

# **Notebook #1**

(replaces Notebook #1 prepared for  
postponed November 14, 2016 hearing)

Board of Adjustment Hearing,  
December 12, 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

2530 S. Congress Ave. Phone (512) 443-0078

Austin, Texas 78704 Fax (512) 443-0188

November 28, 2016

## Objection Letter to the Hotel's Requested Variances

Re: Case # C15-2016-0124

Dear Board of Adjustment Members,

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 south of 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	-	-

The Developer's 1.53 acre property is classified as a large site and has about 66,650 square feet. It is approximately 683 feet deep and 96 feet wide. There is currently a restaurant on it.

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 Ave.:** 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 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 clergy residential units, and 11 cabins which are used for worship service, Sunday school, church offices, and storage of church furniture. The entire 3 acres are used for religious purposes and have been for the past 41 years. The entire 3 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. **Exhibits 4A-4F** are some photographs of the outside use of our property. **Exhibit 4G** identifies the 87.5 hours our property is used on a weekly basis and **Exhibit 4H** the additional 185.5 hours per year our property is used on a non-weekly basis.

E. **Resident clergy:** We currently have 23 people living in our 11 clergy 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 clergy who serve the Lord full-time, except for one part-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. The chart below summarizes some of the highlights of this case.

#	Date	Event
1.	2014	Church informs Developer that we are against waivers/variances.
2.	February 8, 2016	Developer presents to DNPCT request for three waivers: driveway, pool, and alcohol.
3.	June 13	DNPCT approves driveway and pool waivers; Developer postpones requested alcohol waiver.
4.	June 28	Planning Commission (PC) approves driveway and pool waivers.
5.	September 1	Church informs City that church (civic) use triggers compatibility standards; PC approval of waivers challenged.
6.	September 30	Mailing date of Notice of Public Hearing for <b>second</b> PC application: driveway and reduce building setback from Congress Ave.; hearing later postponed.
7.	October 10	Church informs the DNPCT at bimonthly meeting that their approval of waivers was challenged at the City.
8.	October 11 – present	DNPCT refuses Church's request to schedule a revote on driveway and pool and a vote on building.
9.	October 14	Mailing date of Notice of Public Hearing for <b>third</b> PC application: reduce building setback from Congress Ave. and from adjoining property; hearing later postponed.
10.	October 14	First Board of Adjustment application filed.
11.	November 16	Second Board of Adjustment application filed.

Because of the Developer's repeated applications we have gone to the neighbors and church members several times. The chart below summarizes the number of objections to the waivers and variances. As can be seen, the neighbors and church members have prevailingly and consistently objected.

#### Summary of Neighbors' and Church Members' Objections

(1) Objectors	(2) (Planning Commission) Driveway and Pool	(3) (Planning Commission) Building	(4) (Board of Adjustment) Driveway, Pool, and Building
<b>Neighbors</b>			
Planning Commission Form	7	40	n/a
Board of Adjustment Form	n/a	n/a	63
Church Form	73	58	13
Subtotal	73	68 <sup>1</sup>	76 <sup>2</sup>
<b>Church Members</b>			
Residents (PC Form)	15	19	19
Members <sup>3</sup>	522	538	572
<b>Total</b>	<b>610</b>	<b>625</b>	<b>667</b>



Note 1: Of the 58 neighbors who signed the Church form, 30 also signed the Planning Commission form resulting in 28 (58-30) additional signatures and therefore the subtotal is 68 (40+28) and not 98 (40+58) in order to avoid double counting.

Note 2: Of the 61 neighbors who signed the Church form, 48 also signed the Planning Commission form resulting in 13 (61-48) additional signatures and therefore the subtotal is 76 (63+13), not 124 (63+61) in order to avoid double counting.

Note 3: Over 700 different members signed a form. Because of absences not all signers signed all three forms.

The following points provide some of the details of the case:

- 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 about 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** (provided to the Board for the November 14 hearing), 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 a second 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 73 neighbors 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, and the Developer has not 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 a third 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** (provided to the Board for the November 14 hearing), 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 the neighbors and our Church members a third time to present the requested variances before the Board of Adjustment. **Exhibit 12**, which is **Notebook #4** (provided to the Board for the November 14 hearing), 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). **Notebook #4 supplement** contains additional objection forms and was prepared to present at the hearing on November 14, which was postponed.

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."*

The reason the hotel is requesting a reduction in setback from 15 feet to 5 feet for the driveway is because this compatibility standard limits the size of its building on the other side of the driveway. The Developer's lot is 96 feet wide. **Exhibit 13** shows that the driveway variance allows 62 rather than 52 horizontal feet for the building. This property is not left with no reasonable use just because the 15 foot driveway setback limits the size of the building by 10 feet.

B. Furthermore, the Developer wants the building and driveway variances 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 for the buildings and driveway 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 on the map in **Exhibit 14**, narrow lots are common along this area of South Congress Avenue, especially on the west side, some of which are narrower and shorter than the Developer's property. The chart below corresponds with Exhibit 14 and shows the approximate dimensions of seven other narrow lots in the same area of South Congress Avenue. The Developer's lot is 2510 S. Congress Ave.

#	Address	Width (feet)	Length (feet)
Dev.	2510 S. Congress Ave.	96	683
1	2601 S. Congress Ave.	108	402
2	2603 S. Congress Ave.	89	264
3	2716 S. Congress Ave.	75	271
4	2900 S. Congress Ave.	102	246
5	2908 S. Congress Ave.	54	198
6	2910 S. Congress Ave.	84	240
7	2912 S. Congress Ave.	99	240

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)*

a. 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 in January 2015 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.

b. Furthermore, the Developer had knowledge in April 2015 after it purchased the property that church use of our property may trigger compatibility for its entire property. **Exhibit 15** from the Planning Commission's file is email correspondence on April 16, 2015 between one of the Developer's apparent engineers and the City staff about church use triggering compatibility. Scott Wuest, the Developer's main engineer, was carbon copied. Based on the staff's statement that "the Code is a little vague in that area," the Developer should have realized the need for an attorney to interpret the law. Therefore, it failed a second time to exercise due diligence before submitting its current site plan to the City on July 2, 2015. The Developer is responsible for creating its "hardship".

Redesigning its site plan will obviously increase the Developer's cost. However, according to page 11 of the Guidebook,

"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."

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

Exhibit 14 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 14 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".

### **Subsection 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

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

1. Although it is true that the six properties on S. Congress Avenue on the block between Oltorf Blvd. and Cumberland Avenue are predominantly zoned commercial, the area is not highly commercial. **Exhibit 16** 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.

2. 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 17** 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.

3. 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.

B) 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. Exhibits 4G and 4H show the 87.5 hours our property is used on a weekly basis and the additional 185.5 hours per year our property is used on a non-weekly basis, respectively. **Exhibit 18** 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 clergy. Sixteen of our staff of clergy and seven of their family members live on site. Their living units are used regularly for small group religious worship and to individually care for our church members. They do not pay rent or all utilities. Our entire 3 acres, including their living units, are exempt from property taxes.

C) The property is located on a major mobility corridor.

Although the property is located on a major mobility corridor, the hotel is not typical in size and scale to the other commercial developments on this corridor, as shown in Exhibit 17. 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 17, 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.

### **Subsection 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 clientele will be returning at all hours of the night, some of who will bring their parties and loud music back to the hotel.

### **A. 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 19** 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 the neighbors but about 130 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.

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.

The Developer believes the pool will be quieter for 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.

It appears from two of the Developer's site plan drawings attached to its Board of Adjustment application that it has redesigned the swimming pool area (see **Exhibit 20**). However, because its drawings do not provide any details we cannot determine the revisions. Since the Developer has not provided the details of its revisions to the Board of Adjustment and the neighbors for examination, the requested swimming pool variance should be denied.

## **B. Driveway**

1. 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 about 380 feet along the northern border 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 a block, it will serve 79 units, approximately eight times the amount of traffic.

We have five buildings five feet from the Developer's property line along the 380 feet of driveway. One of the ministers living five feet from the property line 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.

On Addendum 2, page 2 of the Developer's Board of Adjustment Interpretations Application (Case # C15-2016-0131), the Developer enumerates the negative impacts generated by high-density commercial tracts: 1) high traffic, 2) open to public and generate noise and almost-constant activity, 3) overall much more intense uses than single family uses. These are precisely the negative impacts that the hotel will have on the Church. Therefore, the driveway should be at least 15 feet away from our border.

2. The bottom of **Exhibit 21** 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 top half of Exhibit 21 shows the effect of the building on another tree.

### **C. Building**

The top half of **Exhibit 22** 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 23A** is the existing view of the property from the entryway of our property. **Exhibit 23B** is the view if the Developer builds 2 stories with a 25-foot setback according to code. **Exhibit 23C** 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 used by groups of our members. Exhibit 4 shows some of the daytime uses of our front yard.

**Exhibits 24A, 24B, and 24C** show the same series of views from our church entrance and **Exhibits 25A, 25B, and 25C** from our church window. **Exhibits 26A and 26B** 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.

### **Subsection 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**

A. 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 as can be seen in the photographs presented in Exhibits 23-26.

B. We asked the case manager two questions about the variances if they are granted: Can the site plan be redesigned afterward to exploit the variances? And, do the variances convey? Her responses are summarized as follows:

1. If the Board of Adjustment grants the building setback from 25' to 0' and a height increase from 2 stories to 5 stories, then the Developer can revise its site plan and move the building or add additional buildings according to the variances approved unless there is a condition placed on the variances that requires a certain layout or requires the site to be developed as illustrated in a site plan submitted at the hearing.

2. If the current owner does not build and sells the site, the variances convey to the next owner as long as they are used as part of a site plan or building permit application within one year of their approval date. That site plan or building permit must not expire or the variances expire with them.

**Exhibit 27** illustrates the potential negative impact on the residents behind (west of) the hotel if the variances are granted without conditions and the Developer redesigns its site plan to place a four-story building 0 feet from its other neighbors' adjoining properties. Therefore, if the building variances are granted, we request that strict conditions be applied.

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

In summary, this Objection Letter has proven that the Developer has failed to meet all three of the legal requirements for granting these variances as shown in the chart below.

### Do the Variances Meet Legal Requirements?

Legal Requirement		Variance		
		Pool	Driveway	Building
1.	Reasonable Use	Failed	Failed	Failed
2.	Hardship			
	a. Unique	Failed	Failed	Failed
	b. Not general	Failed	Failed	Failed
	c. (Not self-created)	Failed	Failed	Failed
3.	Area Character			
	a. Not alter character of area	Failed		Failed
	b. Not impair use	Failed	Failed	Failed
	c. Not impair purpose of the regulations	Failed	Failed	Failed

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,



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 and Hours of Use
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. Driveway Setback to Increase Space for Building
14. Narrow Lots on S. Congress Ave
15. Correspondence between Developer and City
16. Zoning of Surrounding Area Showing Transition
17. Variances Will Alter the Character of the Adjacent Area
18. Certificate of Occupancy
19. Swimming Pool No Build Zone
20. Developer's Drawings Attached to Application
21. Heritage Tree Damage
22. Height Limitations and Setbacks
23. Comparison of Views from Church Entryway
24. Comparison of Views from Church Entrance
25. Comparison of Views from Church Window
26. Comparison of Views from Children's Cabin
27. Potential Negative Impact on Other Neighbors



# Exhibit 1 Area Map







# Exhibit 3

## Diagram of Church Property at 2530 S Congress

