

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

C 6

CASE: C14-86-103(RCT)
Greater Mount Zion Baptist Church

P.C. DATE: June 23, 2015
June 9, 2015
May 12, 2015

DISTRICT: 1

ADDRESS: 1801 Pennsylvania Avenue

AREA: 0.6894 acres

OWNER: Greater Mount Zion Baptist Church

AGENT: Henry H. Gilmore

ZONING: General Office-Neighborhood Plan (GO-NP)

SUMMARY STAFF RECOMMENDATION:

Staff supports the proposed restrictive covenant termination (RCT). The termination would remove the condition that the only permitted land use on the property is Religious Assembly. Please refer to *Exhibit A (Restrictive Covenant)*.

PLANNING COMMISSION RECOMMENDATION:

June 9, 2015: *TO GRANT A POSTPONEMENT TO JUNE 23, 2015, AS REQUESTED BY NEIGHBORHOOD. (7-0) [R. Hatfield- 1st, J. Nortey- 2nd; D. Chimenti, S. Oliver- Absent]*

May 12, 2015: *TO GRANT A POSTPONEMENT TO JUNE 9, 2015, AS REQUESTED BY APPLICANT, ON CONSENT. (7-0) [R. Hatfield- 1st, J. Nortey- 2nd; D. Chimenti, S. Oliver- Absent]*

ISSUES:

As stated in the Applicant's letter, the Greater Mt. Zion Baptist Church is in the process of moving from its current address to a new location. The Church will no longer be using the subject property, and plans to sell the land. Please refer to *Exhibit B (Applicant Letter)*.

DEPARTMENT COMMENTS:

The subject property is located at the southeast corner of Pennsylvania Avenue and Salina Street, and is comprised of three lots. The property is currently developed with a Religious Assembly land use, the Greater Mount Zion Baptist Church. The property is zoned GO-NP. Immediately to the east of the property is a lot zoned SF-3-NP which is developed with a Community Outreach Center associated with the church. Immediately to the south is an alley; across the alley are the Marshall Apartments, which are zoned MF-4-NP. Across Salina Street to the west is Kealing Middle School, which is zoned SF-3-NP. North of the property, across Pennsylvania Avenue, is a building and parking lot associated with the church. These are also zoned GO-NP. Please refer to *Exhibits C and D (Zoning Map and Aerial Exhibit)*.

The restrictive covenant that is proposed to be terminated was filed in conjunction with City File #C14-86-103, which rezoned the property from SF-3 to GO in 1988. The restrictive covenant states that the use of the property is restricted to Religious Assembly land use only. The conditions of this restrictive covenant supersede the permitted land uses of the base zoning district, general office (GO).

Correspondence related to the RCT request is attached in *Exhibit E (Correspondence)*.

CV/2

STAFF RECOMMENDATION:

The Greater Mt. Zion Baptist Church is in the process of moving from this location, and plans to sell the land. Staff supports termination of the restrictive covenant. It is unreasonable to limit a property to only one permissible land use if the property owner intends to discontinue that use. The base zoning of GO-General Office permits appropriate land uses for the property.

1. *Granting of the request should result in an equal treatment of similarly situated properties.*

The City of Austin does not typically limit a property to a single use. Zoning categories are intended to direct land use, and provide a range of land uses that may be appropriate for a property.

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

Limiting the property to a single use significantly constrains the property owner's ability to market and sell the land.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	GO-NP	Religious Assembly
North	GO-NP	Religious Assembly / Parking
South	MF-4-NP	Multifamily
East	SF-3-NP	Religious Assembly
West	SF-3-NP	Kealing Middle School

AREA STUDY: N/A

TIA: N/A

WATERSHED: Lady Bird Lake

CAPITOL VIEW CORRIDOR: No

AIRPORT OVERLAY: No

DESIRED DEVELOPMENT ZONE: Yes

SCHOOLS:

Blackshear Elementary

Kealing Middle School

Garza High School

NEIGHBORHOOD ASSOCIATIONS:

Austin Neighborhoods Council

Austin Conservancy

OCEAN

Kealing Neighborhood Association

Friends of the Emma Barrientos MACC

Real Estate Council of Austin, Inc.

African American Cultural Heritage District Business Association

Del Valle Community Coalition East

Austin Heritage Tree Foundation

United East Austin Coalition

AISD

Preservation Austin

Bike Austin

CITY COUNCIL DATE & ACTION:

August 13, 2015:

June 11, 2015: Postponed on Staff's request to August 13, 2015, on Consent.: A. Kitchen- 1st; S. Renteria- 2nd (11-0)

ORDINANCE READINGS:

ORDINANCE NUMBER:

CASE MANAGER: Heather Chaffin
e-mail: heather.chaffin@austintexas.gov

PHONE: 512-974-2122

89007774

Zoning Case No. 01A-86-103

C4/3
5.00

RESTRICTIVE COVENANT

0000446285

OWNER: Greater Mount Zion Baptist Church, a non-profit corporation

ADDRESS: 1801 Pennsylvania Avenue, Austin, Texas, 78702
11:43 AM 6679 5.00 IND: 1 1 01/27/86

CONSIDERATION: One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.
890077.74-DOC: 7750.73-CHEK:

PROPERTY: Lots 6, 7, and 8, Block 5, C. R. Johns Subdivision, Outlot 57, Division B, according to the map or plat of the Original City of Austin.

Owner of the Property, for the consideration, impresses the Property with these covenants and restrictions running with the land:

1. The use of the Property shall be restricted to the following use: religious assembly as defined in Section 13-2-5 of the Land Development Code of the City of Austin.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for (i) the City of Austin, a municipal corporation, its successors and assigns; or, (ii) the owner of any property located within 1000 feet of the subject property to prosecute proceedings at law or in equity, against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant shall be declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time (i) the City of Austin, its successors or assigns; or, (ii) the owner of any property located within 1000 feet of the subject property fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (i) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (ii) by the owner(s) of the Property at the time of such modification, amendment or termination.

06/4

All citations to the Austin City Code shall refer to the Austin City Code of 1981, as amended from time to time, unless otherwise specified.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 5th day of December, 1988.

Greater Mount Zion Baptist Church

BY: Willie Hargis, Jr.
Willie Hargis, Jr., Chairman
of the Board of Trustees

THE STATE OF TEXAS

§
§
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 5th day of December, 1988, by Willie Hargis, Jr., Chairman of the Board of Trustees of Greater Mount Zion Baptist Church, a non-profit corporation, on behalf of said non-profit corporation.

Victoria V. Turner
Notary Public Signature

Victoria V. Turner
Type or Print Notary Name
My Commission Expires: 10/25/89



FILED

1989 JAN 27 AM 11:00

DANA DE BEAUMONT
COUNTY CLERK
TRAVIS COUNTY, TEXAS

After recording return to
CITY OF AUSTIN
DEPT. OF LAW
P. O. BOX 1088
AUSTIN, TEXAS 78767-8829

Betty Lewis

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED, in the Volume and Page of the
named RECORDS of Travis County, Texas, on

JAN 27 1989



Dana De Beaumont
COUNTY CLERK
TRAVIS COUNTY, TEXAS

DuBois
& Bryant
& Campbell LLP
ATTORNEYS

HENRY H. GILMORE
700 Lavaca, Suite 1300
Austin, Texas 78701
(512) 457-8000 phone
(512) 457-8008 fax
hgilmore@dbcllp.com

CH/B

March 3, 2015

City of Austin Planning and
Development Review Department
505 Barton Springs Rd.
Austin, Texas 78704

**Re: Greater Mt. Zion Baptist Church (1801 Pennsylvania Avenue):
Application for Termination of Zoning Restrictive Covenant;**

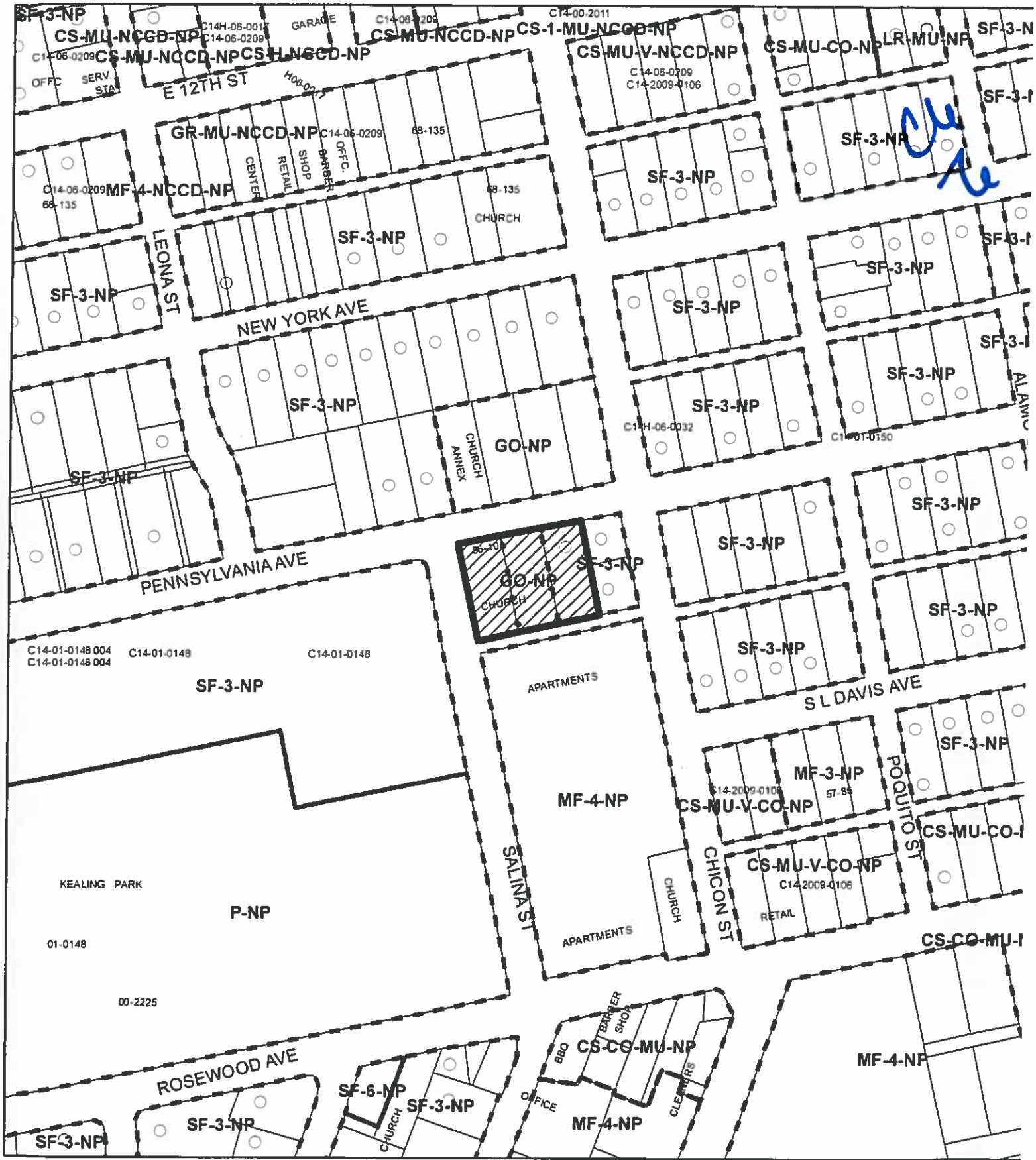
Dear Sir or Madam:




The Greater Mt. Zion Baptist Church ("the Church"), located at 1801 Pennsylvania Avenue, is in the process of moving to a new location. In connection with its move, the Church is selling its current site. The current site is subject to a 1988 zoning restrictive covenant limiting the use of the current site to Religious Assembly use only. A copy of this covenant is included with this application. The Church wishes to remove the restriction in order to be able to more easily market and sell the current site.

Sincerely,



Henry H. Gilmore
Agent/Attorney for Greater
Mt. Zion Baptist Church



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING

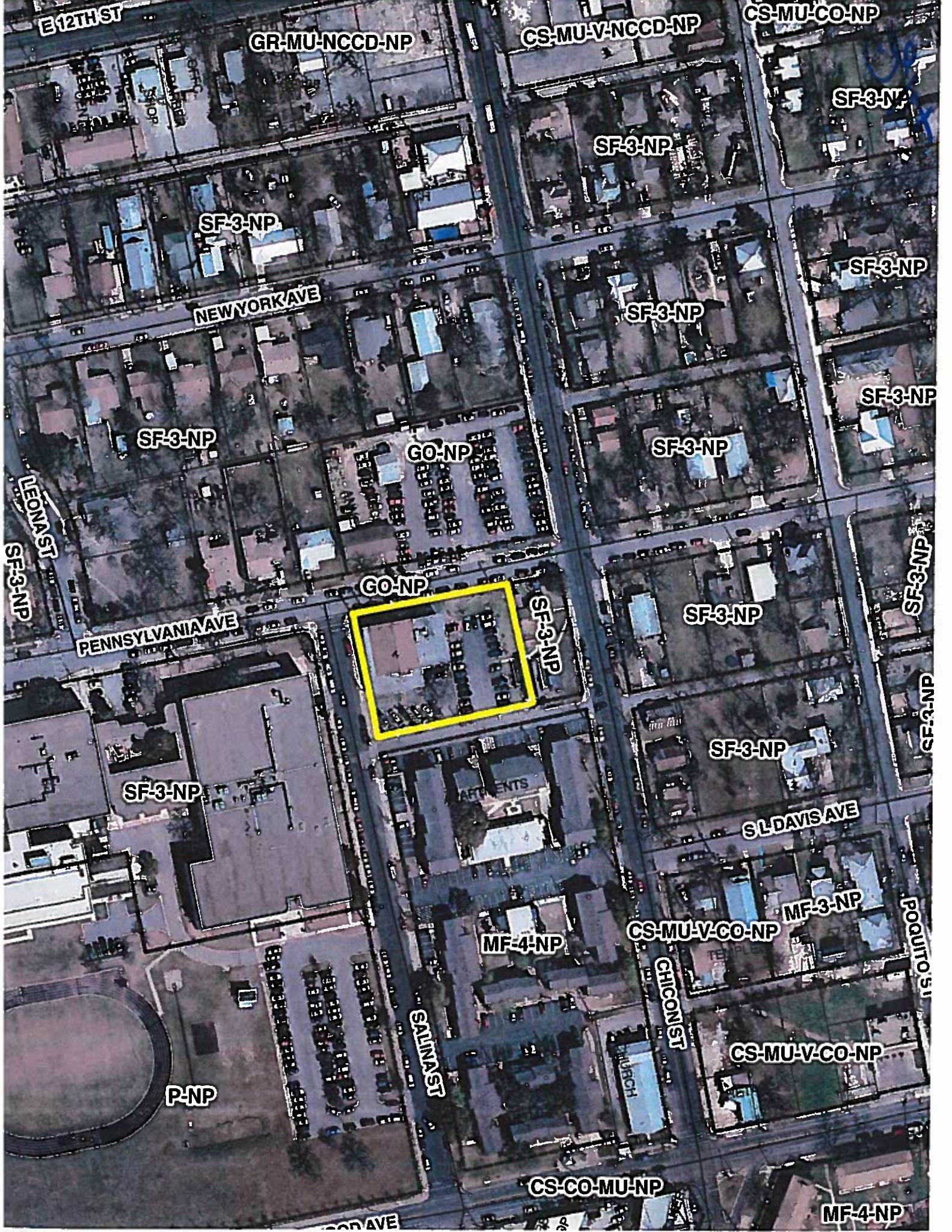
CASE#: C14-86-103(RCT)



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.

1" = 200'

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made.



E 12TH ST

GR-MU-NCCD-NP

CS-MU-V-NCCD-NP

CS-MU-CO-NP

SF-3-NP

SF-3-NP

SF-3-NP

SF-3-NP

NEW YORK AVE

SF-3-NP

SF-3-NP

SF-3-NP

GO-NP

SF-3-NP

LEONAST

GO-NP

SF-3-NP

SF-3-NP

PENNSYLVANIA AVE

SF-3-NP

SF-3-NP

SF-3-NP

CF-3-NP

S L DAVIS AVE

APARTMENTS

MF-3-NP

POUITO ST

MF-4-NP

CS-MU-V-CO-NP

SALINAS ST

CHICON ST

CS-MU-V-CO-NP

P-NP

CS-CO-MU-NP

MF-4-NP

COO AVE

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. 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 its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. 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.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website: <http://www.austintexas.gov/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 board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-86-103(RCT)
Contact: Heather Chaffin, 512-974-2122
Public Hearing: May 12, 2015, Planning Commission
June 11, 2015, City Council

ANNA CRAYTON WARREN
Your Name (please print)

1906 S.L. Davis Avenue, Austin, TX
Your address(es) affected by this application

Anna Crayton Warren
Signature

Daytime Telephone: 512-472-5285
Date

MAY 12, 2015

I am in favor
 I object

Comments: My family has lived in EAST AUSTIN for over 90yrs. I am a member of Greater Mt. Zion Baptist Church - have been since 1935. This church and property is an intrical part of the community. To remove the Covenant will alter the neighborhood, which will create a totally different atmosphere that may attract an undesirable situation. If it's not broken... Do Not Fix It. Leave Well Enough Alone!!!

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

City of Austin
Planning & Zoning Department
Heather Chaffin
P. O. Box 1088
Austin, TX 78767-8810

Chaffin, Heather

From: Lawrence D. Pierce <piercelawrenced@gmail.com>
Sent: Wednesday, May 06, 2015 10:50 AM
To: Chaffin, Heather
Subject: Case Number C14-86-103(RCT)

CL
/g

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mrs Chaffin, in receiving your letter, concerning the propose change of zoning to the property on 1801 Pennsylvania Avenue, Greater Mt. Zion Baptist Church

First, I object to changing the present zoning of Restrictive Covenant to MU zoning, based on the following reasons. This neighborhood, is a neighborhood, whose voice has been silenced in the past, while developments intruded neighborhoods, and built anything they wish to build, which I will call, illegal structures, that does not fit the single family mode, many building erected in the past ten years has increased the total number of people that live in the areas surrounding the church, that has caused traffic jam, to big for the small streets houses are placed on. Planning to add more structures, need to start with looking at the road system first. Roads built in the 1940s were design for small number of people, now we have an overflow of people, which makes the streets much narrow, that has force many people to park blocks away from their house, is an unreasonable expectation to ask new neighbors to do when buying a home.

The second reason, is, a church property should be always be intact, because other churches are looking to move, into areas that are "zone with a restrictive covenant" , a good case in point, the former "Grant Chapel Church, just north of the property in question, has maintain it's restrictive covenant, to allow the Mission Possible group to move in, this group is helping thousands of people, thus, it would be wise to maintain the same type usage for the church in question.

The neighborhood that I live in is experiencing excessive growth, that is out of control, without, looking how the project will affect the lives of citizens, you must look at the big picture first, because greed can wait, if, the city chose to have them to wait. Let's place people first, before any projects are built.

Thank You
Lawrence D. Pierce, Public Advocate
Concern Citizens of Austin

Address 1166 Poquito St.
Austin, Texas 78702
512-203-5595
piercelawrenced@gmail.com



CB
/10

MEMORANDUM

TO: Ms. Danette Chimenti, Chair
Planning Commission Members

FROM: Heather Chaffin, Case Manager
Planning and Development Review Department

DATE: May 12, 2015

RE: **Greater Mount Zion Baptist Church**
C14-86-103(RCT)
District 1
Postponement Request by Applicant

The Applicant is requesting a postponement of the above referenced Restrictive Covenant Termination from May 12, 2015, to June 9, 2015. Additional time is needed to conduct meetings with neighborhood representatives. This is the Applicant's first postponement request.

Chaffin, Heather

From: Henry Gilmore [REDACTED]
Sent: Thursday, May 07, 2015 7:26 AM
To: Chaffin, Heather
Cc: David Mims
Subject: C14-86-103 (RCT) Greater Mt. Zion Baptist Church: Request for 30 Day Postponement of Planning Commission Hearing

Ue/K

Importance: High

Dear Ms. Chaffin,

On behalf of the Applicant in this case, the Greater Mt. Zion Baptist Church, request is hereby made for a 30 day postponement of the Planning Commission hearing. This is the Applicant's first request for postponement. Please be sure to convey this to the members of the Planning Commission. Thank you and should you have any questions, please don't hesitate to contact me.

PLEASE NOTE OUR NEW ADDRESS EFFECTIVE JANUARY 12, 2015

Henry H. Gilmore
Partner
DuBois Bryant & Campbell, LLP
303 Colorado Street, Suite 2300
Austin, Texas 78701

512.381.8026 (Direct Voice)
512.457.8008 (Fax)

[REDACTED]
www.dbcllp.com

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Chaffin, Heather

From: Thomas VanDyke [REDACTED]
Sent: Tuesday, June 02, 2015 4:34 PM
To: "bc-Danette.Chimenti@austintexas.gov"@coasmp3.ci.austin.tx.us; Chaffin, Heather
Cc: [REDACTED]
Subject: Request For Postponement, Greater Mt. Zion Case # C14-86-103 (RCT)

Follow Up Flag: Follow up
Flag Status: Flagged

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/12

Dear Chair Chimenti and Ms. Chaffin:

Please accept this email as Kealing Neighborhood Association's request for postponement of case #C14-86-103(RCT), scheduled for hearing on June 9, 2015.

The Applicant in this case requested a 30-day postponement on May 12, 2015 in order to work with KNA and has since committed to a meeting with us this Thursday evening. We respectfully request a 30-day postponement in order to allow KNA members time to consider the feedback that we receive from Greater Mount Zion this week and hopefully advance our conversation towards consensus on this matter.

Thank you for your attention to our request.

Sincerely,
Clifton Van Dyke
President, Kealing Neighborhood Association
Treasurer, Organization of Central East Austin Neighborhoods

CE
B

June 8, 2015

City of Austin
Chair and Planning Commission Members
301 W. Second Street
Austin, Texas 78701

RE: Support of Greater Mt. Zion Baptist Church Termination of Restrictive Covenant

Dear Commission Members:

It is my pleasure to write a letter in support of our friends at Greater Mt. Zion Baptist Church and their application to terminate the Restrictive Covenant imposed on their property located at 1801 Pennsylvania Avenue in Austin, Texas.

Greater Mt. Zion Baptist Church has been a loyal neighbor and an important cornerstone of East Austin's spiritual foundation for over 80 years. The Church has outgrown its current facilities and is building a new and expanded sanctuary on Tannehill Lane in East Austin. The termination of the Restrictive Covenant on 1801 Pennsylvania Avenue will provide the Church more flexibility with marketing the property and assist them in continuing their community mission, "In The City For The City".

I understand the application is on the agenda for the upcoming planning commission meeting on June 9, 2015. I urge you to approve Greater Mt. Zion Baptist Church's application to terminate the Restrictive Covenant on 1801 Pennsylvania Avenue.

Again, thank you in advance for your time and consideration for this important request.

Sincerely,



Rob Harrell
Senior Pastor

4220 MONTEREY OAKS BLVD.
AUSTIN, TX 78749
512-891-1600
AustinOaksChurch.org

Transformed to transform.



C6
14

Corinth Missionary Baptist Church

Est. 1939

A place to experience God.

City of Austin
Chair and Planning Commission Members
301 W. Second St
Austin, Texas 78701

Subject: Support of Greater Mt Zion Baptist Church Termination of Restrictive Covenant

Dear City of Austin
Chair and Planning Commission Members:

It is my pleasure to write a letter in support of Greater Mt Zion Baptist Church application to terminate the Restrictive Covenant on the Church's property at 1801 Pennsylvania Avenue. Greater Mt. Zion Baptist Church has been a loyal neighbor and an important cornerstone of East Austin's spiritual foundation for over 80 years.

The Church has outgrown its current facilities and is building a new and expanded sanctuary on Tannehill Lane in East Austin to continue its community mission "In The City For The City". The termination of the Restrictive Covenant will provide the Church more flexibility with marketing its property.

I urge you to fully support Greater Mt Zion Baptist Church's application to terminate the Restrictive Covenant. The application is on the agenda for the upcoming June 9th planning commission meeting.

Again, thank you in advance for your time and consideration for this important request.

Sincerely,

Gary M. Renfro, Pastor
1700 E. 16th Street
Austin, Texas 78702

Gary M. Renfro, Pastor