

Notebook #1

Board of Adjustment Hearing,
November 14, 2016

Case # C15-2016-0124

The Church in Austin And Other Neighbors

Objection Letter to the Hotel's
Requested Variances
(with Exhibits)

THE CHURCH IN AUSTIN

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October 31, 2016

Objection Letter to the Hotel's Requested Variances

Dear Board of Adjustment Members,

Re: Case # C15-2016-0124

Thank you for hearing our objections as you serve the Austin residents, businesses, and civic organizations. The Church in Austin, hereafter "Church", is located at 2530 S. Congress Avenue. We own the adjoining property to the proposed hotel to be constructed by Krug Development, hereafter "Developer", at 2510 S. Congress Avenue (see **Exhibit 1**). We and the other impacted neighbors object to the following five (Items 1-5 in chart below) of the hotel's six requested variances: swimming pool setback, driveway setback, and building setback and height limitations from adjoining property. **Exhibit 2** is a diagram of these variances. We request that you deny these five variances.

If the variances to the building setback and height limitations from adjoining property are granted, then we object to the sixth variance requesting a decrease from 25 feet right-of-way to 0 feet in the minimum front building line setback from South Congress Avenue.

#	Item	Setback Decrease (feet)		Height Increase (Stories/feet)	
		Code	Request	Code	Request
1	Pool	50	28	-	-
2	Driveway	15	5	-	-
3	Building	25	0	-	-
4	Building	50	0	2/30	5/60
5	Building	100	50	3/40	5/60
6	Bldg Front R.O.W.	25	0	-	-

A five-story building should be 300 feet from us according to code.

This Objection Letter to the Hotel's Requested Variances, is divided into three parts: Information about The Church in Austin, Our History of This Case, and Reasons for Our Objections.

Part 1: Information about The Church in Austin

- A. **Property at 2530 S. Congress:** The Church in Austin is a Christian church established in Austin in 1973 and has been at this location for 41 years. **Exhibit 3** is a diagram of our property. We own 3.1 acres; the front half is zoned CS (commercial) and the back half is zoned SF-3 (single-family). We have 17 buildings, which consist of our large and small sanctuaries, four buildings which are composed of 11 minister/missionary residential units,

and 11 cabins which are used for worship service, Sunday school, church offices, and storage of church furniture. The entire 3.1 acres are used for religious purposes and have been for the past 41 years. The entire 3.1 acres are exempt from property taxes because we are a church.

B. **Membership:** There are over 750 adult members and 300 children in the church. Our backyard is used for our children's Sunday school classes, children's year-round outings and summer Bible Camps, and for our adult members' worship services and outings.

C. **Our Mission:** Our mission is to serve the citizens of Austin, thus our name "The Church in Austin". We reach out to and welcome all people, especially those in need and the less fortunate. We take care of the young, elderly, sick, poor, deaf, disabled, recovering alcoholics and drug addicts, and the spiritually hungry. We are a charitable organization and we contribute approximately \$2,000 per month to needy people. We give scholarships for higher education of \$1,000 per month to 20 students for a total of \$20,000 per month.

Our mission is derived from the following Bible verse, "May the God of peace Himself sanctify you wholly, and may your spirit and soul and body be preserved complete, without blame, at the coming of our Lord Jesus Christ." Thus, we seek to preserve all three parts of man: his spirit, soul, and body. We believe that the preservation of our property is essential to the preservation of the people we serve and the fulfillment of our mission as a church.

D. **Very active church:** We are a very active church and use our church property seven days a week. We have staff that works onsite Monday through Friday from 8:30 a.m. – 9:00 p.m. We have church worship services throughout the week including Saturday morning. Saturday afternoons and evenings the following groups of members use our property: elementary age children, junior and senior high school children, college students, deaf members, and staff members, and church-wide picnics. On Sunday we have morning and evening worship services. In conclusion, we have groups of members using our property seven days a week, both inside and outside. **Exhibit 4** is some photographs of the outside use of our property.

E. **Resident ministers/missionaries:** We currently have 23 people living in our 11 minister/missionary residential units, four of which are children. Most of the back half of our property is used as their backyard for recreation, relaxation, and entertaining guests. Of the 19 adult residents of our property, 16 are ministers/missionaries who serve the Lord full-time and the other three are their spouses. Our backyard is our only location for them to "get away" from their hectic schedules to have a quiet time in a peaceful, unobstructed environment. There is a very special atmosphere due to the beauty of our huge heritage live oak trees and open space, as seen in Exhibit 4.

Part 2: Our History of This Case

This section provides a brief history of this case. There have been three false starts of this case before the Planning Commission (see G, K, and N below) by the developer which have drained our resources and our time. Please deny the requested variances so the hotel developer can redesign and begin to build the hotel within the City code and we can return to our mission of serving the needs of the people mentioned in Part 1. C.

A. Because the back half of our property is zoned SF-3, compatibility standards are triggered for the back half of the developer's property.

- B. In 2014 before the developer purchased the property we informed him that we were not interested in rezoning or supporting waivers or variances.
- C. We were told by the developer that only the back half of our property triggered compatibility, for which they wanted waivers for the swimming pool, driveway, and alcohol.
- D. On February 8, 2016 the hotel developer presented their case to the Dawson Neighborhood Planning Contact Team (DNPCT). At that point they asked for waivers for the driveway, swimming pool, and to sell alcohol within 300 feet of a church.
- E. On June 13, 2016 the developer asked the DNPCT to approve their waivers for the driveway and swimming pool; the developer postponed the requested alcohol waiver. We narrowly lost the vote by the DNPCT. At that point, no one knew, including the DNPCT, how the other impacted neighbors felt about the hotel. Only three of the approximate 20 DNPCT members who voted live within the 500-foot impacted neighborhood area. The Dawson Neighborhood Association (DNA) did not vote.
- F. We visited the impacted residential neighbors to see where they stood concerning the waivers. **Exhibit 5** identifies the 73 impacted neighbors who objected to the pool and driveway waivers. The houses in this exhibit have two shadings, red and tan. The red houses objected to waivers for the driveway and the swimming pool; the tan houses were either under construction, vacant, not home, didn't answer the door, undecided and needed more information, or declined (only about 8). As can be seen, the neighbors, especially those in close proximity of the hotel prevailingly object to the waivers.
- G. On June 28, 2016 we lost before the Planning Commission on an initial vote of 6-to-5. After dialogue between the commissioners and the hotel we lost by a greater margin. The City staff recommended approval of the two waivers. **Exhibit 6**, which is **Notebook #2**, is the 674 letters of objection to the swimming pool and driveway waivers that we presented to the Planning Commission. They are in five categories: neighbors (73), Church in Austin minister/missionary residents (15), Church in Austin members (525), other church leaders (20), and other church members (41).
- H. On July 8, 2016 we appealed to the City Council. A hearing was set for November 3 and later postponed.
- I. We hired attorney John Joseph who discovered that because our entire property is for civic use, we trigger compatibility standards for the hotel's entire property.
- J. On September 1, 2016 Mr. Joseph filed a letter with the City revealing his findings of civic use and requesting the Planning Commission's decision be voided (**Exhibit 7**). Although we never got a response from the City, apparently his request to void the Planning Commission's decision was agreed upon since we are again addressing the swimming pool and driveway.
- K. On September 30 a Notice of Public Hearing Site Plan Waiver was mailed out announcing that the developer had filed another application to be heard by the Planning Commission on October 11 (see **Exhibit 8**). This application was a repeat of the driveway waiver and a new waiver to allow a building to be constructed less than 25 feet from the Congress Avenue right-of-way. The Planning Commission hearing was later postponed.
- L. On October 10 we presented two important new discoveries at the DNPCT meeting: (1) a prevalent number of the impacted neighbors were opposed to the swimming pool and driveway waivers, and (2) the civic use of our property triggers compatibility standards for their entire property. **Exhibit 9** is an updated version of Exhibit 5 showing the 121 neighbor's opposing the pool and driveway waivers. At the meeting we asked the officers of the DNPCT to call a special meeting to revote on the swimming pool and driveway and to

vote on the anticipated building setback waiver from our property since the developer said they were not going to redesign their hotel.

- M. From October 11-28, we sent numerous emails to the officers of the DNPCT requesting they call a special meeting to revote on the driveway and swimming pool and to vote on the building waiver. Thus far, the DNPCT officers have declined to call a meeting, nor has the developer requested a meeting for voting, to our knowledge. The DNPCT's chairman indicated in his last email that the DNPCT's position would not be considered by the Board of Adjustment: "This is past our input phase and is in the City's hands. DNPCT does not have a voice in this that will be heard or considered." We believe the Board of Adjustment does care about the position of the neighbors, the Dawson Neighborhood Association (DNA) and the DNPCT.

Although the developer may claim that it has the recommendation of the DNPCT for the pool and driveway because the DNPCT vote still stands, we disagree. The fact that these two variances are before the Board of Adjustment indicates that the Planning Commission's vote of recommendation was effectively voided, which was based on inaccurate and incomplete information and an unapprovable site plan. The Planning Commission also relied on the DNPCT's recommendation. In making their decision, the DNPCT members relied on the same inaccurate and incomplete information and an unapprovable site plan. Therefore, the DNPCT's vote of recommendation should also be voided. The developer does not have the support of the neighborhood for the pool and driveway variances and it has chosen not to approach the DNPCT members regarding the building variances. It does not have the support of the neighborhood for the building variances as explained in "O" below. Rather, as documented in this letter, the neighbor's prevailingly object to these building variances.

- N. On October 14 a Notice of Public Hearing Site Plan Waiver was mailed out announcing that the developer had filed another application to be heard by the Planning Commission on October 25, 2016 (see **Exhibit 10**). This application was a repeat of the waiver to allow a building to be constructed less than 25 feet from the Congress Avenue right-of-way. A new waiver was requested to allow a building to be constructed within 24 feet of adjacent property zoned SF-5 or more restrictive. (The new waiver was an error because the 24 feet applies to small sites less than 20,000 sq. ft.; the developer's property is a large site.) The Planning Commission hearing was later postponed.
- O. We went back to the neighbors and our church members to find out what their position was on the building waiver. **Exhibit 11A** is a map of 58 neighbors who signed objection forms. Again, the red houses were the ones objecting and the tan houses were the ones either not approached, under construction, vacant, not home, didn't answer the door, undecided and needed more information, or declined (only a few). Because we went to fewer houses, there are not as many objections as there were with the pool and driveway waivers. **Exhibit 11B**, which is **Notebook #3**, is the 629 letters of objection to the building waiver that we prepared to present to the Planning Commission. They are in four categories: neighbors (Planning Commission form) – 40, neighbors (church form; of the 58, 30 are included above) – 28, church residents (Planning Commission form) – 19, and church members – 542.
- P. On October 19 we received information that the developer had filed with the Board of Adjustment requesting variances for the driveway, pool, 25 feet to 0 feet setback reduction from Congress Ave. right-of-way, and a new variance to exceed the maximum height of a structure located more than 300 feet but not more than 540 feet from property zoned SF-5 or more restrictive.

- Q. On October 26 we received information that the developer had revised its application to ask for different and additional building variances.
- R. We have gone back to some of our church members a third time to present the requested variances before the Board of Adjustment. **Exhibit 12**, which is **Notebook #4**, is a copy of 452 objection forms to the variances requested before the Board of Adjustment. They are in three categories: neighbors (13), church residents (19), and church members (420).

In summary, through three false starts with the Planning Commission our time and money invested in this case to protect what is granted to us by code has tripled. For example, we have presented you with three notebooks of objections, rather than one. We have already spent hundreds of hours and tens of thousands of dollars to protect what is provided to us through City code. We request you deny these variances.

Part 3: Reasons for Our Objections

This third part is based on the developer's revised version as of October 26, 2016 of its Board of Adjustment General/Parking Variance Application and "A Community Guide to The City of Austin's Board of Adjustment," hereafter referred to as "Guidebook," approved by the Board of Adjustment on April 13, 2015. Quotes from the Guidebook are italicized.

This third part focuses on the Application, Section 2: Variance Findings, and is arranged according to the following format: The Board of Adjustment's three required findings (Reasonable Use, Hardship, and Area Character) to prove the need for variances, the developer's findings, and the Church's response. The Board of Adjustment's second required finding regarding "Hardship" has two sections, "a" and "b"; their third required finding regarding "Area Character" has three sub-points. The Church's response focuses on the building, but applies largely to the driveway and pool.

1. Reasonable Use

Application states: "The zoning regulations applicable to the property do not allow for a reasonable use because:"

Applicant's Finding Statement: "The current regulations do not allow for a reasonable use of the property because the long, narrow configuration of the property makes the property not reasonably developable if compatibility standards are applied."

Church's response

A. The fact that compatibility standards limit the size of the building because the property is narrow in size (the long size, as opposed to short size, actually is a plus for the developer) does not mean the property is left with no reasonable use according to page 11 of the Guidebook, which states:

"A property is not left with no reasonable use just because a regulation limits the size or design of a structure or increases development costs."

B. Furthermore, the developer wants the building and driveway waivers in order to increase the number of hotel rooms and thus potential profitability. Under the developer's current configuration of its hotel building, the compatibility standards reduce its number of units and thus potential profitability. However, according to page 11 of the Guidebook, this reduced profitability due to compatibility standards does not constitute a lack of reasonable use:

"In general, the fact that a regulation reduces the potential profitability of an otherwise developable commercial or residential property does not constitute a lack of reasonable use."

The developer has a product type in their economic interests. This is not a reason to waive setback and height compatibility requirements. The developer can design another site plan to meet compatibility on its 1.53 acres.

In conclusion, zoning regulations applicable to the property do allow for reasonable use because a hotel with fewer than 79 rooms (or possible redesign for 79 rooms while meeting compatibility standards), or any other type of structure, can be built according to applicable compatibility standards. Furthermore, the current zoning allows for a vast number of uses requiring no variances. Therefore, the developer failed to prove that the zoning regulations applicable to the property do not allow for a reasonable use.

2. Hardship

Part a.

Application states: "The hardship for which the variance is requested is unique to the property in that:"

Applicant's Finding Statement: "Hardship is unique to this property because the property is zoned for dense commercial use but has a long, narrow configuration that makes it infeasible to develop in compliance with the City's comprehensive plan if the compatibility standards are applied."

Church's response

A. Just as with reasonable use above, the developer is citing the narrow size of the property as the reason for hardship. It wants to waive the compatibility standards so that it can gain more buildable width, more space on which to build. However, page 7 of the Guidebook states that *"self-created or financial hardships are not enough nor are...desire for additional space"* in order to prove hardship. Desire for additional space does not prove hardship.

B. Pages 9-11 of the Guidebook state that the Board of Adjustment considers the three following factors in determining whether a "hardship" exists:

1. "A hardship cannot be personal, but must be based on unique physical features of the property for which the variance is sought." (p.9)

As shown in **Exhibit 13**, narrow lots are common along this area of South Congress Avenue, especially on the west side, most of which are shorter and smaller than the developer's property. Therefore, the hardship is not based on unique physical features of the property. It is not the physical features of the property that are the reason for the requested variance. The developer's claimed "hardship" is due to the compatibility standards triggered by single-family residents and the church's civic use. However, page 10 of the Guidebook states that "*The City's regulations alone cannot be the hardship. For example, an applicant cannot request a height variance and claim that the restrictions on building height constitute a hardship.*" In essence, the developer is claiming that the compatibility standards are the hardship. The developer's current site plan was drawn up before the developer realized that it had to meet building setback compatibility standards on the front half of its property where the four-story building is proposed. Therefore, it is not the physical feature of narrowness that limited the buildings on the current site plan, but the after-the-fact realization of compatibility standards.

2. "A hardship cannot be self-created.

- *An applicant for a permit or site plan cannot claim a hardship based on conditions that he or she is responsible for creating.*

- *For example, if a structure is designed in a manner that fails to comply with regulations, the structure's non-compliance isn't a hardship." (p.10)*

The developer's claimed hardship is based on conditions that it is responsible for creating. The developer created its own hardship regarding the building setbacks because it failed to do due diligence before it purchased the property to determine that City code compatibility standards are triggered by adjoining church property. They then designed structures in a manner that fail to comply with regulations. According to the Guidebook, the structure's non-compliance isn't a hardship. The City code and compatibility standards in and of themselves are not a hardship.

Furthermore, before it purchased the property when it believed that only the back half of our property, which is zoned SF-3, triggered compatibility standards, we informed it we were not interested in re-zoning or supporting its requests for waivers and variances.

3. "A hardship must be unique to the property, not general to the area where it's located." (p.10)

Exhibit 13 shows that narrow lots are not unique to the property, but are general to the South Congress Avenue area where it is located, especially to the south.

C. The developer's finding also stated that the property is zoned for dense use. Dense commercial use does not require a four-story building at zero feet from adjoining property. One-story buildings set back 25 feet qualify for dense commercial use.

D. The developer's finding also referred to the City's comprehensive plan. The developer has not shown us where in the City's comprehensive plan it states that in order to get dense commercial use you have to obtain a variance to compatibility standards.

Part b.

Application states: "The hardship is not general to the area in which the property is located because:"

Applicant's Finding Statement: "The hardship is not general to the area because no other tracts in the area are similarly situated and similarly configured."

Church's response

The hardship is general to the area because there are other tracts in the area similarly situated and similarly configured. As shown in Exhibit 13 there are other narrow tracts along South Congress Avenue. The hardship is general to the area and applies to all the narrow commercial properties.

The developer's finding in this subsection Part b. of its property being "similarly configured" and "similarly situated" is a repeat of the two elements of its finding for subsections 1 and Part a. above entitled "Reasonable Use" and "Hardship":

1. "narrow configuration" of the property
2. "compatibility standards"

The developer has not added any additional elements in this finding. Therefore, the church's response is the same as our response for the previous subsections. In conclusion, the developer has not proven hardship.

3. Area character

Application states: "The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because: "

Applicant's Finding Statement: "The variance will not alter the character of the neighborhood because the area is highly commercial, the adjacent property that triggers compatibility functions as a multi-family development that would not normally trigger compatibility, and the property is located on a major mobility corridor."

Church's response

This subsection of the required findings is composed of the three requirements specified in the application, which are discussed below:

- A. not alter area character
- B. not impair the use of adjacent conforming property
- C. not impair the purpose of the regulations

The developer's finding only responded to "area character"; it did not address "impair the use of adjacent conforming property" or "impair the purpose of the regulations".

A. Character of Area

Application states: "The variance will not alter the character of the area adjacent to the property..."

Applicant's Finding Statement: "The variance will not alter the character of the neighborhood because the area is highly commercial, the adjacent property that triggers compatibility functions as a multi-family development that would not normally trigger compatibility, and the property is located on a major mobility corridor."

Church's Response

To support their finding that the variance will not alter the character of the area the developer gave the following three reasons which are addressed below:

- the area is highly commercial
- the church property functions as a multi-family development
- the property is located on a major mobility corridor

1) The area is not highly commercial but a transitional area from family to commercial.

a) The developer's photograph (**Exhibit 14**) leads one to believe the area is highly commercial when in fact, it is not. It is true that the six properties on S. Congress Avenue on the block between Oltorf Blvd and Cumberland Avenue are predominantly zoned commercial. However, **Exhibit 15** shows that the property is located in an area that transitions from single-family and multi-family zoning in the southwest to commercial in the northeast. The adjoining properties on all three sides of the property are zoned SF-3. To the south The Church in Austin property is zoned SF-3, but because we are civic use our entire property is treated as SF-3 in applying compatibility standards. To the west the property is adjoined by SF-3 zoned residential properties. To the north about 10% of the back of their property is adjoined by SF-3; the middle 70% is zoned commercial and is used as surface parking for HEB employees; and the front 20% is zoned commercial and has a one-story coin-operated laundromat with surface parking. The HEB store, which is a one-story building, is approximately 200 feet from the property's north border. This property is in a transitional area. Compatibility standards are designed for transitional areas and should be honored for providing a buffer.

b) Page 12 of the Guidebook states:

"Development that exceeds the size and scale typical of properties in the vicinity may also alter area character."

Exhibit 16 is a panoramic view of South Congress Avenue showing that the building variances will alter the character of the adjacent area. It shows that the hotel

building exceeds the size and scale typical of properties in the vicinity. What is typical is one-story commercial buildings and apartments.

The property to our south is a three-story apartment complex primarily zoned MF-3. Only the apartment's driveway entry is on South Congress Avenue; the apartment buildings are set back more than 300 feet from South Congress Avenue. South of the apartments is the driveway entry of an approximately 12,500 square foot, 3-story office building that is set back from S. Congress approximately 200 feet. Next to it is a one-story Auto Zone building and to the south of them is a one-story funeral home.

c) Page 12 of the Guidebook states:

"While there are no hard and fast rules, many factors may result in altering area character. For example ... diminishing privacy to adjacent properties could have the effect of altering area character."

As discussed in the subsection below, diminishing privacy is also an impairment of the purpose of the applicable zoning regulation. The pool, driveway, and building variances will all diminish the church's and other neighbors' privacy.

2) The entire church property functions as a church.

Our entire church property functions for church use (a place of religious assembly) and is used to carry out our mission as a church, thereby triggering compatibility. **Exhibit 17** is a copy of our Certificate of Occupancy for our church at 2530 S. Congress Ave., which was originally dated April 22, 1975. We have a large congregation of over 750 adult members and 300 children. In order to carry out our mission as a church, we hire a staff of ministers/missionaries. Sixteen of our staff of ministers/missionaries and seven of their family members live on site. Their living units are used regularly for small group religious services (religious assembly) and to individually care for our church members. They do not pay rent or utilities. Our entire 3.1 acres, including their living units, are exempt from property taxes.

3) The property is located on a major mobility corridor but the hotel is not typical in size and scale to the other commercial developments on this corridor.

Even though the property is located on a major mobility corridor, the neighborhood character of the area has been preserved. The businesses along South Congress Avenue between Oltorf and Cumberland, identified in Exhibit 16, define what is typical size and scale for commercial development on the major mobility corridor in our area. It demonstrates that the proposed hotel is not typical in size and scale of the commercial building development for our major mobility corridor.

In conclusion, the developer has not proven that the variances will not alter the character of the area adjacent to the property.

B. Impairment of Use

Application states: "The variance... will not impair the use of adjacent conforming property... "

Applicant's Finding Statement: none

Church's Response

All five variances will impair the use of our property. The hotel is a vacation/party hotel because of its location in the heart of SoCo, one of the most active night life areas in Austin, and the developer's intention to seek a waiver to sell alcohol within 300 feet of a church. The hotel caters to clients who are vacationing/partying as opposed to a roadside hotel that attracts many travelers seeking sleep in route to their destination. The SoCo bars close at 1:00 or 2:00 a.m. Hotel clientel will be returning at all hours of the night, some of who will bring their parties and loud music back to the hotel.

Even if the swimming pool closes at 10:00 p.m., and has a 10 foot acoustical sound wall all the way around it, neither of which are in the site plan, the party simply moves to the adjacent cabana which remains open and is not surrounded by a 10 foot acoustical sound wall.

1. Swimming pool

The developer seeks a variance to reduce the setback for the pool, "an intensive recreational use," from 50 feet to 28 feet. **Exhibit 18** is a retitled enlargement of page 30 of the developer's site plan showing the location of the pool. It identifies the 50 foot no pool zone. The pool is 28 feet from residents but more than 100 feet from the hotel's clients. This seems inequitable to those who have lived in the neighborhood for 30-40 years versus hotel guests who are staying for 3-4 days. The hotel should swap the location of the pool and the lawn, thereby meeting compatibility standards. Nearby swimming pools, generally found at apartment complexes, are all located in the center of the complex. A survey of the area was performed by an engineering firm and no example of a commercial pool adjacent to a property line was found.

The developer believes the pool will be quieter to the neighbors as designed because it will be a few feet lower in elevation. We disagree. They should move the pool so it meets compatibility standards and also provide sound proofing.

The uncontrollable loud music, parties, and night life in the pool and associated cabanas will impair the use of our backyard for outdoor worship services, children's Bible school, and personal quiet times of prayer and meditation. Exhibit 4 shows some of the daytime uses of our backyard.

2. Driveway

The City code requires a standard 25 foot setback for driveways. This distance has been determined to be reasonable to buffer neighbors from the undesirable characteristics associated with traffic: noise of operating a car, music, and people conversing late at night as they drop off passengers. Because the property is less than 125 feet wide, the developer is allowed to move the driveway 10 feet closer to the church, resulting in only a 15 foot setback rather than the standard 25 feet. Therefore, it is already closer than the distance determined to be appropriate. It

should not be granted a variance that would allow it to move the driveway another 10 feet closer, reducing the setback to 5 feet. Its driveway is not a typical residential driveway; it is 25 feet wide, the width of a residential street, and more than 300 feet along the length of our property. Due to its size and that it is built for a fire truck, it will resemble a city street on a city block that dead ends. Only instead of serving approximately ten houses on the block, it will serve 79 units, approximately eight times the amount of traffic.

One of the ministers living five feet from the property will be ten feet from the driveway if this variance is granted. The head of his bed will literally be 11 feet from all the traffic noise. In addition, a driveway 5 feet from our property impairs the future use of future developments to this area of our property.

The bottom of **Exhibit 19** shows that one of our heritage live oaks will be affected if the variance is granted. Although the driveway is at the end of the ½ critical root zone area, there is no way that the edge of a driveway built to support a fire engine can be constructed without cutting or filling 4 inches above or below the existing ground level in the ½ critical root zone area.

The developer is required to have a 25 foot driveway for fire engines, but it does not need to be 5 feet from our property. Again, it is already 10 feet closer than what is considered standard for protection against the negative impacts of driveways.

A hotel driveway can be designed to meet compatibility standards; it may mean fewer hotel rooms.

3. Building

Exhibit 19 shows that our front heritage oak tree will be impacted by a 0 feet setback for the building.

The top half of **Exhibit 20** is a diagram of the height limitations and setbacks according to City code. A building 5 stories high is required to be 300 feet from our property. The bottom half shows the extreme request of the developers to reduce the 300 feet setback to a 0 feet setback. In order to do so, the developer must obtain three building variances.

Exhibit 21A is the existing view of the property from the entryway of our property. **Exhibit 21B** is the view if the developer builds 2 stories with a 25-foot setback according to code. **Exhibit 21C** is the view if the 4 stories are built with a 0 foot setback. The entire atmosphere of our property will be changed and felt the moment a person enters our property. As addressed in the next section, we lose privacy, view, open space, and quietness. In addition, the area below the heritage oak is our only front yard and is frequently used by groups of our members. Exhibit 4 shows some of the daytime uses of our front yard.

Exhibits 22A, 22B, and 22C show the same series of views from our church entrance and **Exhibits 23A, 23B, and 23C** from our church window. **Exhibits 24A and 24B** show the existing view and the view with variances from one of our children's cabins. No doubt our members would be greatly inhibited by the potential hotel viewers from their balconies and

windows. The third story party deck 0 feet from and overlooking our property will also impair our use. The variances will impair the use of our property and adjoining properties.

In conclusion, the developer has not proven that the variances will not impair the use of adjacent conforming property.

C. Impairment of Purpose of Regulations

Application states: "The variance...will not impair the purpose of the regulations of the zoning district in which the property is located because:"

Applicants Finding Statement: none

Church's Response

Society and the City code recognize civic use as a special category which warrants compatibility standards because civic use serves the citizens. The code defines civic use as facilities that provide educational, recreational, day care, and religious assembly (churches). The Guidebook on page 12 states,

"An applicant should also be able to explain, in general terms, how the variance will not significantly impair the purpose of the regulation. For example, a residential setback restriction is intended to protect privacy, provide for open space, and avoid the aesthetic and safety concerns associated with over-crowding."

These residential setback restrictions protect our neighborhoods because society values the atmosphere that they preserve. Because society equally values civic use, civic facilities are afforded the same setbacks as residential zoning. The Guidebook states that these setback restrictions are intended to **protect**. The fact that these compatibility standards are intended to protect, means that they have value to the community and property owners. Thus, they are valuable to the use of our property as a church; to lose them means we would lose our protection and diminish the value of our service to citizens. As a non-profit charitable organization that sells no product and does not charge for its services, we cannot afford to have the value of our services diminished to citizens.

As indicated in the Guidebook, these compatibility standards *"protect privacy, provide for open space, and avoid aesthetic and safety concerns associated with over-crowding."* In addition to these qualities, tranquility, quietness, and view are also protected by the compatibility standards. All of these qualities would be significantly impaired if the requested variances are granted.

The developer has not proven that the variances will not impair the purpose of the compatibility standards.

In conclusion, the developer has failed to prove that applicable compatibility standards do not allow for a reasonable use of the property, that the hardship is unique to the property, or that the variances will not alter area character. The Church in Austin and other neighbors have

provided evidence that the compatibility standards do allow for a reasonable use of the property, that hardship is not unique to the property, and that the variances will alter area character. Therefore, we request that you deny the variances for pool, driveway, and building setback and height limitations from adjoining property.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Tym Seay". The signature is fluid and cursive, with the first name "Tym" and last name "Seay" clearly distinguishable.

Tym Seay
Chairman of the Board
Of The Church in Austin

List of Exhibits

1. Area Map
2. Diagram of Six Variances Requested
3. Diagram of Church Property
4. Photographs of Use of our Property
5. Map of Neighbors Objecting to the Pool and Driveway Waivers
6. Neighbor' and Church Members' Objection Forms to Pool and Driveway Variances (see Notebook #2)
7. Attorney's Letter to City re: Civic Use Triggers Compatibility Standards
8. Planning Commission Notice of Hearing on October 11, 2016
9. Neighbors Objecting to Pool and Driveway Waivers
10. Planning Commission Notice of Hearing on October 25, 2016
- 11A. Neighbors Objecting to the Building Variances
- 11B. Neighbors' and Church Members' Objection Forms to the Building Waiver (see Notebook #3)
12. Neighbors' and Church Members' Objection Forms to Pool, Driveway and Building (see Notebook #4)
13. Narrow Lots on S. Congress Ave
14. Developer's Area Map
15. Zoning of Surrounding Area Showing Transition
16. Variances Will Alter the Character of the Adjacent Area
17. Certificate of Occupancy
18. Swimming Pool No Build Zone
19. Heritage Tree Damage
20. Height Limitations and Setbacks
21. Comparison of Views from Church Entryway
22. Comparison of Views from Church Entrance
23. Comparison of Views from Church Window
24. Comparison of Views from Children's Cabin

Exhibit 1 Area Map



Exhibit 2

Six Variances Requested

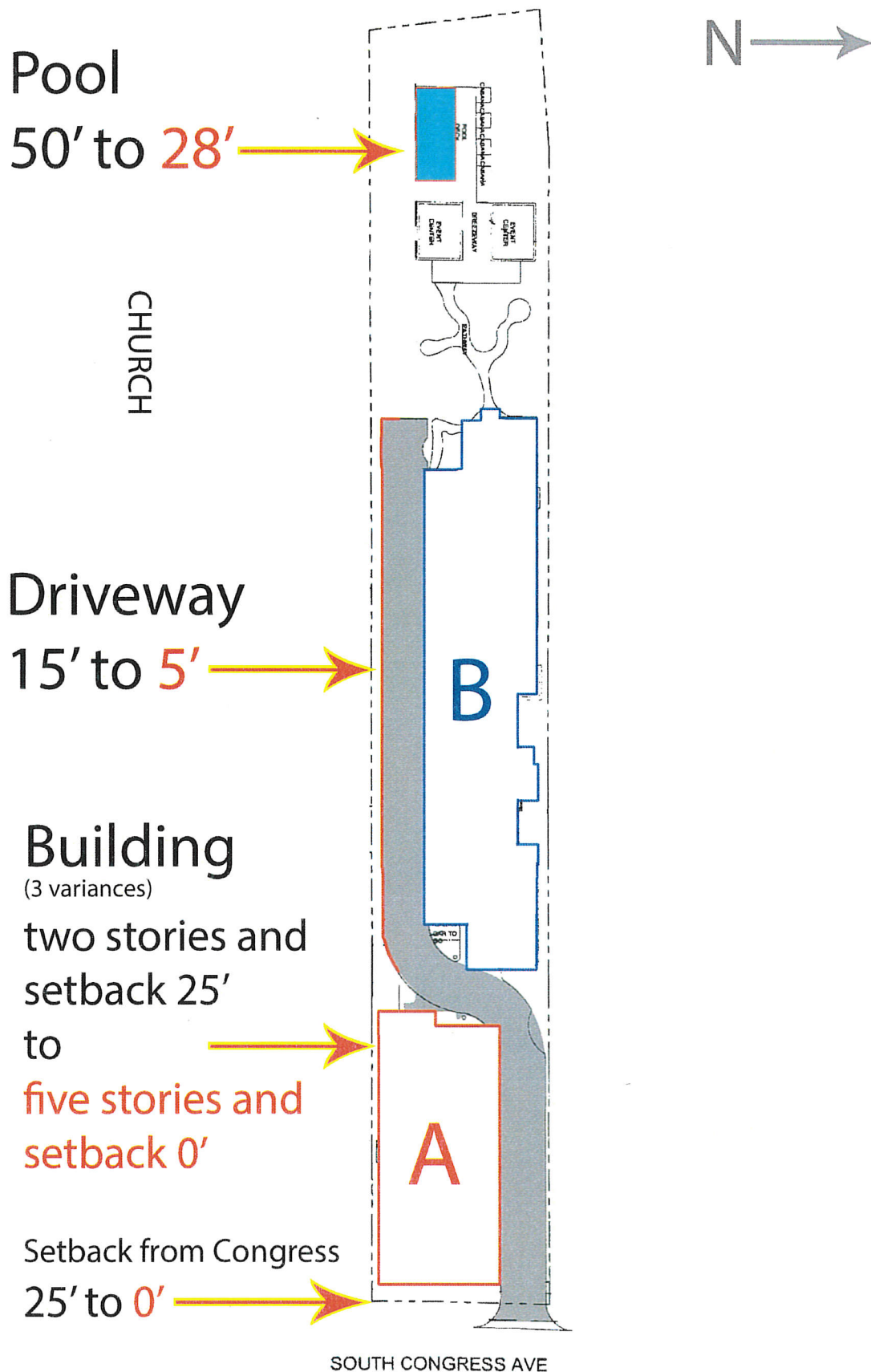


Exhibit 3

Diagram of Church Property at 2530 S Congress

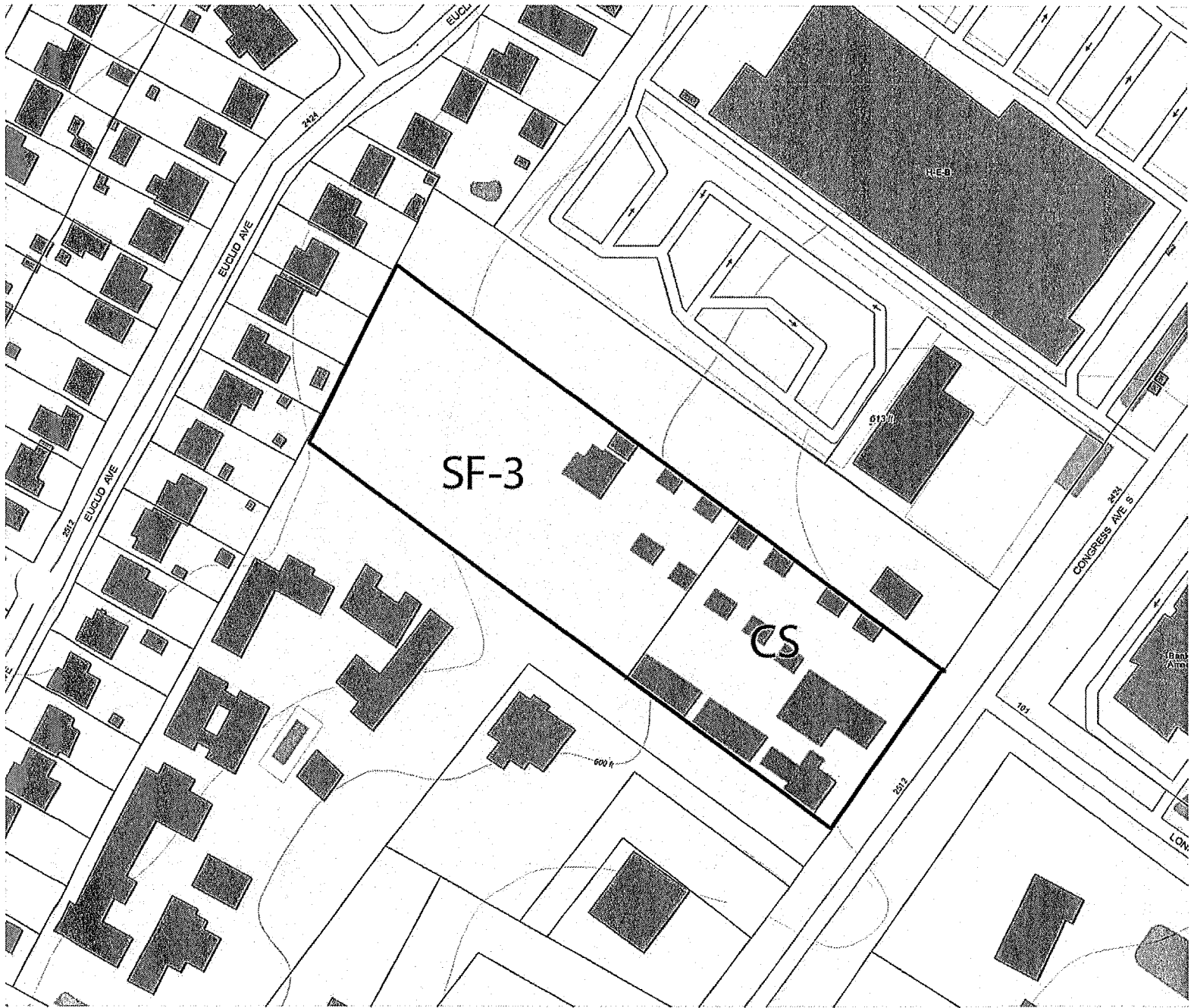


Exhibit 4

Location where following 12 photos were shot
(↑ indicates direction of view)

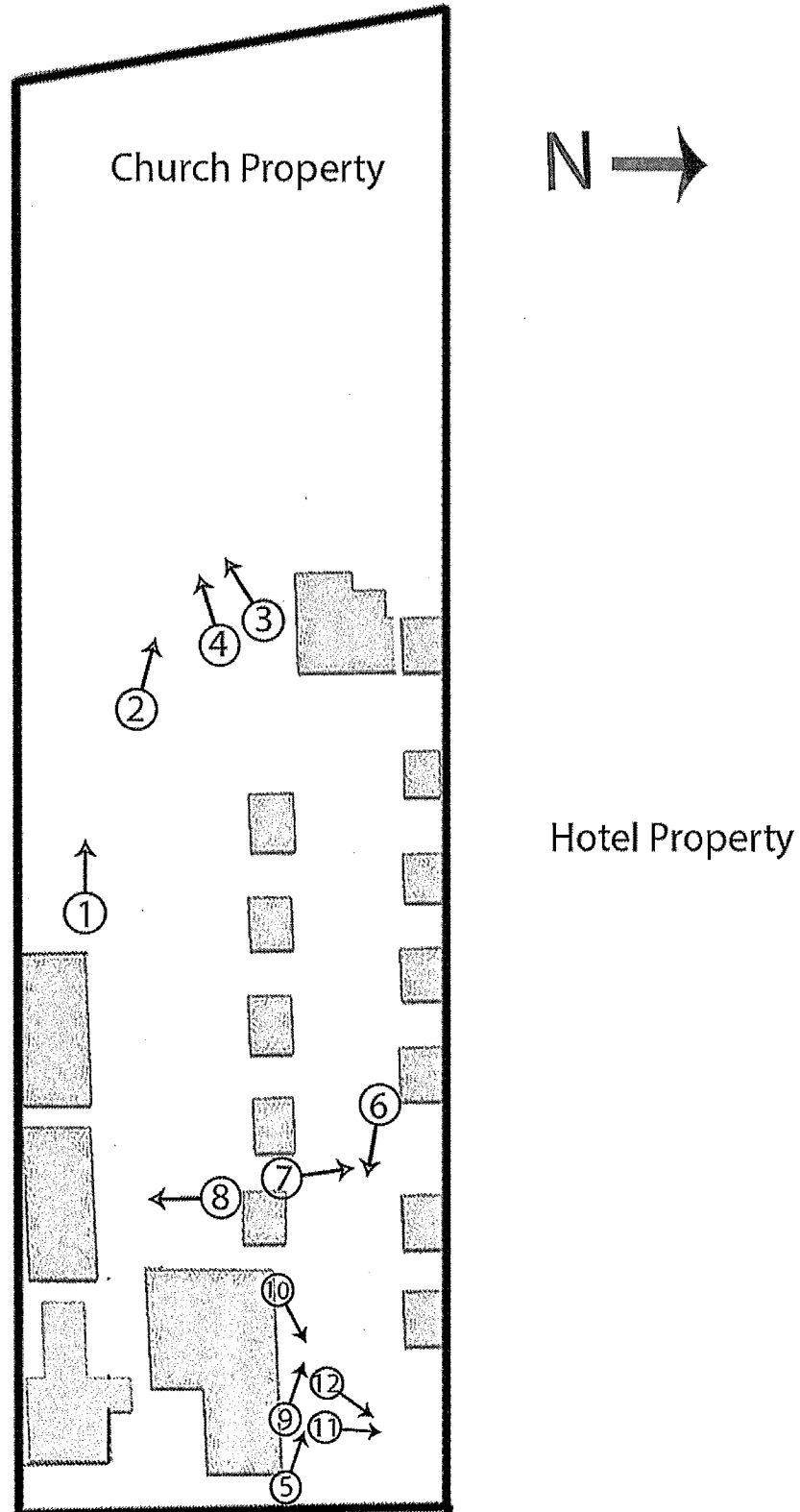


Exhibit 4-A

1



Backyard viewed from southern parking lot

2



Backyard viewed from southern parking lot

Exhibit 4-B

3



Backyard dinner before worship meeting

4



Backyard baptism

Exhibit 4-C

5



6



Exhibit 4-D

7



Prayer and fellowship area viewing developer's property

8



High Schoolers

Exhibit 4-E

9



Prayer and fellowship area outside church building viewing developer's property

10



Prayer and fellowship area outside church building viewing developer's property

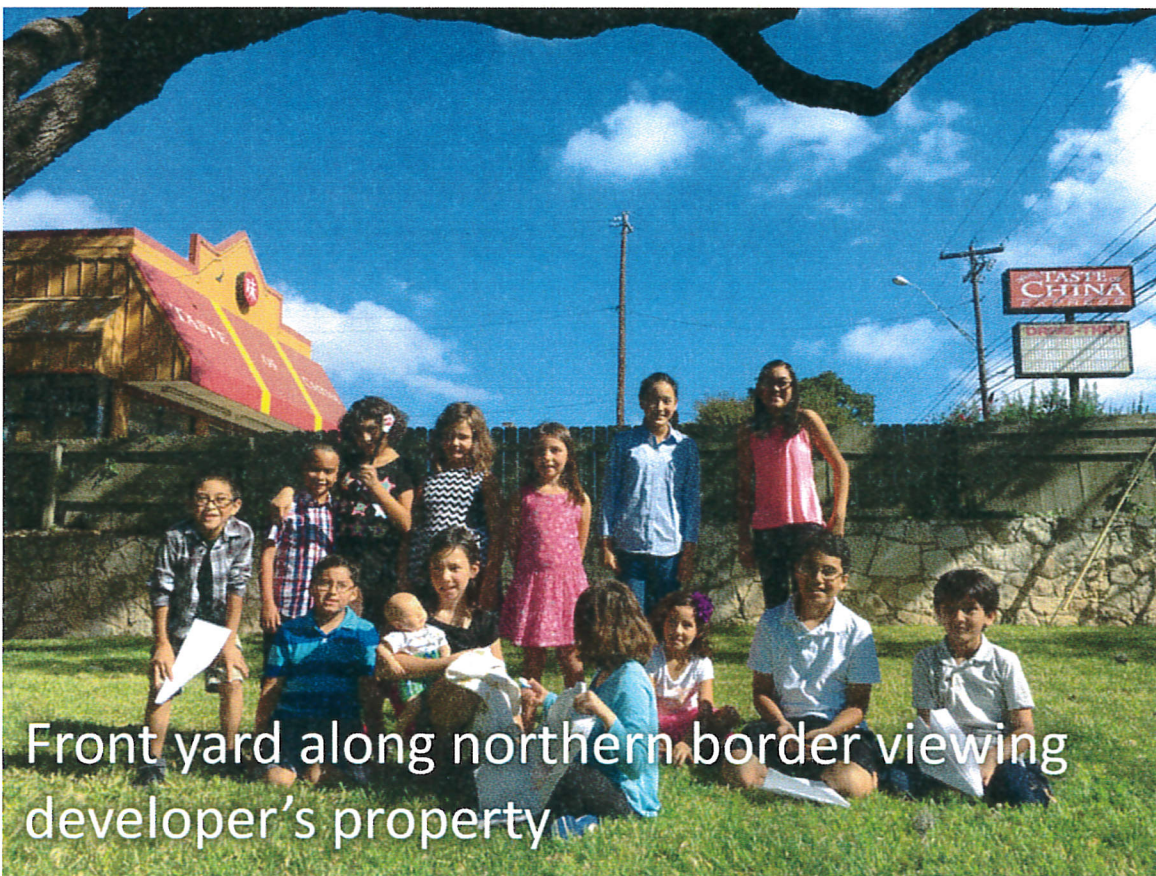
Exhibit 4-F

11



Front yard along northern border viewing developer's property

12



Front yard along northern border viewing developer's property

Exhibit 5 Map of Neighbors Objecting to the Pool and Driveway Waivers



Exhibit 6

(Notebook #2)

Objection Forms to Hotel Variances Requested for Pool and Driveway
(presented to the Planning Commission on June 28, 2016)

Table of Contents

	Number of Objections
1. Neighbors	73
2. Church in Austin residents (Planning Commission Form)	15
3. Church in Austin members	525
4. Other church leaders	20
5. Other church members	41
Total:	674

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DIRECTOR

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September 1, 2016

Ms. Lynda Courtney
Development Services Process Coordinator
City of Austin
Development Services Department
505 Barton Springs Road
Austin, Texas 78704

Re: Compatibility Waivers for Guesthouse Hotel, 2510 South Congress Avenue
(Site Plan No. SP-2015-0300C).

Dear Ms. Courtney:

As you know, I represent the Church in Austin (hereafter "Church") in connection with the application by applicant Wuest Group (owner Krug Development) for two compatibility waivers for The Guesthouse Hotel project at 2510 S. Congress Avenue (Site Plan No. SP-2015-0300C). The Church in Austin is on the southern adjoining property located at 2530 S. Congress Ave.

On June 28, 2016, the Planning Commission granted two compatibility waivers, as reflected on pages 5 and 6 of the Planning Commission minutes attached as Exhibit "A". The Church in Austin has perfected an appeal of the compatibility waivers granted by the Planning Commission. The Church in Austin's appeal is on Council's September 1, 2016 agenda, although I understand that an agreed postponement to November 3, 2016 is pending.

Since the appeal was docketed, staff has been made aware that the waivers were approved on the basis of an erroneous application of the compatibility rules for this site. Staff assumed (and the Planning Commission was told) that compatibility regulations were triggered only by the SF-3 zoned western portion of the Church property adjoining

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the site to the south. Under this application of the rules, only the western portion of the site required compatibility waivers.

It is now clear that the proposed development must satisfy compatibility regulations along the entire southern boundary of the site. The eastern portion of the Church tract, although zoned CS-V-CO-NP, is used as a church and therefore triggers compatibility requirements under Section 25-2-1051(A)(1)(a)(ii) of the Land Development Code. The approved compatibility waivers are insufficient to permit the development of the project in the proposed configuration. For example, the Planning Commission approved a waiver for only approximately two-thirds of the length of the driveway along the southern border, not the entire length of driveway along the southern border. The other one-third of the driveway along the southern border was not brought before the Planning Commission. The waiver therefore is insufficient. Indeed, the proposed site plan cannot be approved even with compatibility waivers granted by the Planning Commission because the site plan proposes to exceed the compatibility height limitation on the building closest to South Congress Avenue. As you are aware, the Planning Commission is authorized to grant waivers from the compatibility regulations' height restrictions only in narrow circumstances not applicable here.

The notice of the Planning Commission's hearing on the compatibility waivers, attached as Exhibit "B", falsely portrayed that "Two waivers to Compatibility standards are required", when in fact additional compatibility waivers and variances are required. The Planning Commission considered the waivers in conjunction with a site plan that cannot be approved under the compatibility regulations even with waivers from the Planning Commission. The Planning Commission conditioned the waivers on adherence to "mitigating measures" that were, again, tied to a specific configuration of the site. See Compatibility Waiver Review Sheet, Scott Wuest Memo (March 30, 2016), attached as Exhibit "C".

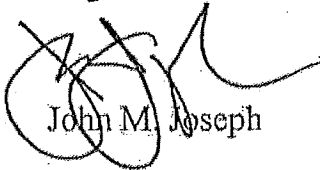
Given these circumstances, it is clear that the compatibility waivers were conditioned on an incomplete and inaccurate notice and an inaccurate depiction of the allowable development. The waivers are void, and the applicant should be required to resubmit its request for compatibility waivers to the Planning Commission. Moreover, the applicant should be allowed to resubmit a waiver request only after submitting a site plan that otherwise complies with applicable compatibility regulations. The Planning Commission cannot make an informed judgment about the need for compatibility waivers without such information.

September 1, 2016

Page 3

We accordingly request that you advise the applicant that the compatibility waivers are void and the existing site plan is rejected, and that the applicant will be permitted to reapply for compatibility waivers only after submission of a site plan that otherwise complies with applicable development regulations.

Regards



John M. Joseph

Cc: Greg Guernsey
Rodney Gonzales
Brent Lloyd



**REGULAR MEETING
MINUTES**

**PLANNING COMMISSION
June 28, 2016**

The Planning Commission convened in a regular meeting on June 28, 2016 @ 301 W. 2nd Street, Austin, TX 78701

Chair Stephen Oliver called the Commission Meeting to order at 6:03 p.m.

Commission Members in Attendance:

Stephen Oliver – Chair
Fayez Kazi – Vice – Chair (*left early*)
Karen McGraw
Tom Nuckols
Angela PineyroDeHoyos
James Schissler
Patricia Seeger
James Shieh
Jose Vela
Trinity White
Michael Wilson
Nuria Zaragoza

William Burkhardt – Ex-Officio

Absent:

Jeffrey Thompson

Robert Hinojosa – Ex-Officio
Dr. Jayme Mathias – Ex-Officio

EXECUTIVE SESSION (No public discussion)

The Planning Commission will announce it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel on matters specifically listed on this agenda. The commission may not conduct a closed meeting without the approval of the city attorney.

Private Consultation with Attorney – Section 551.071



A. CITIZEN COMMUNICATION: GENERAL

Ms. Susana Almanza – Presented a video concerning the displacement of residents at Cactus Rose Mobile Home Park.

Mr. Saul Madero – Presented a video concerning the displacement of residents at Cactus Rose Mobile Home Park.

B. APPROVAL OF MINUTES

1. Approval of minutes from June 14, 2016.

The motion to approve the minutes from June 14, 2016 was approved on the consent agenda by Commissioner Jose Vela, Commissioner Nuria Zaragoza seconded the motion on a vote of 12-0. Commissioner Jeffrey Thompson absent.

C. PUBLIC HEARINGS

1. **Rezoning:** **C14-2016-0025 - St. James Missionary Baptist Church; District 1**
Location: 3417 East Martin Luther King, Jr. Boulevard, Tannehill Branch
Watershed; East MLK Combined NP Area
Owner/Applicant: St. James Missionary Baptist Church (Thomas J. Owens)
Agent: Urban Design Group (Laura Toups)
Request: SF-3-NP to SF-6-NP
Staff Rec.: **Recommended**
Staff: Heather Chaffin, 512-974-2122
Planning and Zoning Department

Public Hearing closed.

Motion by Vice-Chair Faye Kazi, seconded by Commissioner Tom Nuckols to grant SF-6-CO combining district zoning with a maximum of 60 units and to prohibit the payment in-lieu for on-site water quality controls, was approved on a vote of 8-4. Those voting aye were: Chair Stephen Oliver, Vice-Chair Faye Kazi, Commissioner Karen McGraw, Commissioner Tom Nuckols, Commissioner Patricia Seeger, Commissioner James Shieh, Commissioner Trinity White, and Commissioner Nuria Zaragoza. Those voting nay were: Commissioner Angela PineryoDeHoyos, Commissioner James Schissler, Commissioner Michael Wilson and Commissioner Jose Vela. Commissioner Jeffrey Thompson absent.

Planning Commission Note: Direction to staff to further study connection of this property to the larger JJ Seabrook trail network to the north and report to Council.

2. **Rezoning:** C14-2015-0146 - 1414 W. Oltorf; District 5
Location: 1404, 1408, 1412, 1414 W. Oltorf St & 2043 S. Lamar Blvd, West
Bouldin Creek Watershed; Zilker NP Area
Owner/Applicant: Jstrain, LLC (Scott Trainer)
Agent: Metcalfe, Wolff, Stuart & Williams, LLP (Michele Rogerson Lynch)
Request: CS, SF-3, CS-CO (Tract 1) & CS-MU-V-CO (Tract 2) to CS-MU-CO
(Tract 1) & CS-MU-V-CO (Tract 2)
Staff Rec.: **Recommended**
Staff: Andrew Moore, 512-974-7604
Planning and Zoning Department

The motion to grant staff's request for postponement of this item to July 12, 2016 was approved on the consent agenda by Commissioner Jose Vela, Commissioner Nuria Zaragoza seconded the motion on a vote of 12-0. Commissioner Jeffrey Thompson absent.

3. **Rezoning:** C14-2016-0039 - Thornton 2; District 5
Location: 2413 Thornton Road, West Bouldin Creek Watershed; South Lamar NP
Area
Owner/Applicant: John Hobberman
Agent: South Llano Strategies (Glen Coleman)
Request: CS to MF-4-CO
Staff Rec.: **Recommendation of MF-2-CO**
Staff: Andrew Moore, 512-974-7604
Planning and Zoning Department

Public Hearing closed.

The motion to grant the Applicant's request for MF-4-CO combining district zoning with the condition of a 70 unit dwelling cap and to include the traffic mitigation measures per the Neighborhood Traffic Analysis (see Staff Report - Ivan Naranjo and Scott A. James, Development Services Department, Neighborhood Traffic Analysis for Thornton Road, Memo (June 22, 2016) pgs. 10-12), was approved on Commissioner Angela PineyroDeHoyo's motion, seconded by Commissioner Patricia Seeger on a vote of 10-1. Commissioner Tom Nuckols voted nay. Vice-Chair Faye Kazi (*left early*) and Commissioner Jeffrey Thompson absent.

Planning Commission Note: Applicant informed the Commission he is amenable to participating in the SMART Housing program.

4. **Rezoning:** **C14-2015-0119 - Neal Mixed Use Zoning; District 9**
Location: 1507, 1509, 1511, 1601, & 1603 Shoal Creek Boulevard, Shoal Creek Watershed; Downtown Austin Plan
Owner/Applicant: F. Scott Holdings LLC (John S. Neal), Neal Family Chalet LP, Caroline Neal, Francis CC Neal Trust
Agent: Site Specifics (John Hussey)
Request: SF-3, LO, GO to GO-MU
Staff Rec.: **Recommendation of GO-MU**
Staff: Victoria Haase, 512-974-7691
Planning and Zoning Department

The motion to grant the Applicant's request for postponement of this item to August 23, 2016 was approved on the consent agenda by Commissioner Jose Vela, Commissioner Nuria Zaragoza seconded the motion on a vote of 12-0. Commissioner Jeffrey Thompson absent.

5. **Code Amendment:** **C20-2015-018 - Tenant Relocation**
Request: Consider amendments to Title 25 of the Land Development Code related to recommendations regarding tenant relocation assistance requirements.
Staff Rec.: **Recommended**
Staff: Lauren Avioli, 512-974-3141
Neighborhood Housing and Community Development

Public Hearing closed.

Motion by Commissioner Angela PineyroDeHoyos, seconded by Commissioner Tom Nuckols to refer this item to the Codes and Ordinance Joint Committee for further review along with direction to staff to schedule the item for the July 26, 2016 Planning Commission agenda was approved on a 10-0-1 vote. Commissioner James Schissler recused himself from this item. Vice-Chair Faye Kazi (*left early*) and Commissioner Jeffrey Thompson absent.

6. **Code Amendment:** **C20-2015-004 - Subchapter F: Carport and Garage Exemptions**
Request: Consider an amendment to Title 25 of the City Code to change regulations related to Subchapter F gross floor area exemptions for garages and carports.
Staff Rec.: **Recommended**
Staff: Greg Dutton, 512-974-3509
Planning and Zoning Department

Public Hearing closed.

There was a motion by Commissioner Trinity White, seconded by Commissioner James Schissler to deny staff recommendation and recommend the amendment be reviewed during the CodeNext rewrite.

There was a substitute motion by Commissioner Karen McGraw to grant staff's recommendation and allow existing carports to maintain their exemptions. The motion failed to garner a second. There was a motion by Commissioner Jose Vela to remove Article 3, increase F.A.R. to .6 and increase square footage to 3,450 feet. *Motion deemed erroneous in disposing of the item as posted on the Planning Commission agenda.*