

**CITY COUNCIL APPEAL SUMMARY OF  
PLANNING COMMISISON SITE PLAN  
COMPATIBILITY WAIVER**

**CASE NUMBER:** SP-2015-300C    **PC DATE:** June 14, 2016 (PP, neighborhood )  
June 28, 2016 (8-3 25-2-1067F;  
9-2 25-2-1067H)

**CITY COUNCIL APPEAL:** 12-15-2016

**PROJECT NAME:** 2510 S. Congress    **DISTRICT:** 3

**ADDRESS OF APPLICATION:** 2510 S. Congress

**APPLICANT:** Krug Development (David Krug) (773) 750-3706

**AGENT:** Wuest Group (Scott Wuest) (512) 394-1900

**AREA:** 66646.8 SF (Total Site Area)

**WATERSHED:** East Bouldin Creek (urban)

**SUMMARY OF CASE:**

The proposed development is within 25' of the adjacent property to the south, a religious assembly use which occupies a lot with two zonings---SF-3-NP zoning to the rear (western portion of the property), and CS-V-CO-NP zoning to the front (eastern portion of the property). The applicant for the hotel sought and obtained compatibility waivers for the portion of the proposed development which abutted the SF-3-zoned portion of the church tract. Later analysis and interpretation of the compatibility portions of the Land Development Code raised the concern that additional compatibility waivers were needed for the front portion of the tract, based on the religious assembly use. The church is opposed to the development of the hotel and is appealing the original decision to approve the 2 compatibility waivers. The applicant for the hotel project is seeking clarification about the compatibility requirements for the front portion of their project, determination of additional compatibility requirements, and how to proceed from this point to allow the hotel to be permitted and built.

**PROPOSED DEVELOPMENT:**

The applicant is proposing to construct a 4 story hotel with parking and a pool, with compatibility waivers for setback for driveway (25-2-1067H) and setback for intensive recreational use (25-2-1067F) from adjacent residentially zoned property, zoned SF-3.

**EXISTING ZONING:** The site is located on South Congress Avenue and is zoned CS-V-CO-NP and GR-V-CO-NP. The Conditional overlay limits the height of any structure to 40 feet, and prohibits and pawn shop use.

**NEIGHBORHOOD ORGNIZATIONS:**

Dawson Neighborhood Plan Contact Team  
Dawson Neighborhood Association  
Greater SRCC Neighborhood Planning Team  
Zoning Committee of South River City Citizens  
South Central Coalition  
South River City Citizens Association  
Austin Neighborhoods Council  
Friends of Austin Neighborhoods

**DEPARTMENT COMMENTS:**

**CASE MANAGER:** Lynda Courtney      Telephone: (512) 974-2810  
[Lynda.courtney@austintexas.gov](mailto:Lynda.courtney@austintexas.gov)

**PROJECT INFORMATION:** 1.53 acres

**EXIST. ZONING:** CS-V-CO-NP, GR-V-CO-NP

**ALLOWED F.A.R.:** 2:1, 1:1

**PROPOSED F.A.R.:** 1.63:1, .63:1

**MAX. BLDG. COVERAGE:** 95%, 75%

**PROPOSED BLDG. CVRG:** 56%, 24.5%

**MAX. IMPERVIOUS CVRG.:** 95% ,90%

**PROPOSED IMPER. CVRG:** 13.68%, 24.97%

**REQUIRED PARKING:** 64

**PROVIDED PARKING:** 76

**Proposed Access:** South Congress Avenue

**SUMMARY COMMENTS ON SITE PLAN:**

**Land Use:** This use is allowed under this zoning.

**Environmental:** Comments have been met.

**Transportation:** All parking is shown on the site plan

**SURROUNDING CONDITIONS:****Zoning/ Land Use**

<b>North:</b>	CS-V-CO-NP (Commercial)
<b>East:</b>	S. Congress, then CS-V-CO-NP (Commercial)
<b>South:</b>	SF-3-NP (Residential) and CS-C-CO-NP (Church)
<b>West:</b>	SF-3-NP (Residential)



**City of Austin Development Services Department**  
**505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835**

*with F/om*

**SITE PLAN APPEAL**

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Development Services Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Land Use Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SP-2015-0300C

PROJECT NAME 2510 S. Congress

PROJECT ADDRESS 2510 S. Congress Ave

APPLICANT'S NAME Wuest Group

CITY CONTACT Lynda Courtney  
*(case manager)*

DATE APPEAL FILED July 8, 2016

YOUR NAME Tym Seay

SIGNATURE Tym Seay

YOUR ADDRESS 2530 S. Congress Ave  
Austin, Tx 78704

YOUR PHONE NO. (512) 731-7364 WORK (cell)  
 (512) 474-6408 HOME

**INTERESTED PARTY STATUS:** Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Land Use Commission public hearing on (date)  
June 28, 2016.
- ☐ I communicated my interest in writing to the Director or Land Use Commission prior to the decision (attach copy of dated correspondence).

**In addition to the above criteria,** I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☒ I am the record owner of property within 500 feet of the subject site. *(I represent The Church in Austin)*
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

**DECISION TO BE APPEALED\*:** (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☐ Land Use Commission Approval/Disapproval of a Site Plan
- ☒ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision
- ☐ Other: \_\_\_\_\_

Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: June 28, 2016  
 Date of Decision: \_\_\_\_\_  
 Date of Decision: \_\_\_\_\_

\*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

**STATEMENT:** <sup>*more*</sup> Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

A vacation/party hotel on South Congress Ave placed closer  
to neighbors and our church than allowed by law is  
incompatible with the neighborhood.

(Attach additional page if necessary.)

Applicable Code Section: 25-2-1067(F) ; 25-2-1067(H)

# COATS | ROSE

A PROFESSIONAL CORPORATION

JOHN M. JOSEPH  
DIRECTOR

DIRECT: (512) 541-3593  
FAX: (512) 469-9408

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

BARTON OAKS PLAZA, 901 S. MOPAC EXPWY, BLDG 1, STE 500, AUSTIN, TEXAS 78746  
PHONE: (512) 469-7987 FAX: (512) 469-9408  
WEB [www.coatsrose.com](http://www.coatsrose.com)

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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.

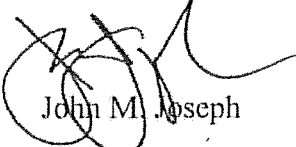
The notice of the Planning Commission's hearing on the compatibility waivers, attached as Exhibit "B", falsely portrayed that "Two waivers to Compatibility standards are required", when in fact additional compatibility waivers and variances are required. The Planning Commission considered the waivers 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  
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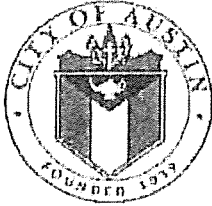
We accordingly request that you advise the applicant that the compatibility waivers are void and the existing site plan is rejected, and that the applicant will be permitted to reapply for compatibility waivers only after submission of a site plan that otherwise complies with applicable development regulations.

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. 2<sup>nd</sup> 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



There was a substitute motion by Commissioner James Shieh to grant staff recommendation with a 450 square foot exemption. The motion failed to garner a second.

Substitute motion by Commissioner Nuria Zaragoza, seconded by Commissioner Patricia Seeger to deny staff recommendation was approved on an affirmative vote of 9-2. Commissioner Karen McGraw and Commissioner Tom Nuckols voted nay. Vice-Chair Faye Kazi (left early) and Commissioner Jeffrey Thompson absent.

Planning Commission Note: Commission strongly encourages the CodeNEXT Group to review Subchapter F and the issue of F.A.R.

7. **Site Plan - Conditional Use Permit:** **SPC-2015-0600A - Eberly; District 5**  
Location: 615 S. Lamar Boulevard, West Bouldin Creek Watershed; Zilker NP Area  
Owner/Applicant: 613 South Lamar LLC  
Agent: Armbrust & Brown, PLLC (Richard Suttle)  
Request: Approval of a Conditional Use Permit for a restaurant with late hours in CS-V zoning and approval of a compatibility setback variance for parking.  
Staff Rec.: **Recommended**  
Staff: Donna Galati, 512-974-2733  
Development Services Department

The motion to grant the Applicant'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.

8. **Site Plan - Compatibility Waiver:** **SP-2015-0300C - 2510 S. Congress; District 3**  
Location: 2510 South Congress Avenue, East Bouldin Creek Watershed; Dawson NP Area  
Owner/Applicant: Krug Development (David Krug)  
Agent: Wuest Group, Ltd. (Scott Wuest)  
Request: Approval of compatibility waivers for driveway setback within 15' and swimming pool within 50' of residential property.  
Staff Rec.: **Recommended**  
Staff: Lynda Courtney, 512-974-2810,  
Development Services Department

Public Hearing closed.

The motion to divide the question of granting compatibility waivers for SP-2015-0300C - 2510 S. Congress located at 2510 South Congress Avenue, and to grant the approval of a compatibility waiver



for a driveway setback within 15' of a residential property, contingent upon the adherence to the mitigating measures as proposed by the applicant/owner (*see Compatibility Waiver Review Sheet, Scott Wuest - Memo (March 30, 2016) pgs. 6-7*), was approved on Commissioner James Schissler's motion, seconded by Commissioner James Shieh on an affirmative vote of 9-2. Commissioners Karen McGraw and Tom Nuckols voted nay. Vice-Chair Fayez Kazi (*left early*) and Commissioner Jeffrey Thompson absent.

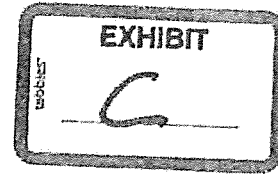
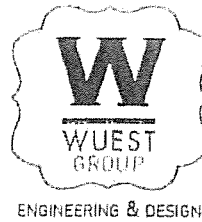
The motion to grant the approval of a compatibility waiver for a swimming pool within 50' of residential property, contingent upon the adherence to the mitigating measures as proposed by the applicant/owner (*see Compatibility Waiver Review Sheet, Scott Wuest - Memo (March 30, 2016) pg. 6-7*), was approved on Commissioner James Schissler's motion, seconded Commissioner Patricia Seeger on an affirmative vote of 8-3. Commissioners Tom Nuckols, Trinity White and Nuria Zaragoza voted nay. Vice-Chair Fayez Kazi (*left early*) and Commissioner Jeffrey Thompson absent.

9. **Site Plan - Hill Country Roadway:** **SPC-2016-0258C - 5301 Southwest Parkway - Phase II; District 8**  
Location: 5301 Southwest Parkway, Barton Creek Watershed-Barton Springs Zone; Oak Hill Combined (West Oak Hill) NP Area  
Owner/Applicant: Drawbridge 5301 SW Pkwy, LLC (Michael Embree)  
Agent: Bury (Joe Farias, P.E.)  
Request: Approve a site plan to increase the size of an existing building and add amenities with associated improvements in the Southwest Parkway Low Intensity Hill Country Roadway.  
Staff Rec.: **Recommended**  
Staff: Christine Barton-Holmes, 512-974-2788  
Development Services Department

Public Hearing closed.

The motion to grant staff's recommendation for SPC-2016-0258C - 5301 Southwest Parkway - Phase II located at 5301 Southwest Parkway 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.

10. **Resubdivision:** **C8-2016-0036.0A - Resubdivision of Lot 2, Longhorn Business Park No. 3 and Lots A and B, Block A, Resubdivision of Lots 1, 2 & 3, Block A, Longhorn Business Park; District 7**  
Location: 2608 Brockton Drive, Walnut Creek Watershed; North Burnet / Gateway TOD  
Owner/Applicant: 2608 Brockton Ltd. (Andy Portor)  
Agent: Stantec (Lauren Beavers)  
Request: Approve the resubdivision of 3 lots into 2 lots on 4.024 acres.  
Staff Rec.: **Recommended**



March 30, 2016

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

RE: *Compatibility Waiver*  
The Guesthouse Hotel  
2510 S Congress  
SP-2015-0300C  
Austin, Travis County, Texas

Dear Ms. Courtney,

Please accept this letter as our formal request for waivers from the City of Austin Land Development Code for the following two items:

- Section 25-2-1067 (F) Design Regulations. Allow an intensive recreational use (a swimming pool and three small cabanas) to be constructed 50 feet or less from adjoining property zoned SF-5 or more restrictive district. The proposed swimming pool is located over 30' from the closest triggering property and the cabanas are located approximately 28' away from the property line. We request a waiver to reduce the setback from 50' to 28'.
- Section 25-2-1067 (H) Design Regulations. Allow for a driveway to be constructed within the prescribed 15' driveway setback on a tract adjoining property zoned SF-5 or more restrictive district when the subject lot is less than 125' wide. The driveway/fire lane is proposed to be located 5' away from the property line. We request a waiver to reduce the setback from 15' to 5'.

This Guesthouse Hotel property is located on S. Congress Avenue, a Core Transit Corridor. The Dawson Neighborhood Plan has zoned the front portion of this property, as well as the front portions of the properties on either side of it CS-V-CO-NP. The rear portion of the subject property is zoned GR-V-CO-NP. The proposed use is allowed within both zoning districts.

The adjacent property to the south is zoned SF-3-NP along the back two-thirds of the length of the property. All properties along the rear of the site are zoned SF-3-NP and consist of single family houses. The back portion of the southern adjacent property, as well as the single family uses along the west property line trigger compatibility design standards. The property to the north is zoned CS-V-CO-NP throughout the entire property and thus does not trigger any compatibility issues.

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March 30, 2016  
Ms. Lynda Courtney  
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The first waiver is to allow an intensive recreational use be placed within 50' of properties zoned SF-5 or more restrictive or used as single family. The owner proposes to add a small swimming pool and three small cabanas in the rear of the site outside of the 25' No Build Line, but within 50' setback. The edge of the pool is approximately 30' from the closest single family use and the proposed cabanas within 28' of the closest single family property. Therefore, we request a reduction from the code's 50' setback to 28'. The pool and surrounding deck area are included in the site's Private Open Space requirements, per Subchapter E.

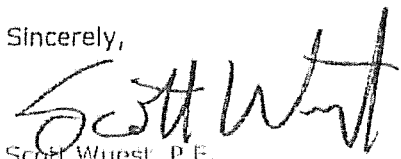
Mitigating Measures: In addition to the 6' privacy fence and a landscape berm at the edge of the property, the owner is proposing to construct a 10' high acoustic wall from the cabanas east along both edges of the pool area. This wall will mitigate sound, in addition to providing a visual screen. Finally, the pool hours will be restricted to 9 am - 10:00 pm to avoid disturbance to the neighbors.

The second waiver request is to allow the construction of a driveway/fire access lane within the 15' code prescribed setback for drives. This 25' driveway will be located 5' from the southern property line and within the setback triggered by the adjacent property to the south. The site is very narrow and contains several heritage trees which are to remain. The proposed hotel has been placed against the north property line to the extent possible to maintain maximum separation from the church property, however compatibility height restrictions and the location of heritage trees on both the north and south property lines dictate the location of the building and thus the driveway.

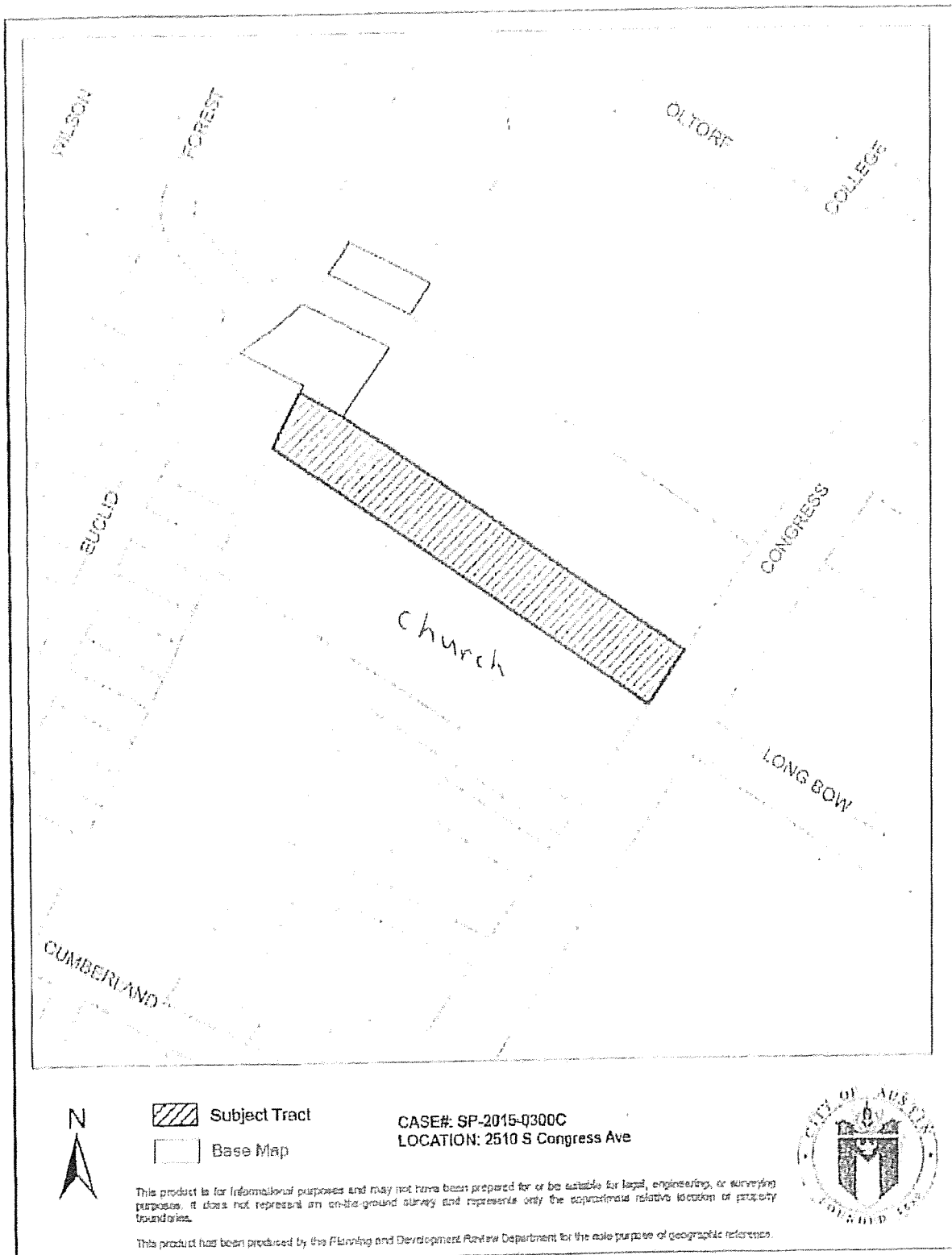
Mitigating Measures: The owner will construct a 6' privacy fence and add plantings at the edge of the property, to prevent headlights from shining on to the neighboring property. This drive will provide access to underground parking as well as provide required emergency access for the fire department. Basement parking will reduce the noise levels and eliminate possible issues with headlights for the adjacent church property. This driveway location will also push the proposed building to the north, 31' from the church property; 6' further than allowed by City Code.

If there are any questions, please feel free to contact me at (512) 394-1900. Thank you for your consideration and attention to this project.

Sincerely,



Scott Wuest, P.E.  
Wuest Group  
Texas Firm Registration No. 15324



[Click here and insert your map]

## Scott M. Wuest

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**From:** Johnson, Christopher [PDRD] <Christopher.Johnson@austintexas.gov>  
**Sent:** Thursday, April 16, 2015 10:36 AM  
**To:** Joan Ternus Angil; Mitchell, Amber  
**Cc:** Rhoades, Glenn; Scott M. Wuest  
**Subject:** RE: Churches and Compatibility

Although the language in the Code is a little vague in that area, it has always been my interpretation that since a church (or other civic use) is required to comply with compatibility standards when it is adjacent to a residence, that it would not trigger compatibility upon surrounding development despite the fact that it is a development that could be constructed in SF-5 zoning.

Now if the church happens to be located on SF-5 or more restrictive zoning, then the zoning would trigger compatibility on surrounding tracts, even though the property is developed with a church, but if the church is in a multi-family or commercial district, the use would not trigger compatibility on neighboring properties, since the whole intent of compatibility is to ensure appropriate scale development near residences.

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**From:** Joan Ternus Angil [REDACTED]  
**Sent:** Thursday, April 16, 2015 10:11 AM  
**To:** Mitchell, Amber; Johnson, Christopher [PDRD]  
**Cc:** Rhoades, Glenn; 'Scott M. Wuest'  
**Subject:** Churches and Compatibility

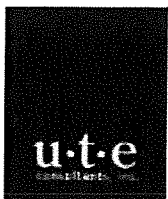
Hello.

I have been asked by a client about compatibility being triggered by a church use. The church is on property zoned CS. We have been told this might trigger compatibility but since it is not a "residential" use, I don't believe it would. I looked online at the COA GIS and found a case where a church on land zoned GO was adjacent to a site that did not show compatibility setback for the church. This is a recent condominium site plan (SP-2013-0119C) and is attached. They do show compatibility setback from the adjacent single family residences though.

Caitlin will come in to see whoever is available this morning, but can someone please respond in writing to this email?

Thanks,

Joan Ternus Angil, P.E.



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Austin, Texas 78704  
512.789.5018



