

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CM
/

CASE: C14-79-171(RCT) – 501 E. 53rd Street

P.C. DATE: August 11, 2015

ADDRESS: 501 – 503 E. 53rd Street

DISTRICT AREA: 9

OWNER/APPLICANT: Janet & Edward Belz

AGENT: Land Use Solutions, LLC (Michele Haussmann)

EXISTING ZONING: GR-CO-NP

AREA: .5085 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends termination of the Restrictive Covenant.

PLANNING COMMISSION RECOMMENDATION:

August 11, 2015;

DEPARTMENT COMMENTS:

The subject tract is approximately .5 acres located on the south east corner of East 53rd Street and Duval Street and is in the North Loop Neighborhood. Development on the tract includes a 4854.95 sq. ft., 1-story commercial structure with an attached 2024.43 sq. ft. warehouse. The remainder of the lot is developed with surface-level, paved parking that is accessible by a curb cut from 53rd Street as well as from the alley that runs along the eastern property line. There is one additional curb cut with a paved driveway from Duval Street. This driveway does not give access the parking spaces on the property and instead, once served as the location of the trash dumpster. The structure on the property is currently vacant and has been for several years.

Originally, the subject property was comprised of 8 lots out of Block 22 of The Highlands Subdivision. In January of 1974, the property was re-subdivided under case no. C8S-74-30 to its current configuration as Lot A of the Glynn Addition, a subdivision recorded in Travis County in plat book 68, page 43. In 1979, the property was rezoned from Local Retail (LR) district zoning to General Retail (GR) district zoning under case no. C14-79-171. The property was developed in the 1980's in accordance with the site plan that attached a public Restrictive Covenant as part of the C14-79-171 zoning case (see Exhibit C). The Restrictive Covenant restricted development of the property to the approved site plan. In addition, the Restrictive Covenant restricted the uses shown on the site plan, which are warehouse, retail and office uses on the property.

The Owner would like to repurpose the existing structure primarily for a restaurant use and will also have an office in the warehouse portion of the building that is associated with the business of the restaurant. Additionally, the Owner is considering a small scale grocery store or bakery in a portion of the building. The Restrictive Covenant does not allow for a restaurant use, grocery store use, bakery use and therefore, the request is to terminate the Restrictive Covenant.

The subject property is located within the North Loop Neighborhood Planning Area. As part of the neighborhood plan adoption process, the subject property was rezoned from General Retail (GR) to General Retail-Conditional Overlay-Neighborhood Plan (GR-CO-NP) combined district zoning. The conditional overlay 1.) designates this tract as an appropriate location for a neighborhood mixed use

CM
1/2

building; 2.) make the following uses conditional: congregate living and drive in services as an accessory use to a commercial use; 3.) prohibits automotive retail, automotive services, funeral services, medial offices (greater than 5,000 sq. ft.), residential treatment, automotive repair, exterminating services, hospital services (general), pawn shop services, and service stations. Per the neighborhood plan document, the vision for the 53rd Street corridor is to have a diverse mix of uses with a concentration of retail uses and including restaurants on the ground floor of structures so as to increase street activity. The neighborhood plan document and Future Land Use Map support the termination of the restrictive covenant as does the Northfield Neighborhood Association (see exhibit D). With this, Staff recommends termination of the Restrictive Covenant.

ISSUES: None at this time.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	GR-CO-NP	Vacant
<i>North</i>	LO-CO-NP	Office
<i>South</i>	SF-3-NP	Single-family Residential
<i>East</i>	SF-3-NP	Single-family Residential
<i>West</i>	SF-3-NP	Single-family Residential

NEIGHBORHOOD PLANNING AREA: North Loop

TIA: Not required.

WATERSHED: Waller Creek (urban)

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

<i>Community Registry Name</i>	<i>ID</i>
Northfield Neighborhood Assn.	941
Central Austin Community Development Corporation	1391
Preservation Austin	1424
Austin Independent School District	742
North Austin Neighborhood Alliance	283
Austin Neighborhoods Council	511
The Real Estate Council of Austin, Inc.	1236
Austin Heritage Tree Foundation	1340
Friends of Austin Neighborhoods	1530
Sierra Club, Austin Regional Group	1228
Friends of Emma Barrientos MACC	1447
SEL Texas	1363
Bike Austin	1528
North Loop IBIZ District	1328
Sustainable Neighborhoods	1396

CM
/g

SCHOOLS: Ridgetop Elementary, Lamar Middle, McCallum High

CITY COUNCIL DATE:

ACTION:

ORDINANCE READINGS: 1st

2nd

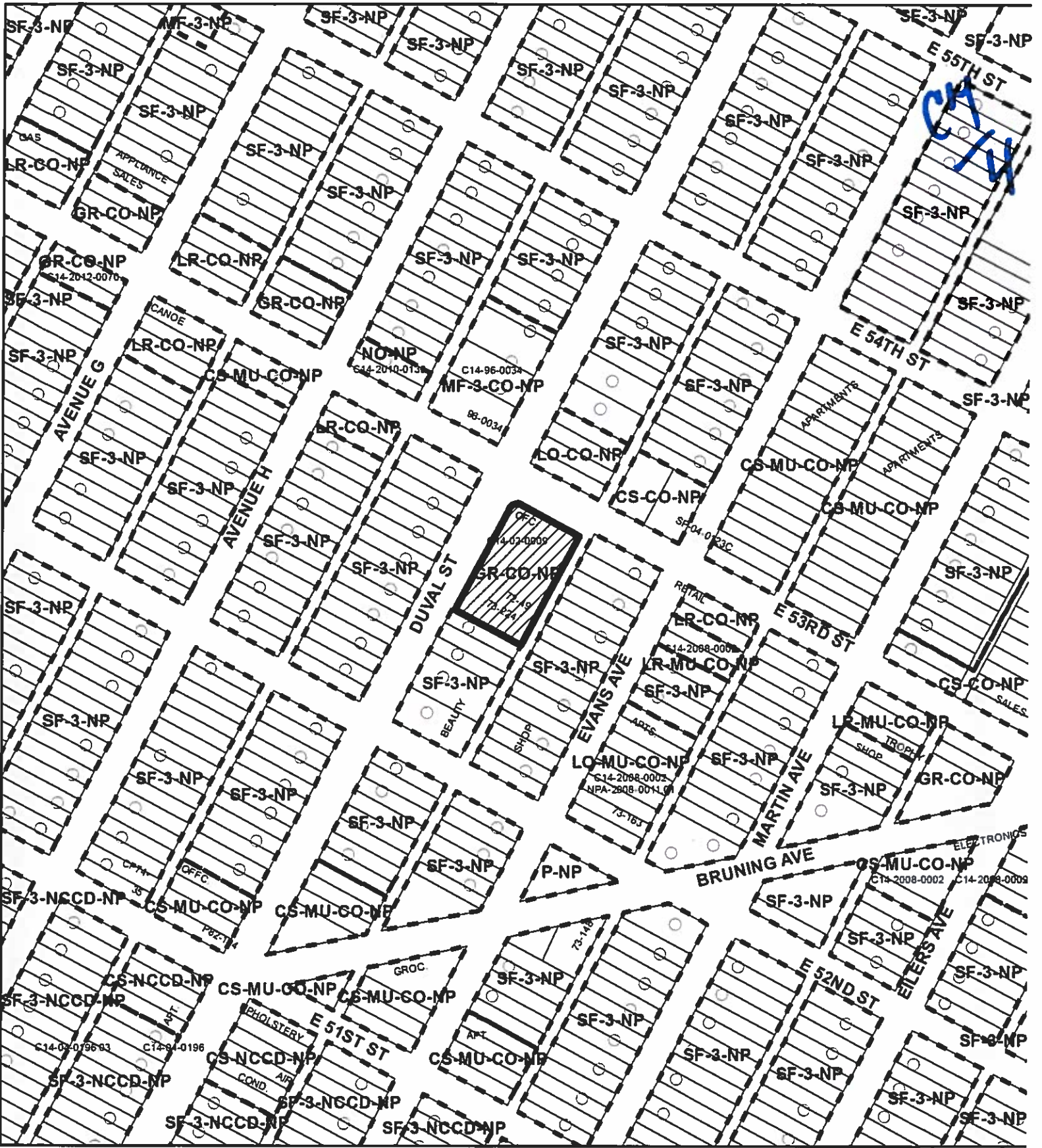
3rd

ORDINANCE NUMBER:

CASE MANAGER: Tori Haase

PHONE: 512-974-7691

EMAIL: tori.haase@austintexas.gov






CAW

Exhibit A

N



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

RESTRICTED COVENANT TERMINATION

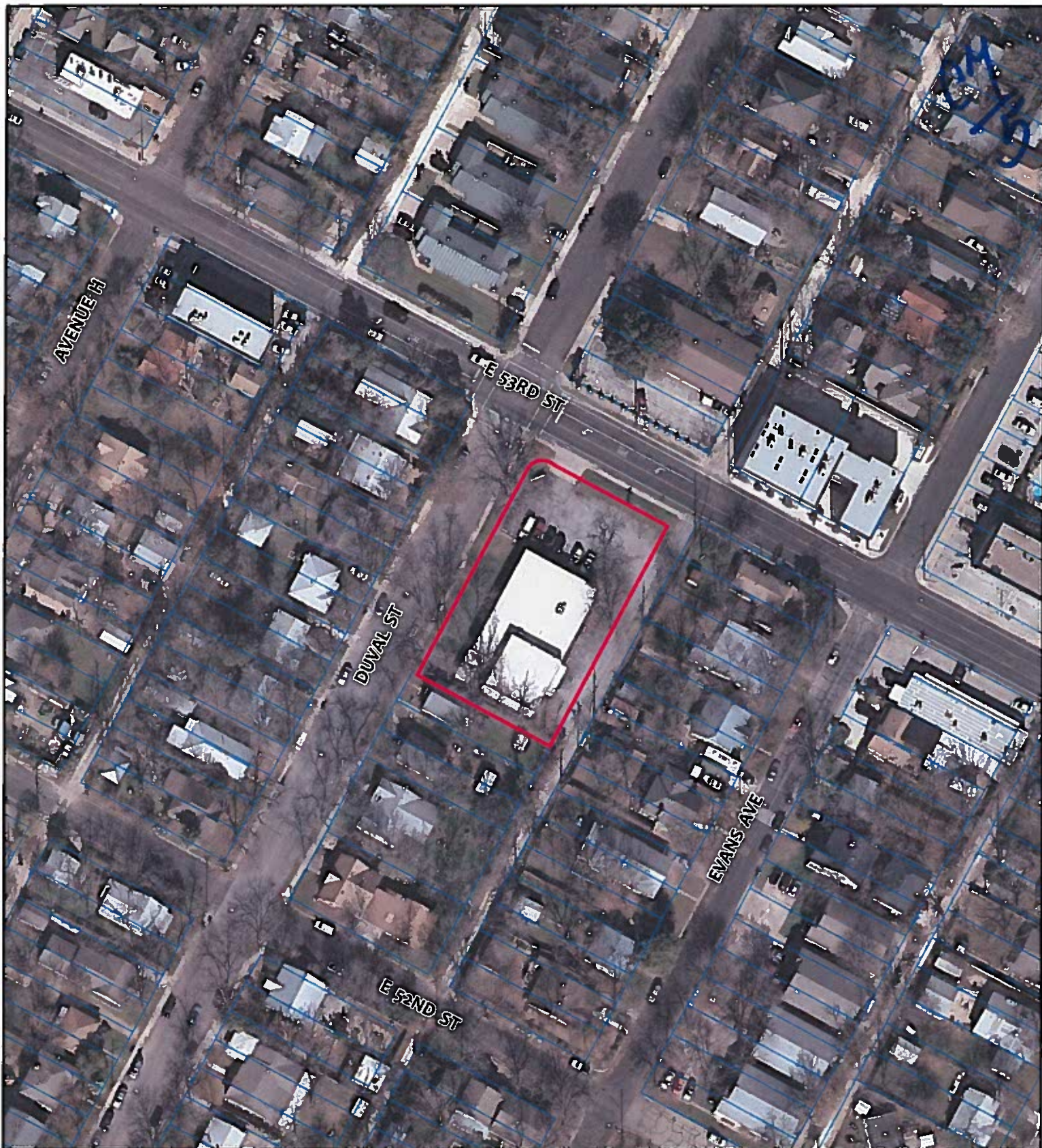
CASE#: C14-79-171(RCT)
501 E 53rd Street

1" = 200'

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 CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.





RESTRICTIVE COVENANT TERMINATION

CASE#: C14-79-171(RCT)

LOCATION: 501-503 E 53RD STREET

SUBJECT AREA: .5085 ACRES

MANAGER: TORI HAASE

Exhibit B



N



Subject Property

1" = 400'

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

25 CH 6

RESTRICTIVE COVENANT

(C14-79-171)

Nov 5 79 FOCHA-4271-25⁰⁰

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

2-15-4758

WHEREAS, WARREN C. BAIR of Travis County, Texas, is the owner of the following described property, to-wit:

Tract A, Glynn Addition, Lots 9-16, Block 22, The Highlands, Locally known as 5209-5213 Duval Street and 501-503 East 53rd Street; and

WHEREAS, the City of Austin and Warren C. Bair have agreed that the above described property should be impressed with certain covenants and restrictions running with the land and desire to set forth such agreement in writing;

NOW, THEREFORE, WARREN C. BAIR for and in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration in hand to the undersigned paid by the City of Austin, the receipt of which is hereby acknowledged, does hereby agree with respect to said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on him, his successors and assigns, as follows, to-wit:

1. No improvements shall be constructed on the above described property except those indicated on a site plan heretofore approved by the Austin City Council, a copy of which plan is attached hereto and made a part hereof, marked EXHIBIT A.

2. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.

3. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order, the same shall in nowise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.

4. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

2-15-4759

CM
/A

5. This agreement may be modified, amended or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owners of the above described property at the time of such modification, amendment or termination.

EXECUTED, this the 15th day of October, 1979.

Warren C. Bair

Warren C. Bair

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared WARREN C. BAIR, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15th day of October, 1979.

NOTARY SEAL

Jan Belz
Jan Belz
Notary Public in and for Travis County,
Texas.
My commission expires: 10-10-80.

Restrictive Covenant - 1979 Site Plan

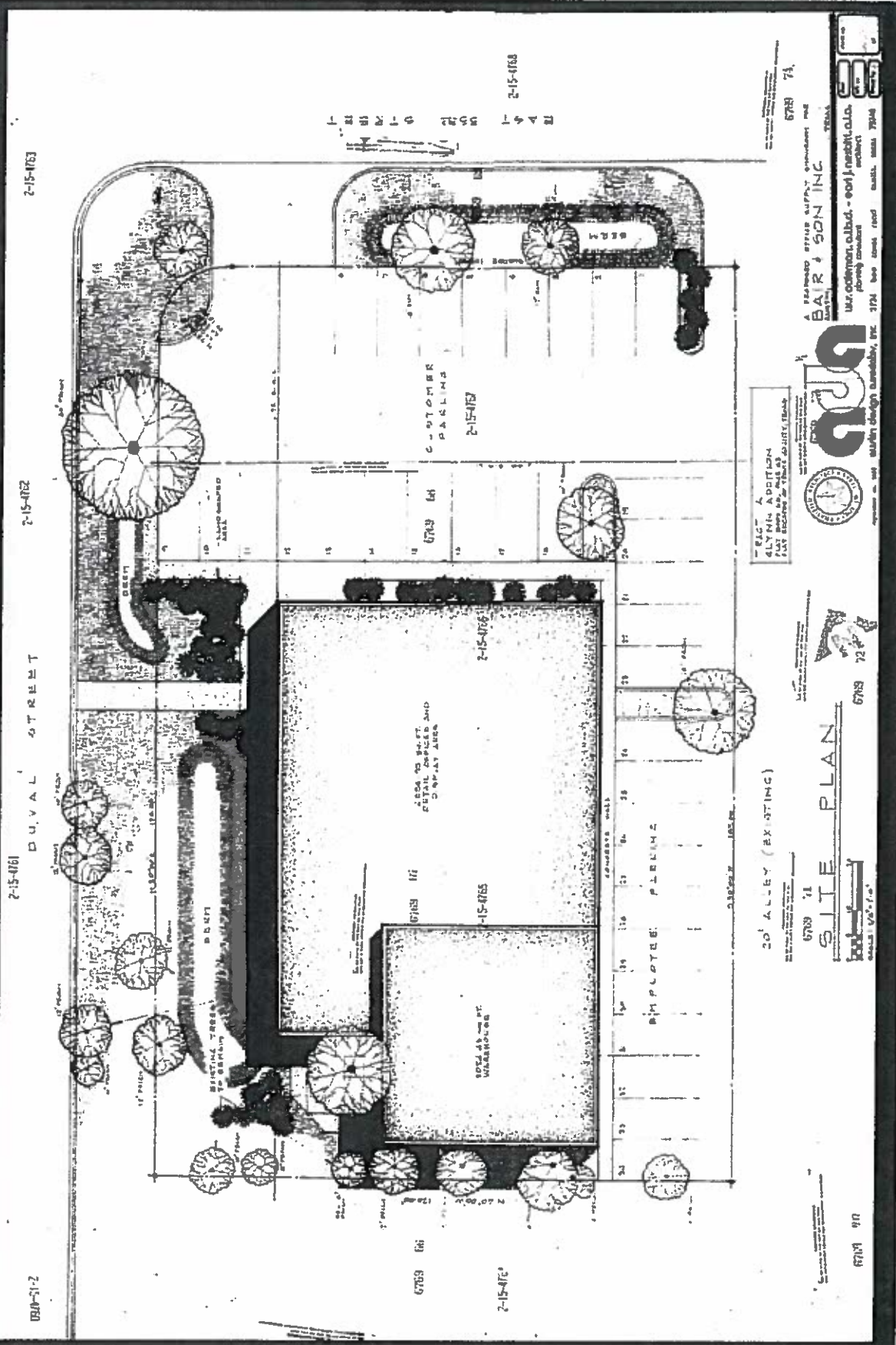


Exhibit C

8/21



CM
/g

Northfield Neighborhood Association

June 10, 2015

Mr. Jerry Rusthoven
City of Austin
Planning and Zoning Department
Via Electronic Mail Jerry.Rusthoven@austintexas.gov

Re: 501 E. 53rd Street – Home Slice Pizza

Dear Mr. Rusthoven:

Thank you for your time in considering the subject request for termination of a restrictive covenant. Home Slice Pizza and their representatives presented to us and we understand that the restrictive covenant placed on the property in 1979 prevents any uses other than office supply store/warehouse from making use of the property. As always, we encourage proactive communication with the community.

As the president of the Northfield Neighborhood Association (NNA), I'm able to inform you that the as a result of our meetings and deliberation, NNA voted unanimously to support the proposed termination of the restrictive covenant on the property located at 501 E. 53rd Street. The attendance at the two meetings at which we considered Home Slice's request was much higher than normal; and indicates that there was significant interest in the issue and that the vote was representative of the entire neighborhood's intent. Of particular note, all of the neighbors directly adjacent to the property that attended the meeting voted to support the request.

Please feel free to contact me should you have any questions or comments. I will also be happy to serve as the contact for the association should others need additional information.

Warmest Regards,

Michael Wong, CPSM, LEED AP
President, Northfield Neighborhood Association
(512) 944-6370 (cel)

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: www.austintexas.gov/planning.

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: C14-79-171(RCT)
 Contact: Tori Haase, 512-974-7691
 Public Hearing: Aug 11, 2015, Planning Commission
 Sep 10, 2015, City Council

Kathleen Warren
 Your Name (please print) 78751
 502 Dwalst, Austin, TX

I am in favor
 object

Your address(es) affected by this application
 7/28/15
 Date
 Signature

Daytime Telephone: 512-952-0419

Comments: What will the hours of the business be? Will there be live music? What about parking? I see the online plot claims there are 45 parking spaces - there are not! Move like 20, if even street!

If you use this form to comment, it may be returned to:
 City of Austin
 Planning & Zoning Department
 Tori Haase
 P. O. Box 1088
 Austin, TX 78767-8810

10/13



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: www.austintexas.gov/planning.

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: C14-79-171(RCT)
Contact: Tori Haase, 512-974-7691
Public Hearing: Aug 11, 2015, Planning Commission
Sep 10, 2015, City Council

Tori Haase
Your Name (please print)

5310 EVANS AVE
Your address (if affected by this application)

Tori Haase
Signature

949-278-1155
Daytime Telephone:

Signature

Date

8/26/15

I am in favor
 I object

Comments: I am in favor of this change. I believe having amenities in walking distance is a benefit for the community. Furthermore having a restaurant is far more beneficial than just an office space.
Case #: C14-79-171(RCT)
Tori Haase 8/11/15 public hearing

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

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

CASE NUMBER: C14-79-171 (RCT)

Contact: Tori Hasse 512-974-7691

Public Hearing: 8/11/2015 Planning Commission; 9/10/2015 City Council

RE: Notice of Public Hearing for a Restrictive Covenant Termination 501 E.53rd street

C7
12

COMMENTS:

In Favor

As the resident most directly impacted by this action because of the long property line that I share with the E. 53rd street property, I do not object to removing the restrictive covenant on it to allow for its transformation into a restaurant/grocery business. I welcome the termination if it can facilitate a responsible renovation of this decayed, vacant property in a fashion that will enhance the livability and vibrancy of the neighborhood.

However, my support is contingent upon the assurance that any re-development plans for this property conforms to the guidelines of the *North Loop Neighborhood Plan* that requires new commercial mixed uses to respect the residential uses of existing homes that share the area. Thus, I am relying on the prospective tenant Home Slices' pledge that its final site plan will situate its garbage dumpster in an alley location where it will not negatively impact the use and enjoyment of my home, harm existing trees or detract from the residential character of the neighborhood.

Thank You,

Lydia Hajnosz Doty
5207 Duval Street
Austin, TX 78751
8/1/2015

Lydia Hajnosz Doty 8/1/2015

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: www.austintexas.gov/planning.

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: C14-79-171(RCT)
Contact: Tori Haase, 512-974-7691
Public Hearing: Aug 11, 2015, Planning Commission
Sep 10, 2015, City Council

LYDIA HASZOSZ DOTY

Your Name (please print)

5207 DUVAL Street 78751

Your address(es) affected by this application

Lydia Haszozs Doty

Signature

Daytime Telephone: 512-925-9579

Date

8-1-2015

I am in favor
 I object

Comments:

See attached

AHD

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

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

13/3