

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, March 10, 2014

CASE NUMBER: C15-2014-0033

____ Jeff Jack
____ Michael Von Ohlen
____ Ricardo De Camps
____ Bryan King
____ Fred McGhee
____ Melissa Hawthorne
____ Sallie Burchett

APPLICANT: Ellis, Winstanley

OWNER: Margaret, Gilbreth

ADDRESS: 2330 LAMAR BLVD

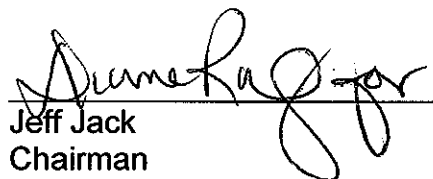
VARIANCE REQUESTED: The appellant has filed an appeal challenging the Planning & Development Review Department's decision that proposed construction at 2330 South Lamar is not within the scope of alterations allowed to a legally non-complying structure under Section 25-2-963 (sometimes called the "Remodel Ordinance") and other provisions of Chapter 25-2.

BOARD'S DECISION: POSTPONED TO APRIL 14, 2014 BY APPLICANT

FINDING:

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:
3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

Leane Heldenfels
Executive Liaison



Jeff Jack
Chairman

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.

A board or commission's decision 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.

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.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

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 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: C15-2014-0033

Contact: Leane Heldenfels, 512-974-2202

Public Hearing: Board of Adjustment, March 10th, 2014

Merk & Charles Bentley

Your Name (please print)

☒ I am in favor
☐ I object

2409 Ann Arbor Ave # 82

Your address(es) affected by this application

Mark Bentley

Signature

8-4-2014

Date

Daytime Telephone: 512-461-5375

Comments: We are in favor of allowing the rebuilding of the old Artz restaurant as nearly like it was, but of course compliant with fire and safety codes, ADA requirements, etc. Code requirements should be applied consistently and reliably. We are in favor because 1) Artz is an iconic South Austin institution, 2) the rebuilt restaurant is preferable to an empty lot, 3) the owners are attempting to good faith to restore the building while bringing it into safety compliance.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088



MEMORANDUM

TO: Jeff Jack, Board of Adjustment Chair
Board of Adjustment Members

FROM: Christopher Johnson
Development Assistance Center Manager
Planning & Development Review Department

DATE: March 3, 2014

SUBJECT: Appeal of Administrative Decision/Request for Interpretation for 2300 S. Lamar

Case Summary

The subject property at 2330 S. Lamar Blvd. is the location of the former Artz Rib House Restaurant which closed in the spring of 2012. On 3/6/2013 Staff approved a site plan exemption request, DA-2013-0091, for the remodel of the existing restaurant. The exhibit included with the site plan exemption request showed remodel of the existing restaurant, demolition of the smokehouse and entry totaling 186-sf, and additions to the front and rear of the building totaling 1,152-sf.

On 3/28/2013, the appellant obtained approval of a partial demolition permit and demolished the entire structure, except for an approximately 25-ft long section of exterior wall along the northeast side of the building. The existing building foundation has been covered by a significant amount of compacted base material and the site framed up for the pouring of a new foundation. A commercial building plan submittal was filed on 6/20/13 for "Interior Remodel Renovation and Addition to Existing Restaurant" for an approximate 6,900-sf restaurant, excluding deck area. This building plan submittal was rejected due to the proposed building plans not being consistent with the approved site plan exemption, and the fact that there is no existing restaurant to remodel, since the existing restaurant was demolished. The appellant disagrees with the denial of their commercial building plan submittal and the determination that it is not a remodel of the existing restaurant.

Staff believes the appellant's primary objection is with the Director's determination that the construction is beyond what's allowed without a site plan under Section 25-5-2. That issue is beyond the Board's authority, since Chapter 25-5 is not a zoning regulation, and the Board's decision in this case will not impact the requirement to submit a site plan.

However, portions of the appeal do imply that the appellant disagrees with staff's determination that the proposed construction is beyond what's allowed for a "remodel" of a legal non-complying structure under Section 25-2-963 and/or related provisions of Subchapter E.

Since these are questions within the Board's authority, we have posted this appeal solely to allow the Board to review staff's determination on these issues. The remainder of this report is limited to these issues.

Arguments

The project located at 2330 S. Lamar is still a remodel under all applicable zoning and other city codes. Section 1.2.3 of the zoning code [Chapter 25-2, Subchapter E, APPLICABILITY] specifically qualifies Level III alterations as defined in the International Building Code as remodels. Nothing that has been performed at the site would make the project less compliant with Section 25-5-2 that the day the site plan exemption was approved.

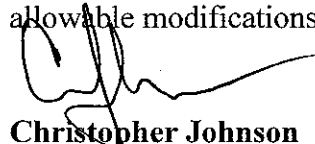
Staff Interpretation

Chapter 25-2, Subchapter E, Section 1.2.3 establishes the applicability of partial compliance with the Design Standards and Mixed-Use Subchapter E, also known as the Commercial Design Standards, based on terms of alteration defined in the adopted Existing Building Code. It does not define the term remodel as it pertains to modification of a non-complying structure.

Although the term "remodel" is not defined under the City's zoning regulations, the restaurant structure that existed on the subject property prior to its demolition, was considered a legal noncomplying structure since the site did not comply with the sidewalk and building placement requirements for a Core Transit Corridor under Chapter 25-2, Subchapter E, Section 2.2 – *Relationship of Buildings to Streets and Walkways*. Therefore permitted modification to the noncomplying structure is limited to what is authorized under Section 25-2-963. It is staff's determination that since the noncomplying structure was substantially demolished, including the roof, all interior and exterior walls, except for approximately 25-ft segment of the northeast wall, and a new foundation proposed (the old foundation is buried under fill, and not structurally connected to the proposed construction), there is no existing non-complying structure to modify.

Additionally, Section 25-2-964 limits the restoration to damaged or destroyed, noncomplying structures to *structures that were damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind*. The demolition of the noncomplying structure at 2330 S. Lamar was not accidental. It was intentional demolition performed by the appellant's contractor and thus the non-complying structure cannot be restored to its prior noncompliant configuration.

Based on the findings above, staff respectfully requests the Board to uphold the Director's determination that the demolition of the entire roof, all interior and exterior walls, except for a small segment of the northeast wall, and the covering of the existing foundation with base material for the construction of a new foundation, is not a remodel in conformance with the allowable modifications to a noncomplying structure authorized by Section 25-2-963.



Christopher Johnson
Development Assistance Center Manager
Planning and Development Review Dept.

Pertinent Code references:

25-2-963 MODIFICATION AND MAINTENANCE OF NONCOMPLYING STRUCTURES.

(A) Except as provided in Subsections (B), (C), and (D) of this section, a person may modify or maintain a noncomplying structure.

(C) Except as provided in Subsections (E) and (F), a person may not modify or maintain a noncomplying structure in a manner that increases the degree to which the structure violates a requirement that caused the structure to be noncomplying.

(F) A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:

(1) the modified portion of the building:

(a) does not extend further into the required yard setback than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section;

(b) unless located in a street side yard, is not greater in height than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section; and

(c) complies with the height requirements of this title; and

(2) the additional length of a modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet measured from the existing building and parallel to the lot line.

(G) Subsection (F) applies to each yard setback requirement with which the existing building does not comply.

25-2-964 RESTORATION AND USE OF DAMAGED OR DESTROYED NONCOMPLYING STRUCTURES.

(A) A person may restore a noncomplying structure that is damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind if the restoration begins not later than 12 months after the date the damage or destruction occurs.

(B) Except as provided in Section 25-2-963 (*Modification And Maintenance Of Noncomplying Structures*):

(1) a structure restored under this section is limited to the same building footprint, gross floor area, and interior volume as the damaged or destroyed structure; and

(2) a noncomplying portion of the structure may be restored only in the same location and to the same degree of noncompliance as the damaged or destroyed structure.

Chapter 25-2, Subchapter E – DESIGN STANDARDS AND MIXED-USE

1.2.3. Partial Compliance. For a project that is not subject to Sections 1.2.2 (Full Compliance) or 1.2.4 (Exemptions), the Director shall determine which standards of this Subchapter apply to the project or a portion of the project in accordance with the following requirements:

A. A new building, or building addition as defined by the adopted Existing Building Code must comply with:

1. Article 2 unless compliance cannot be achieved due to:

- a. The location of existing buildings or other improvements retained on the site;
- b. The size or nature of the proposed building limits placement on the site;
- c. Topography, protected trees, or critical environmental features; or
- d. The location of water quality or detention facilities.

- e. A waiver from the requirements of Article 2 shall be to the minimum extent required based on the criteria of this subsection; and
- 2. Article 3.
- B. A remodeled building or facade must comply with:
 - 1. Section 2.5 (Exterior Lighting); and
 - 2. Article 3 where the remodeled building is considered a "Level 3" Alteration or Addition as defined by the adopted Existing Building Code such that the work area exceeds 50% of the aggregate area of the building and the principal street facade.

Site Plan Exemption criteria (provided for information only)

25-5-2 SITE PLAN EXEMPTIONS.

(A) The director shall determine whether a project is exempt under this section from the site plan requirement of Section 25-5-1 (Site Plan Required). The director may require that the applicant submit information necessary to make a determination under this subsection. The director may require an applicant to revise a previously approved site plan under Section 25-5-61 (Revisions To Released Site Plans).

(B) A site plan is not required for the following development:

- (1) construction or alteration of a single-family residential, single-family attached residential, duplex residential, two-family residential, or secondary apartment special use structure, or an accessory structure, if:
 - (a) not more than one principal residential structure is constructed on a legal lot or tract; and
 - (b) a proposed improvement is not located in the 100 year flood plain, or the director determines that the proposed improvement will have an insignificant effect on the waterway;
 - (2) removal of a tree not protected by this title;
 - (3) interior alteration of an existing building that does not increase the square footage, area, or height of the building;
 - (4) construction of a fence that does not obstruct the flow of water;
 - (5) clearing an area up to 15 feet wide for surveying and testing, unless a tree more than eight inches in diameter is to be removed;
 - (6) restoration of a damaged building that begins within 12 months of the date of the damage;
 - (7) relocation or demolition of a structure or foundation covering not more than 10,000 square feet of site area under a City demolition permit, if trees larger than eight inches in diameter are not disturbed and the site is not cleared;
 - (8) development in the extraterritorial jurisdiction that is exempt from all water quality requirements of this title; or
 - (9) placement of a commercial portable building on existing impervious cover if the building does not impede or divert drainage and the site complies with the landscaping requirements of this title.
- (C) Except for a change of use to an adult oriented business, a site plan is not required for a change of use if the new use complies with the off-street parking requirements of this title.
- (D) Except for an adult oriented business, a site plan is not required for construction that complies with the requirements of this subsection.
- (1) The construction may not exceed 1,000 square feet, and the limits of construction may not exceed 3,000 square feet, except for the following:
 - (a) enclosure of an existing staircase or porch;
 - (b) a carport for fewer than ten cars placed over existing parking spaces;

- use;
 - (c) a wooden ground level deck up to 5,000 square feet in size that is for open space
 - (d) replacement of a roof that does not increase the building height by more than six feet;
 - (e) remodeling of an exterior facade if construction is limited to the addition of columns or awnings for windows or entrance ways;
 - (f) a canopy over an existing gas pump or paved driveway;
 - (g) a sidewalk constructed on existing impervious cover;
 - (h) replacement of up to 3,000 square feet of building or parking area lost through condemnation, if the director determines that there is an insignificant effect on drainage or a waterway; or
 - (i) modification of up to 3,000 square feet of a building or impervious cover on a developed site if the modification provides accessible facilities for persons with disabilities.
- (2) The construction may not increase the extent to which the development is noncomplying.
- (3) The construction may not be for a new drive-in service or additional lanes for an existing drive-in service, unless the director determines that it will have an insignificant effect on traffic circulation and surrounding land uses.
- (4) A tree larger than eight inches in diameter may not be removed.
- (5) The construction may not be located in the 100 year flood plain, unless the director determines that it would have an insignificant effect on the waterway.
- (E) A site plan is not required for minor site development, minor construction, or a change of use that the director determines is similar to that described in Subsections (B), (C), and (D) of this section.

2330 S LAMAR BLVD

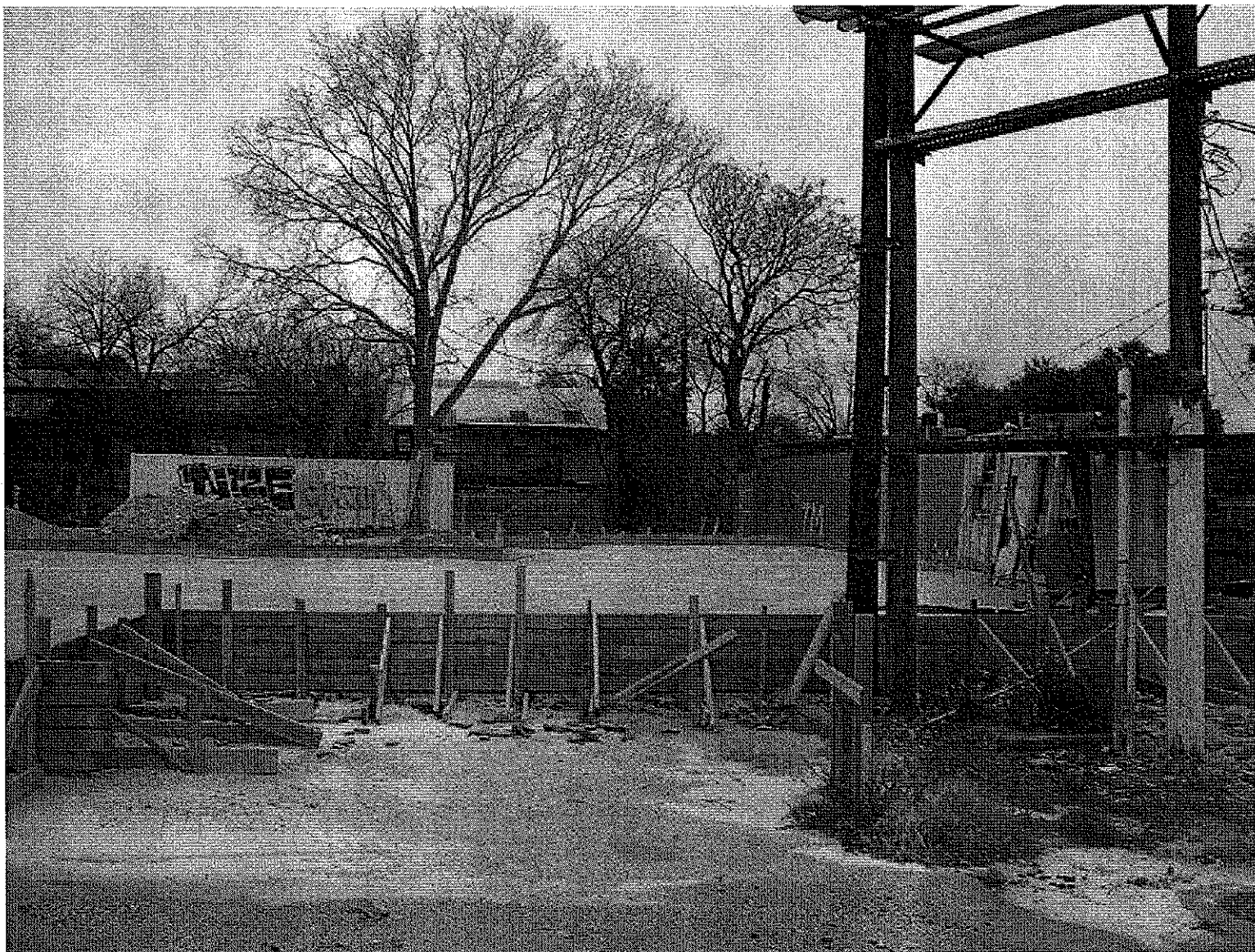


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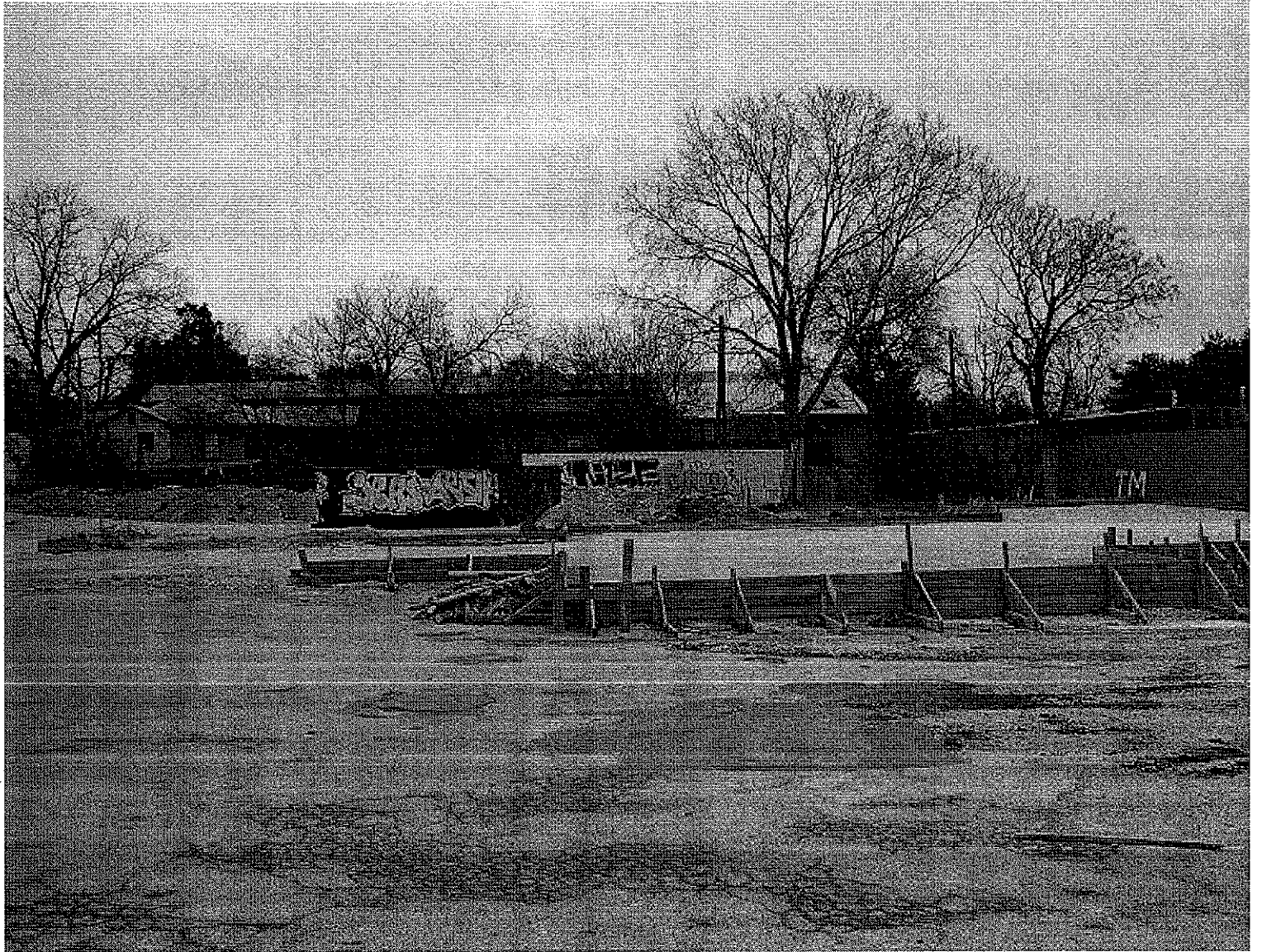
Legend

-  Lot Lines
-  Streets
-  Building Footprints
-  Named Creeks
-  Lakes and Rivers
-  Parks
-  County
-  Lot Line
-  Zoning (Large Map Scale)

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 CITY OF AUSTIN FOR THE SOLE PURPOSE OF GEOGRAPHIC REFERENCE. NO WARRANTY IS MADE BY THE CITY OF AUSTIN REGARDING SPECIFIC ACCURACY OR COMPLETENESS.



① View north from S. Lamar Blvd.



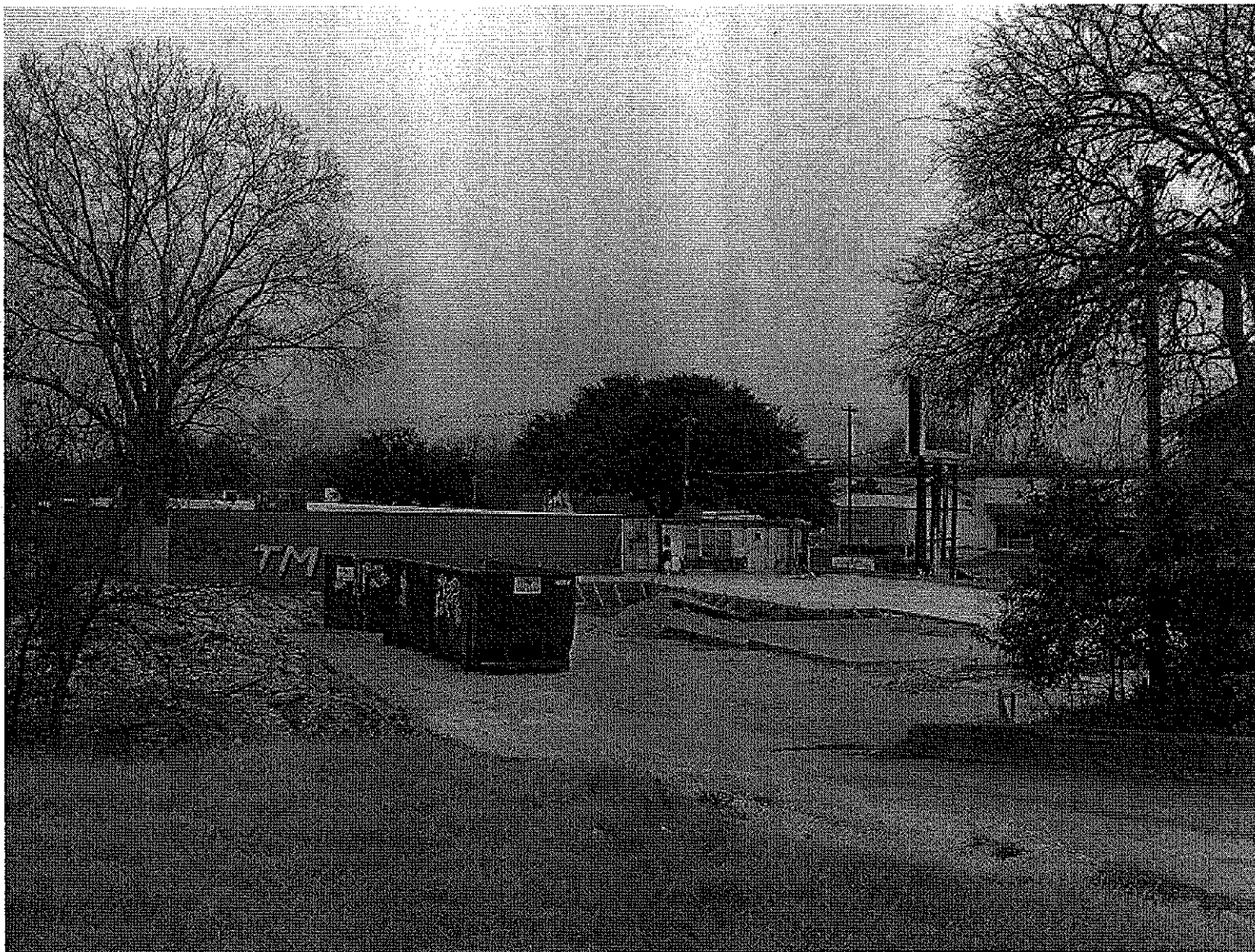
② View north from S. Lamar



③ View northeast from S. Lamar Blvd.



(4) View northeast from S. Lamar Blvd.



⑤ View southeast from Bluebonnet



⑥ View east from Bluebonnett



⑦ View southeast from Bluebonnett



⑧ View north west from S. Lamer Blvd.



Planning and Development Review Department

P.O. Box 1088, Austin, Texas 78767
One Texas Center, 505 Barton Springs Road
Telephone: (512) 974-6370 Fax: (512) 974-2423



Site Development Exemption Request

Tree Regulations Apply

DA-2013-0091

Site Address:	5 2330 Lamar Austin TX 78704		
Project Name:	Abel's Rib House		
Legal Description:	TRT 2 TWENTY FOUR 0 ONE BLUEBONNET ADDN		
Zoning:	L0	Watershed:	
Existing Land Use(s):	Restaurant		
Proposed Land Use(s):	Restaurant		
Brief /General Description of the Development being sought:	Restaurant Remodel		

Attach a detailed description of the proposed development in a memorandum or letter and a site plat or survey plan that graphically indicates, but is not limited to,:

- | | |
|--|--|
| <input checked="" type="checkbox"/> existing trees | <input checked="" type="checkbox"/> limits of construction |
| <input checked="" type="checkbox"/> buildings | <input checked="" type="checkbox"/> type of construction |
| <input checked="" type="checkbox"/> parking areas | <input checked="" type="checkbox"/> location of construction |
| <input checked="" type="checkbox"/> roadways/streets | <input checked="" type="checkbox"/> accessible parking |
| <input checked="" type="checkbox"/> all areas of impervious cover levels (existing & proposed) | <input checked="" type="checkbox"/> access route |
| <input checked="" type="checkbox"/> erosion controls (i.e.: silt fencing, tree protection) | <input checked="" type="checkbox"/> on-site sewage (septic) systems and drain fields |

I, Margaret Gilbreth, do hereby certify that I am the
(PRINT NAME)

☒ Owner ☐ Owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan submittal requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

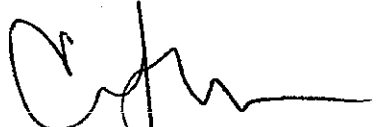

1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code or other applicable requirements, which includes the use or occupancy of the improvement.
4. The approval notice with paid receipt shall be clearly posted on-site and protected from the elements at all times.

Margaret Gilbreth Date: 2/7/13
Signature of Requester
Address: 2815 Manor Rd Austin, TX 78722
Telephone: 512 413-3792

Please indicate how you wish to receive a copy of the results of the review:

☐ FAX: ☒ E-mail Address: Please provide e-mail address on other side of form

Departmental Use Only

Project Name: <u>Abel's Rd Home</u>		Case Number: <u>DA-013-0091</u>		Applicant Name: <u>Margaret Gibreth</u>	
<input checked="" type="checkbox"/> If Required	Reviewer	Date	Comments		
<input type="checkbox"/> Site Plan			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Transport			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Drainage	<u>Genf Boel</u>	<u>3-4-13</u>	<input type="checkbox"/> SPOC*		
<u>OK</u>					
<input type="checkbox"/> Environ	<u>Kristen Croston</u>	<u>3-5-13</u>	<input type="checkbox"/> SPOC*		
<u>OK</u>					
<input checked="" type="checkbox"/> AFD	<u>S. Stekey</u>	<u>3-5-2013</u>			
<u>APPROVED. NOTE: THE 865 sq. ft. Addition is AN INCREASE IN THE BUILDING FIRE AREA & WILL REQUIRE AUTOMATIC SPRINKLER PROTECTION OR FIRE-RESISTIVE SEPARATION OF THE 865</u>					
<input checked="" type="checkbox"/> AWU	<u>Cory Harmon</u>	<u>3/5/2013</u>	<u>sq. ft. Addition.</u>		
<u>N/A</u>					
<input checked="" type="checkbox"/> Plumbing	<u>Cory Harmon</u>	<u>3/5/2013</u>			
<u>N/A: with utilities illustrated</u>					
<input checked="" type="checkbox"/> AE		<u>3-4-13</u>			
<u>N/A</u>					

• SPOC – Single Point of Contact

<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Determined to be a <input type="checkbox"/> Revision <input type="checkbox"/> New Project
-----------------------------------	---------------------------------	--

Building permit required? ☐ Yes ☐ No ☐ N/A
 Smart Housing Project? ☐ Yes ☐ No

Qualifies for exemption per Section 25-5-2(____)

Check all that apply:

- ☐ Review Fee(s) Not Required
- ☐ Site Plan Correction/ Exemption Review Fee
- ☐ Change of Use Review Fee
- ☐ Phasing Review: _____ phases
- ☐ Landscape Inspection: _____ acres
- ☐ Shared Parking Review

NO.	DATE	DESCRIPTION	BY
1	12/10/20	DESIGN	OP
2	12/10/20	REVISION	OP
3	12/10/20	REVISION	OP
4	12/10/20	REVISION	OP
5	12/10/20	REVISION	OP
6	12/10/20	REVISION	OP
7	12/10/20	REVISION	OP
8	12/10/20	REVISION	OP
9	12/10/20	REVISION	OP
10	12/10/20	REVISION	OP

DESIGN STUDIO, INC.
 1301 East 7th Street, Suite 201
 Austin, TX 78702
 512.695.9100
 www.designstudioinc.com

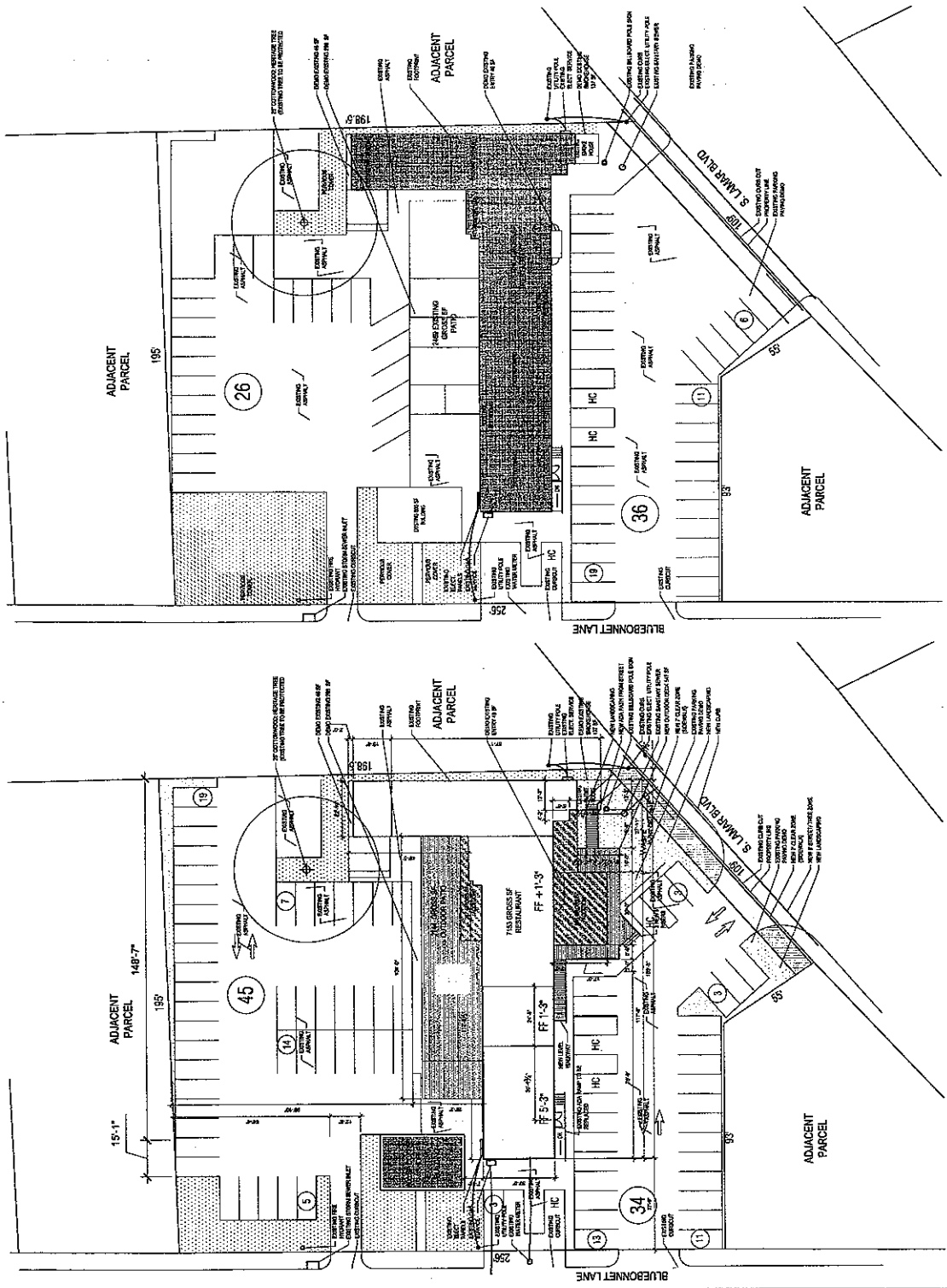
opa

2330 SOUTH LAMAR
 AUSTIN, TEXAS

DATE	12/10/20
CHECKED	OP
DATE	12/10/20
CHECKED	OP

A1
 SITE PLAN

PROJECT DESCRIPTION	
A. SITE DESCRIPTION	EXISTING 1.0285 ACRE SITE AT 2330 SOUTH LAMAR
B. SITE AREA	1.0285 ACRES = 4450 SF
C. EXISTING IMPERVIOUS COVER	39403 SF (87.9%)
D. ALLOWABLE IMP. COVER (LO)	31350.7 (70%)
E. PROPOSED IMP. COVER	38642 SF (86.7%)
OCCUP. TYPE: RESTAURANT (A2)	
ZONING	LO
CONST. TYPE: TYPE V-B	
F. EXISTING RESTAURANT	6350 SF
G. GROSS AREA OF EXISTING ACCESSORY BUILDING	800 SF (STORAGE)
H. GROSS BUILDING	2469 SF
I. EXISTING PATIO	9819 SF (F+G+H)
J. GROSS DEVELOPMENT	0 SF
K. GROSS PATIO	924 SF
L. BUILDING	1132 SF
M. BUILDING	2144 SF (H+J+K)
N. GROSS ADDITION SF	(232 SF)
O. NET BUILDING DEMO	7259 SF (F+M+N)
P. GROSS RESTAURANT SF	10184 SF (G+L+O)
DEVELOPMENT BUILDINGS/	
PATIO	Q. NET NEW 575 SF (P+I)
EXISTING DEVELOPMENT	
EXISTING	NO
PROPOSED	YES
SPRINKLER	ALLOWABLE
ALLOWABLE	9,000 SF PER LEVEL, BUILDING AREA PLUS SPRINKLER UNDER TYPE INCREASE
V.B.	82 SPACES
R. PARKING	PREVIOUSLY PROVIDED ON SITE
S. NEW PARKING 7.67 SPACES (Q/75)	
REQUIRED FOR RESTAURANT ADDITION (575 SF NET)	
ADDITION @	175
20% PARKING	6.13 SPACES (S * 60%) REDUCTION
T. STORAGE	8 SPACES (800 SF/1000)
U. PARKING	66.93 SPACES (R+S+T)
SPACES REQUIRED	
W. PARKING PROVIDED	78 SPACES



1) EXISTING SITE PLAN
 SCALE: 1/8" = 1'-0"

1) NEW SITE PLAN
 SCALE: 1/8" = 1'-0"

ALL SITE INFORMATION FOR INFORMATION PURPOSES AND PERMIT REVIEW BASED UPON ON SITE OBSERVATIONS AND BUILDING INFORMATION PROVIDED TO THE ARCHITECT BY THE OWNER. PRIOR TO CONSTRUCTION, GRADING AND EXISTING CONDITIONS SHOULD BE PROVIDED SO AS TO VERIFY EXISTING CONDITIONS BEFORE PROCEEDING.

DA 2020-0091

PUBLIC HEARING INFORMATION

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Contact: Leane Heldenfels, 512-974-2202

Public Hearing: Board of Adjustment, March 10th, 2014

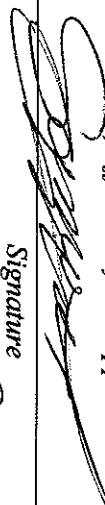
SAMIR N. MAAMARY

Your Name (please print)

☒ I am in favor
☐ I object

2340 S. Lamar, Austin

Your address(es) affected by this application



Signature

3/10/14

Date

Daytime Telephone: (512) 892 1508

Comments: The contested property was and still is an eye-sore. I strongly support the applicant to rebuild the subject property.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

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.

A board or commission's decision 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.

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.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

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 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: C15-2014-0033
Contact: Leanne Heldenfels, 512-974-2202
Public Hearing: Board of Adjustment, March 10th, 2014

Rebecca Stelice Heston
 Your Name (please print) _____

2001 Arroyo 783704
 Your address(es) affected by this application _____

Robert _____ *2/28/14* _____
 Signature Date

Daytime Telephone: *(512) 413 6446*

Comments: *Pls. act on with this remodel!*

The homebest were living in the

building before they started. Now

its positive. We want a venue

there & we like the closest

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor
 Leanne Heldenfels
 P. O. Box 1088
 Austin, TX 78767-1088

resident property to this site.
WHT

Lorraine Atherton

2009 Arpdale ♦ Austin, TX 78704 ♦ 512-447-7681

March 8, 2014

Board of Adjustment
City of Austin Watershed Protection and
Development Review Dept.
Austin, TX 78704

Re: Code reinterpretation request C15-2014-0033, 2330 South Lamar Blvd.

Ms. Leane Heldenfels,

This letter explains my support of the appellant's interpretation that the project at 2330 South Lamar Boulevard is a remodel project under the applicable zoning and City codes, and my support of the position that the project should be allowed to proceed under Section 25-2-964 as a restoration of a "damaged or destroyed noncomplying structure."

I live half a block away from the former Artz Rib House, and I pass by it several times a week on my way to and from the bus stop on South Lamar. According to tax records the building was built in 1940, and last year it was obvious that the roof and most of the walls on the east third of the building were not sound. The structure looked like it had been built as three separate shops, on three foundations, each at a different level, and frequent plumbing problems at the restaurant indicated that at least one of the three foundations was damaged. When the restaurant closed, the prospects for its restoration as an iconic barbecue and live music venue seemed dim.

When I studied the plan submitted with the site plan exemption request in February 2013, I immediately appreciated that the footprint of the building would be preserved, that the parking lots would be improved and the number of parking spaces greatly increased, and that pedestrian access on South Lamar, between the front entrance and the bus stop, would be much improved. I also noted that the cottage facing on Bluebonnet was to be preserved, along with the distinctive residential character that it lends to the entrance to the neighborhood. Although I assumed that the site was considered "legal noncomplying," I was pleased to see that the applicant planned to improve the site's code compliance in those important areas. I was also relieved that the restaurant use would be preserved, as the Zilker Neighborhood Association had recommended when the property was opted out of the VMU overlay on South Lamar.

I was therefore very disappointed to learn that City staff had suddenly changed the "remodel" classification of the project. Much of the case summary and staff interpretation conflict with my personal observations of work at the site. The case summary reads as though a "partial demolition" permit was granted in March and the applicant immediately demolished the entire building. In fact, the permit was issued April 10, and the building was not demolished until October. The applicant tells me that he spent the intervening six months trying to determine what the vaguely worded permit allowed him to do, while engineers and inspectors were finding that more and more of the structure was unsafe and needed to be demolished. My almost daily observations of activity at the site match Mr.

Winstanley's description of events. During the spring and summer, various crews would work on the interior of the building for a couple weeks at a time, but then weeks would pass with no activity. It looked like a remodeling of a building that might collapse at any moment. Exterior demolition did not begin until the fall, and that too seemed to proceed in stages.

The staff interpretation suggests that 25-2-964 (Restoration and use of damaged or destroyed noncomplying structures) does not apply because the demolition "was not accidental" but was "intentional." Based on my observations of the work on the site over six months, the demolition was a last resort, as though the owner was forced to demolish the building as each of the three sections was found to be unsound. The applicant has said that part of the foundation crumbled in the midst of demolishing one wall, an explanation that also matches my observations. It seems to me that the failure of the foundation in the midst of remodeling could easily be considered an accident, under 25-2-964. (See 1700 Kinney below, as an example of a property allowed to retain its legal noncomplying status after a nonaccidental complete demolition.)

The case summary says that the building plan was rejected because it was not consistent with the approved site plan exemption, but I cannot find any significant differences from the site plan that I studied in February 2013. The plan approved in February 2013 preserves the footprint of the original structure. As far as I can tell, the proposed building plans are consistent with the approved site plan exemption, and the framing in place for the new foundation reflects the original footprint of the building.

Also, the distinctive cottage facing on Bluebonnet has remained untouched throughout the demolition.

The case summary mentions "additions to the front and rear of the building totaling 1,152 sf." I can find no additions on the rear of the building. I assume that staff has misidentified the original patio on the rear of the restaurant as an addition. (In my experience, the treatment of decks and screened porches is inconsistent in noncompliance cases.)

I am convinced that the proposed project will not increase the degree of noncompliance on the site. This is in contrast to other projects in the neighborhood that were allowed to increase their noncompliance after complete demolition of the existing structure. (See the attached list for a few examples.) Plans already submitted by the applicant appear to improve code compliance regarding health and safety, parking, and pedestrian access, and I and my neighbors are eager to see the remodel completed as planned.

Sincerely yours,
Lorraine Atherton

Other cases involving demolition of noncomplying structures:

- 1002 Kinney, existing noncomplying house (substandard lot) demolished in Oct. 2012. Replaced with much larger house, classified as new construction but site plan not required. Noncompliance permitted under 25-2-943, as a substandard lot recorded before March 1946.
- 1705 Dexter, existing noncomplying duplex (lot less than 7000 square feet) demolished in May 2012. Apparently replaced with a much larger duplex. Classified as new construction, but there is no indication of a site plan or of variances granted for noncompliance. This may have been approved administratively under 25-2-943 (substandard lot), but no documentation is available to the public online.
- 1815 Margaret, house completely demolished in Feb. 2012. Apparently replaced with a much larger house. Classified as new construction, but there is no indication of a site plan. There is a note regarding an administrative sidewalk waiver and fee paid in lieu.
- 1404 Garner Avenue, beginning in July 2005, demolished in stages and moved to encroach on the side street setback, under an "interior demolition" permit. Eventually there was no stick of lumber remaining from the original structure. I can find no indication that a site plan was ever required.
- 1700 Kinney, existing noncomplying duplex (lot less than 7000 square feet) demolished in March 2005. Construction of enormous condos was permitted as "Rebuild existing noncomplying duplex," based on the application of 25-2-964 ("Restoration and use of damaged or destroyed noncomplying structures"). The argument was that the owner's neglect of the structure was comparable to damage caused by fire or an act of God. Its status as a "legal noncomplying duplex" was questioned because the property was considered a single house up until 1998, when it was allowed to be remodeled as a duplex. The "rebuild" was not limited to the same degree of noncompliance required under 25-2-964; rather, it was allowed to far exceed the noncompliance of the original structure.

Heldenfels, Leane

From: David King [REDACTED]
Sent: Sunday, March 09, 2014 5:38 PM
To: Heldenfels, Leane
Cc: Gardner Sumner; William Neale
Subject: Case # C15-2014-0033 - 2330 South Lamar Boulevard

Ms. Leane Heldenfels,

Regarding case #C15-2014-033, the Zilker Neighborhood Association (ZNA) supports the property owner's interpretation that the project at 2330 South Lamar Boulevard is a remodel project under the applicable zoning and City codes.

The ZNA understands that City inspectors designated the project as a remodel and that the owner complied with the applicable codes. We also understand that the city codes regarding remodel project are ambiguous and subject to the discretion of the inspector. We support the owner's interpretation that the project is still a remodel project.

We believe that the proposed project will comply with 25-2-964 (Restoration and use of damaged or destroyed noncomplying structures) in that it will not increase the degree of noncompliance on the site. Plans already submitted by the applicant appear to improve code compliance regarding health and safety, parking, and pedestrian access, and neighbors are eager to see the remodel completed as planned.

Please include this email in the backup for this case at the Board of Adjustment hearing.

Respectfully,

David King
Zilker Neighborhood Association VP 2
1808 Kerr Street
Austin, TX 78704
512-415-6016

Case # C15-2014-0033
Row ID # 11087755
Tax Roll # 0401070329

RECEIVED

JAN 08 2014

CITY OF AUSTIN

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS
PART I: APPLICANT'S STATEMENT
(Please type)

STREET ADDRESS: 2330 S. Lamar Blvd, Austin, TX 78704

LEGAL DESCRIPTION: Subdivision -

TRT Z TWENTY FOUR O ONE BLUEBONNET ADDN

Lot (s) _____ Block _____ Outlot _____ Division _____

ZONING DISTRICT: _____

I/WE Ellis Winstanley on behalf of myself/ourselves as
authorized

Agent for Lora Margaret Gilibreth affirm that on January

Day of 6, 20 14, hereby apply for an interpretation hearing before the Board of
Adjustment.

Planning and Development Review Department interpretation is: The project
located at 2330 S Lamar 78704 is not considered a remodel
because too much of the building has been demolished.

I feel the correct interpretation is: The project located at 2330 S Lamar
78704 is still a remodel under all applicable zoning and
other city codes.

NOTE: The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that: section 1.2.3 of the zoning code
specifically qualifies Level III alterations, as defined
in the International Existing Building Code 2009 as remodels.
Nothing that has been performed at the site would make the
project less compliant with Section 25-5-2 than the day the
site plan exemption was approved.
2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because: the project is a remodel under the zoning and building code

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that: the property is compliant with all applicable codes; any
other citizen could do the same thing under city codes

APPLICANT/AGGRIEVED PARTY CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Printed Ellis Winstanley for Abel's
FRR, LLC

Mailing Address 2815 Manor Rd

City, State & Zip Austin, TX 78722 Phone 512 222-0395

OWNER'S CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Printed Lora Margaret Gilbreth

Mailing Address _____

City, State & Zip _____ Phone _____

**REQUESTS FOR INTERPRETATION
(Appeal of an Administrative Decision)**

REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- A completed application with all information provided. Additional information may be provided as an addendum to the application.
- Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- Payment of application fee for residential zoning or for commercial zoning. See Current Fee Schedule (<http://www.austintexas.gov/department/fees>) for Applicable Fees. Checks should be made payable to the City of Austin.

An appeal of an administrative decision must be filed by the 20th day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.

If you have questions on this process contact Susan Walker at 974-2202.

**To access the Land Development Code, go to
<http://www.austintexas.gov/department/online-tools-resources>**

RECEIVED

JAN 08 2014

CITY OF AUSTIN

January 8, 2014

Mr. Greg Guernsey
Director, Planning & Development Review
City of Austin
505 Barton Springs Road
Austin, Texas 78704

Re: ***Appeal of Administrative Decision/Request for Interpretation for 2330 S.
Lamar Blvd, Austin, TX 78704***

Dear Mr. Guernsey,

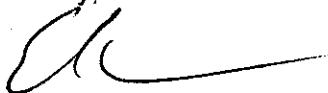
We are requesting an interpretation from the Board of Adjustments regarding the property located at 2330 South Lamar Boulevard.

For purposes of §25-1-131(A), we meet the requirements as an Interested Party in this matter as the applicant and the authorized agent for the record owner of the subject property.

It is our interpretation that the project in question is a remodel under all applicable city code provisions, and that no additional work has been performed that would alter the project in such a way as to negatively affect the status of the existing site plan exemption.

For these reasons and others, we respectfully request an appeal of the administrative decision and an interpretation from the Board of Adjustments.

Sincerely,



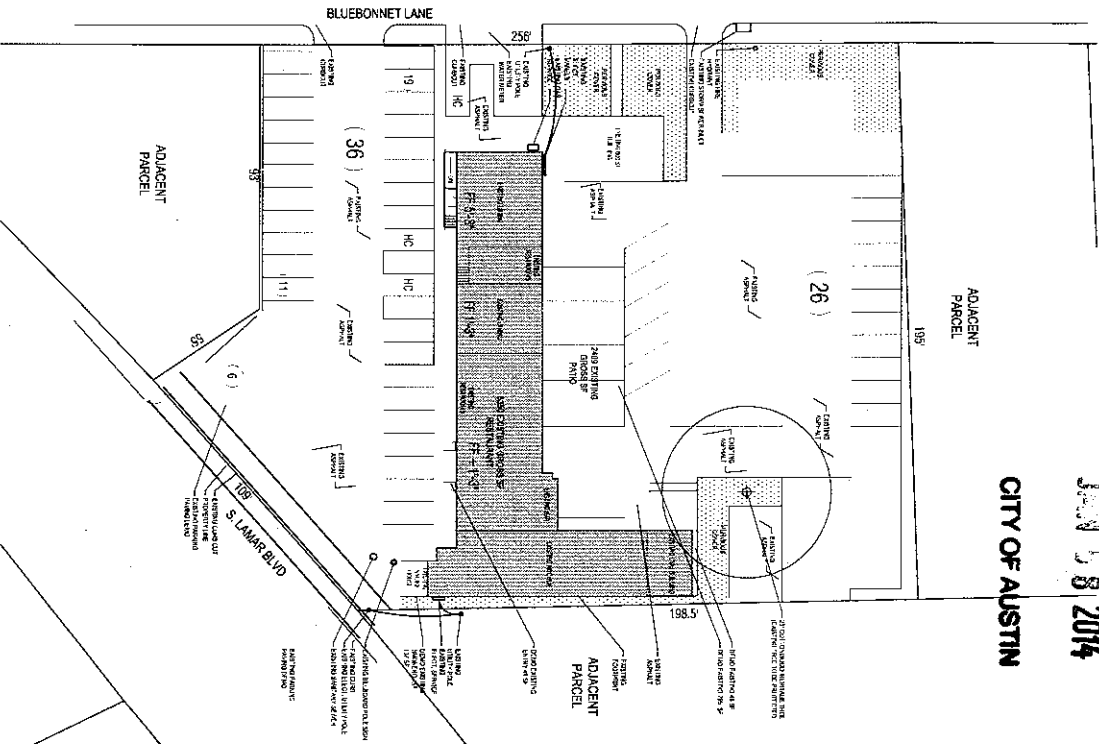
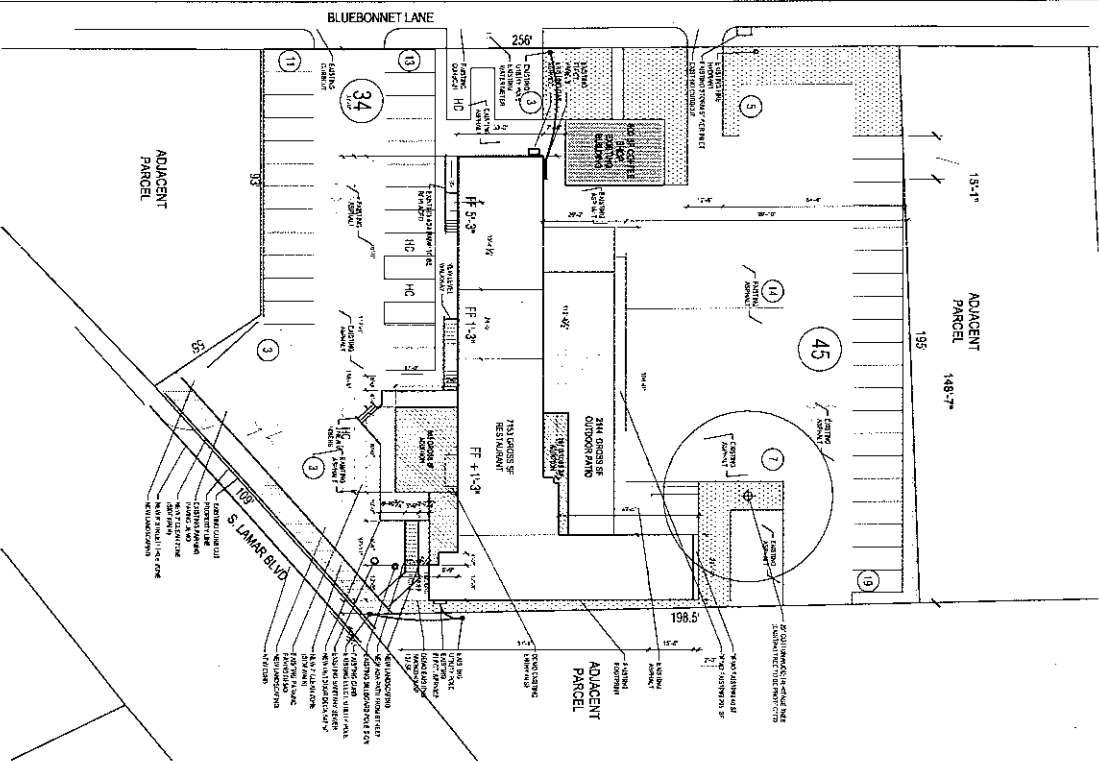
Ellis Winstanley, Abel's FRR, LLC

Cc: Susan Walker
Board of Adjustments
City of Austin

RECEIVED

JUN 18 2014

CITY OF AUSTIN



PROJECT DESCRIPTION	
A. SITE DESCRIPTION	EXISTING 1,0285 ACRE SITE AT 2230 SOUTH LAMAR
B. SITE AREA	1.0285 ACRES = 44891 SF
C. EXISTING IMPROVEMENTS	38403 SF (87.9%)
D. ALLOWABLE IMP COVER (LO)	31360.7 (70%)
E. PROPOSED IMP COVER	36642 SF (83.7%)
F. OCCUP. TYPE	RESTAURANT (A2)
G. ZONING	LO
H. CONST. TYPE	TYPE V/B
I. EXISTING RESTAURANT	6550 SF
J. EXISTING RESTAURANT (A-2)	800 SF (STORAGE)
K. GROSS AREA OF EXISTING ACCESSORY BUILDING	2460 SF
L. EXISTING PATIO	6019 SF (F+Q+H)
M. EXISTING PATIO	0 SF
N. ADDITION SF	0 SF
O. GROSS PATIO (244 SF)	244 SF (H+K)
P. BUILDING DEMO	1132 SF
Q. NET NEW BUILDING DEMO	1232 SF
R. GROSS RESTAURANT SF	7260 SF (F+M+N)
S. GROSS BUILDINGS/ PATIO	10194 SF (G+L+O)
T. EXISTING PROPOSED ALLOWABLE UNDER TYPE INCREASE	YES
U. NEW PARKING PROVIDED ON SITE	79 SPACES
V. REQUIRED FOR ADDITION (75) SF NET	75 SPACES
W. NEW PARKING PROVIDED ON SITE	79 SPACES
X. STORAGE BUILDING (800 SF @ 1:1000)	8 SPACES (800 SF @ 1:1000)
Y. PARKING SPACES REQUIRED (R+S+T)	68.33 SPACES
Z. PARKING PROVIDED	79 SPACES

2330 SOUTH LAMAR
AUSTIN, TEXAS

opa
DESIGN STUDIO, INC.

1301 East 7th Street Suite 201
Austin, TX 78702
512.453.8815
info@opastudio.com

BY	REVISION	DATE

A1
SITE PLAN

DATE	06/18/2014
DESIGNED BY	OPA
CHECKED BY	OPA
DATE	06/18/2014

ALL SITE INFORMATION FOR INFORMATION PURPOSES AND PERMIT REVIEW
BASED UPON ON SITE OBSERVATIONS AND BUILDING INFORMATION PROVIDED
ADDITIONAL SURVEY INFORMATION SHOULD BE PROVIDED SO AS TO VERIFY
EXISTING CONDITIONS BEFORE PROCEEDING.

NEW SITE PLAN
SHEET 150



EXISTING SITE PLAN
SHEET 100





Planning and Development Review Department

P.O. Box 1088, Austin, Texas 78767

One Texas Center, 505 Barton Springs Road

Telephone: (512) 974-6370 Fax: (512) 974-2423



Tree Regulations Apply

Site Development Exemption Request

DA-2013-0091

Site Address:	52330 Lamar Austin TX 78704		
Project Name:	Abel's Rib House		
Legal Description:	TRT 2 TWENTY FOUR 0 ONE BLUE BONNET ADDN		
Zoning:	L0	Watershed:	Flood Plain? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Existing Land Use(s):	Restaurant		
Proposed Land Use(s):	Restaurant		
Brief /General Description of the Development being sought:	Restaurant Remodel		

Attach a detailed description of the proposed development in a memorandum or letter and a site plat or survey plan that graphically indicates, but is not limited to,:

- | | |
|--|--|
| <input checked="" type="checkbox"/> existing trees | <input checked="" type="checkbox"/> limits of construction |
| <input checked="" type="checkbox"/> buildings | <input checked="" type="checkbox"/> type of construction |
| <input checked="" type="checkbox"/> parking areas | <input checked="" type="checkbox"/> location of construction |
| <input checked="" type="checkbox"/> roadways/streets | <input checked="" type="checkbox"/> accessible parking |
| <input checked="" type="checkbox"/> all areas of impervious cover levels (existing & proposed) | <input checked="" type="checkbox"/> access route |
| <input checked="" type="checkbox"/> erosion controls (i.e.: silt fencing, tree protection) | <input checked="" type="checkbox"/> on-site sewage (septic) systems and drain fields |

I, Margaret Gilbreth, do hereby certify that I am the
(PRINT NAME)

☒ Owner ☐ Owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan submittal requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

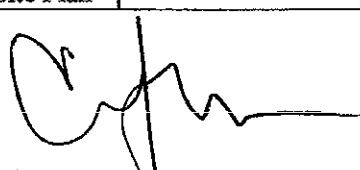
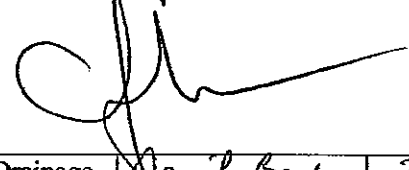
1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code or other applicable requirements, which includes the use or occupancy of the improvement.
4. The approval notice with paid receipt shall be clearly posted on-site and protected from the elements at all times.

Margaret Gilbreth Date: 2/7/13
Signature of Requester
Address: 2815 Manor Rd Austin, TX 78722
Telephone: 512 413-3792

Please indicate how you wish to receive a copy of the results of the review:

☐ FAX: ☒ E-mail Address: Please provide e-mail address on other side of form

Departmental Use Only

Project Name: <i>Abe's Rib House</i>		Case Number: <i>13-0091</i>		Applicant Name: <i>Margaret Gibroth</i>	
<input checked="" type="checkbox"/> If Required	Reviewer	Date	Comments		
<input type="checkbox"/> Site Plan			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Transport			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Drainage	<i>Genf Boel</i>	<i>3-4-13</i>	<input type="checkbox"/> SPOC*		
<i>OK</i>					
<input type="checkbox"/> Environ	<i>Kristen Quiston</i>	<i>3-5-13</i>	<input type="checkbox"/> SPOC*		
<i>OK</i>					
<input checked="" type="checkbox"/> AFD	<i>S. Stacey</i>	<i>3-5-2013</i>			
<i>APPROVED. NOTE: THE 865 sq. ft. Addition is AN INCREASE IN THE BUILDING FIRE AREA & WILL REQUIRE AUTOMATIC SPRINKLER PROTECTION OR FIRE-RESISTIVE SEPARATION OF THE 865</i>					
<input checked="" type="checkbox"/> AWU	<i>Cory Harmon</i>	<i>3/5/2013</i>	<i>sq. ft. Addition.</i>		
<i>N/A</i>					
<input checked="" type="checkbox"/> Plumbing	<i>Cory Harmon</i>	<i>3/5/2013</i>			
<i>N/A: with utilities illustrated</i>					
<input checked="" type="checkbox"/> AE		<i>3-4-13</i>			
<i>N/A</i>					

• SPOC – Single Point of Contact

<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Determined to be a <input type="radio"/> Revision <input type="radio"/> New Project
--	---------------------------------	--

Building permit required? ☐ Yes ☐ No ☐ N/A
Smart Housing Project? ☐ Yes ☐ No

Qualifies for exemption per Section 25-5-2(____)

Check all that apply:

- ☐ Review Fee(s) Not Required
- ☐ Site Plan Correction/ Exemption Review Fee
- ☐ Change of Use Review Fee
- ☐ Phasing Review: _____ phases
- ☐ Landscape Inspection: _____ acres
- ☐ Shared Parking Review