVE ALLOWED THE SEBAND HOUSE TO BE BUILT. THE PROPOSAL VIOLATES A NUMBER OF DEED RESTRICTIONS OF THE ADJACING SUBDIVISION - QUAIL CREEK PHASE IV. LOTS IN THE NEARBY PLATS SUBDIVISIONS WERE INTENDED TO BE PARCELS WITH SINGLES - FAMILY DWELLINGS.

If you use this form to comment, it may be returned to:
 City of Austin - Planning & Development Review Dept. /4th Fl
 Don Perryman
 P. O. Box 1088
 Austin, TX 78767-8810

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 - appearing and speaking for the record at the public hearing;
- and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
 - is the record owner of property within 500 feet of the subject property or proposed development; or
 - is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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 Contact: Don Perryman, (512) 974-2786 or
 Yolanda Parada, (512) 974-2784
 Public Hearing: September 13, 2011, Planning Commission

NELLEN
 Your Name (please print) I am in favor
 I object

1188 S MEADOWS CRT
 Your address(es) affected by this application

[Signature] 9.13.11
 Signature Date

Daytime Telephone: N/A

Comments: Case is done

If you use this form to comment, it may be returned to:
 City of Austin - Planning & Development Review Dept. /4th Fl
 Don Perryman
 P. O. Box 1088
 Austin, TX 78767-8810

Perryman, Don

From: Sandra Zaragoza (szaragoza@bizjournals.com)
Sent: Tuesday, September 27, 2011 3:41 PM
To: Perryman, Don
Subject: 1111 neans

Cb

Dear Don Perryman:

I'm attending tonight's planning and zoning meeting regarding 1111 Neans, but I'm emailing you to make sure my objection is registered. Thanks, Sandra Zaragoza

As a first-time homeowner, I would like to strongly object to the request to resubdivide Lot 1, Block C, Neans Place Section 1 by applicant Francisco Guerrero.

I would like to raise a few questions/make comments.

1. Applicant Guerrero has already built a small second home on the lot that remains unoccupied. It appears Guerrero did not ask permission from the city to build the second home. Was he building a second home for his family? Or was his intention was to skirt the city's zoning process? If so, then I believe any plans for future building should be more closely scrutinized.
2. The second home's size and design is incongruent to neighboring homes on Neans Street, Aspen Street and Red Cliff Drive. How will the value of neighboring homes be affected if prospective buyers see the potential of other Neans property owners building second or third homes on their lots. Does the city want to open that street up to willy-nilly housing?
3. This is not just a question of congruency and aesthetics. A third small home on a large lot is suspiciously close to developing a duplex-like situation, which will bring tenants, not homeowners into the neighborhood. My motivation is not to keep out renters, but rather to protect the integrity of a special North Austin neighborhood and the value of my first home. Many of my neighbors have made improvement to their homes and their investments deserve to be protected. Building a second small home on that property was an instant blemish to the neighborhood. Building two small homes would be opening the neighborhood up to half-baked structures that do not fit into the neighborhood.

In conclusion: Ours is one of the few "Central-esque Austin" neighborhoods where a teacher, police officer or construction worker can afford a home. I don't have to remind you that that is a BIG DEAL. Please help us keep the integrity and consistency of this neighborhood, so that other hardworking professionals will want to live here. I believe the city should take a look at the potential in the tree-lined streets, 70s tract homes and sidewalks that give our neighborhood character. We deserve as much, if not more, thoughtful planning as the downtown core or any central Austin neighborhood.

We are a neighborhood teetering on the edge. We have crimes taking place all around us. Instead of approving a third home on a lot, take a look at the potential for revitalization. We have Central Health finishing up a beautiful clinic for low-income residents, and YMCA investing in a new gym. HEB is investing in renovating its store into a Hispanic concept market.

I'm happy and proud to live in a socially and economically diverse neighborhood, I just want to make sure that pockets of single-family dwellings remain in tact because that will encourage more investment and long-term homeownership.

Sincerely,
Sandra Zaragoza
1108 Red Cliff Drive

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9/27/2011