

THE CHURCH IN AUSTIN

2530 S. Congress Ave. Phone (512) 443-0078
Austin, Texas 78704 Fax (512) 443-0188

November 14, 2016

Supplement to Objection Letter

Dear Board of Adjustment Members,

Re: Case # C15-2016-0124

This supplement to The Church in Austin's Objection Letter dated October 31, 2016 addresses the following five points:

1. The developer's lack of due diligence caused it to miss three opportunities to design its site plan to avoid the need of variances.
2. The driveway variance is to increase space for the building.
3. Swimming pool area apparent revisions are illegible.
4. Building right-of-way setback of 0 feet is atypical of our block.
5. Potential negative impact on other neighbors if variances are granted without conditions.
6. Summary: Do variances meet legal requirements?

1. The developer's lack of due diligence caused it to miss three opportunities to design its site plan to avoid the need of variances.

Page 7 of our Objection Letter quoted the Guidebook, which states:

"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. Regarding the building variances, the developer failed to exercise due diligence before purchasing the property on or about January 2, 2015 by not correctly applying compatibility standards. Thus, the developer skipped three of the first four steps (steps 1, 3, and 4) of the Board of Adjustment's "Checklist of Steps for Variances" found in Appendix A of its Guidebook as reproduced below:

"Checklist of Steps for Variances:

1. **Determine what zoning regulations apply to your property.** Consider those regulations impact development of the property—i.e., yard setbacks, limits on height and impervious cover, etc.

2. Design what you want to build.

3. Determine if a variance is needed—i.e., does your proposed design fit within what's allowed by the zoning regulations.

4. If a variance is needed, consider altering the design to avoid the need for a variance."

By skipping these steps, the developer has created its "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 1** 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".

C. On September 1, 2016 our attorney informed (see Exhibit 7 of the Objection Letter) the City that our church use triggered compatibility standards on the developer's entire property. The developer had a third opportunity to design its site plan to avoid the need for variances. Again, it has created 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."

2. The driveway variance is to increase space for the building.

In addition to the objections already raised against the driveway variance in our Objection Letter, please note the following:

A. The Church in Austin's Objection Letter, Part 3, section 1 entitled "Reasonable Use", pages 5 and 6, quoted the Guidebook, pages 4 and 7, which state:

"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."

"Self-created or financial hardships are not enough nor are...desire for additional space [in order to prove hardship]."

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 97 feet wide. **Exhibit 2** 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 feet driveway setback limits the size of the building by 10 feet. Nor does the desire for additional space prove hardship.

B. Safety is another concern regarding the sharp turn in the driveway as shown in **Exhibit 3**. The Guidebook 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 overcrowding. An applicant requesting a setback variance, therefore, should be able to explain how decreasing the setback will not undermine those objectives."

There are frequent accidents on South Congress Avenue in front of the hotel's property and out property, the last two being August 25, 2016 and September 27, 2016. An earlier accident resulted in a car crashing onto our property and causing damage.

If the sharp turn is missed by an inebriated driver, their car could easily crash through their six-foot privacy fence, probably constructed with wood, and land in our adjacent children's play area. Denying the requested driveway variances provides 10 more feet of protection.

C. At the Planning Commission hearing the developer showed photos of the driveway of the apartment complex adjoining us on the other side (south) of our property in order to justify its requested driveway variance. This driveway and parking lot are about 2 feet from our southern property line. The apartment complex was built before we purchased our property so that civic use did not trigger compatibility standards on the front half of their property. Whether the complex obtained a variance on the back half of their property because we are SF-3 would need to be researched. Regardless if the complex's driveway is legal or not, it does not justify the developer's requested driveway variance. (Neither does the 0 feet setback of the drive through of the fast food restaurant that is currently on the front half of the developer's property justify the variance. It was built in 1993 without obtaining the required variance.)

3. Swimming pool area apparent revisions are illegible.

It appears from two of the three developer's site plan drawings attached to its Board of Adjustment application that it has redesigned the swimming pool area (see **Exhibit 4**). However, because its drawings are illegible we cannot determine the revisions. Since October 20 we have requested legible copies of these three drawings through numerous emails to the applicant, Ms. Nikelle Meade, but have yet to receive them. On October 26 we delivered a 2x3 foot copy to her demonstrating that an enlarged copy was equally illegible (see **Exhibit 5**). Since the developer cannot produce a legible copy of its revisions to the Board of Adjustment or the neighbors, the requested swimming pool variance should be denied.

4. Building right-of-way setback of 0 feet is atypical of our block.

We did not object to the variance requesting a decrease from 25 feet right-of-way to 0 feet in the minimum front building line setback from South Congress Avenue unless the other building variances are granted.

However, please note that this variance is atypical of the setbacks of the other buildings along both sides of our block of South Congress Avenue as shown below (southbound from Oltorf Street to Cumberland Road on west side of street).

#	Building	Setback from S. Congress Ave (feet)
1	HEB	90
2	Laundromat	119
3	Restaurant on developer's property	65
4	Church	25
5	Apartments	367
6	Gardner Betts Juvenile Center	233
7	AutoZone	74
8	Funeral home	34

5. Potential negative impact on other neighbors if variances are granted without conditions.

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:

A. 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.

B. 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 6 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.

6. Summary: Do variances meet legal requirements?

The evidence presented in our Objection Letter to the Hotel's Requested Variances and this Supplement to 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.

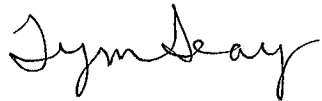
Do the Variances Meet Legal Requirements?

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

We reiterate our request that the Board of Adjustment deny the developer's requested variances.

Thank you again for your consideration.

Sincerely,



Tym Seay
Chairman of the Board
Of The Church in Austin

List of Exhibits

1. Correspondence between Developer and City
2. Driveway Setback to Increase Space for Building
3. Sharp Turn in Driveway
4. Developer's Site Plan Drawings Attached to Application
5. Enlargement of Exhibit 4
6. Potential Negative Impact on Other Neighbors

Exhibit 1

Scott M. Wuest

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.

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

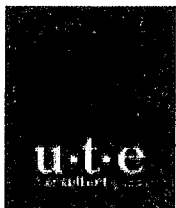
Hello.

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.

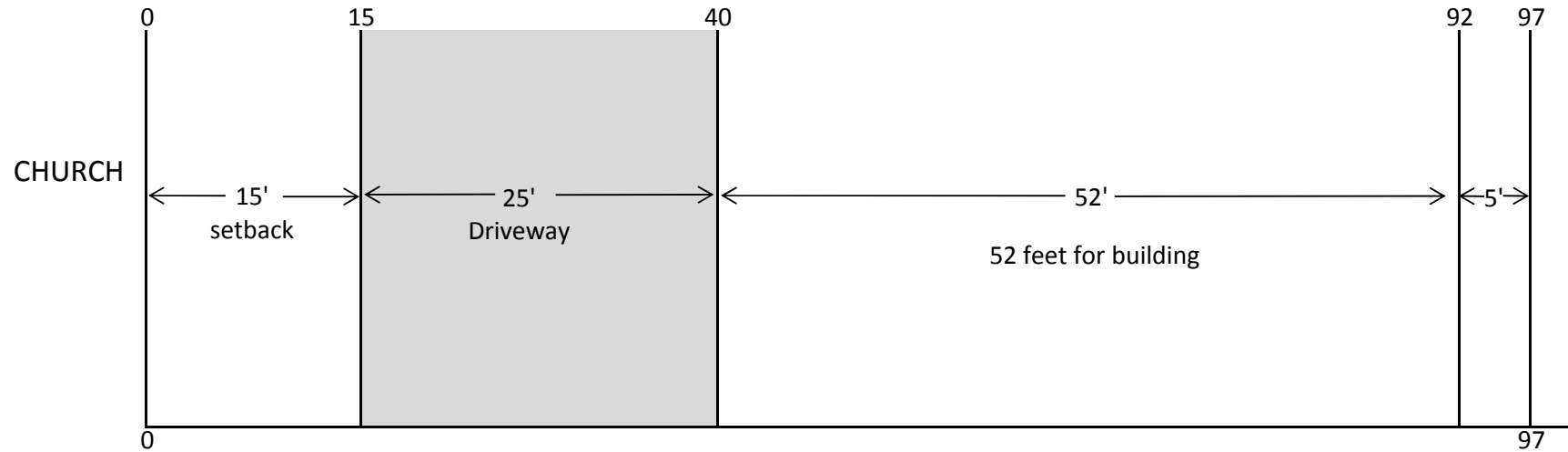


UTE Consultants, Inc.
2007 S 1st Street
Suite 103
Austin, Texas 78704
512.789.5018

Exhibit 2

Driveway Setback to Increase Space for Building

Code for Driveway (15 feet setback)



With Driveway Variance (5 feet setback)

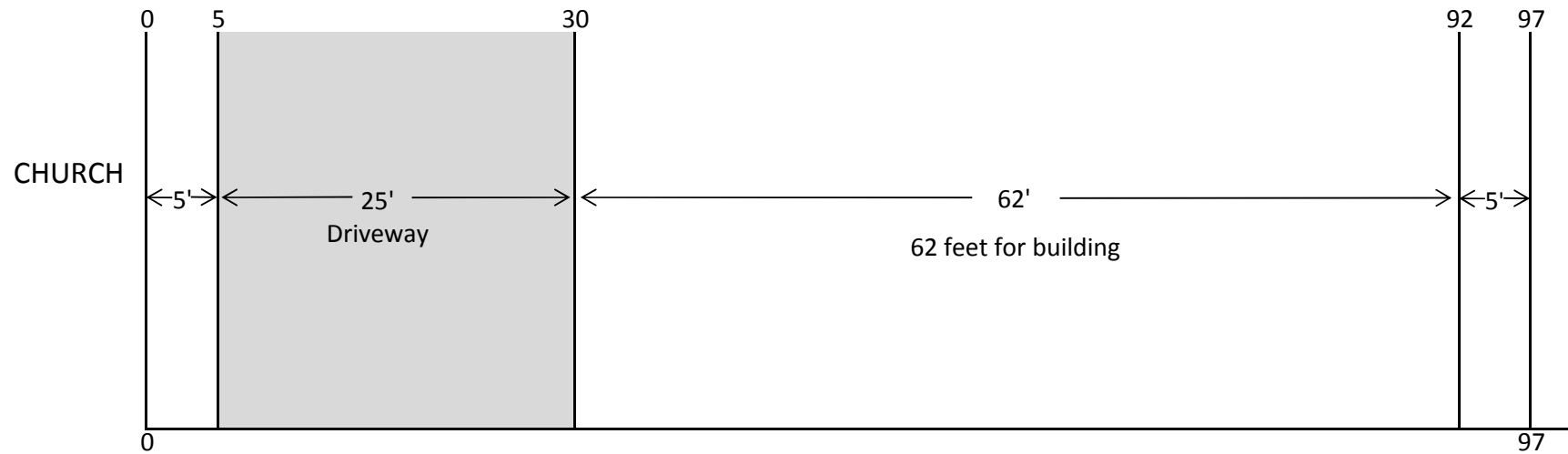
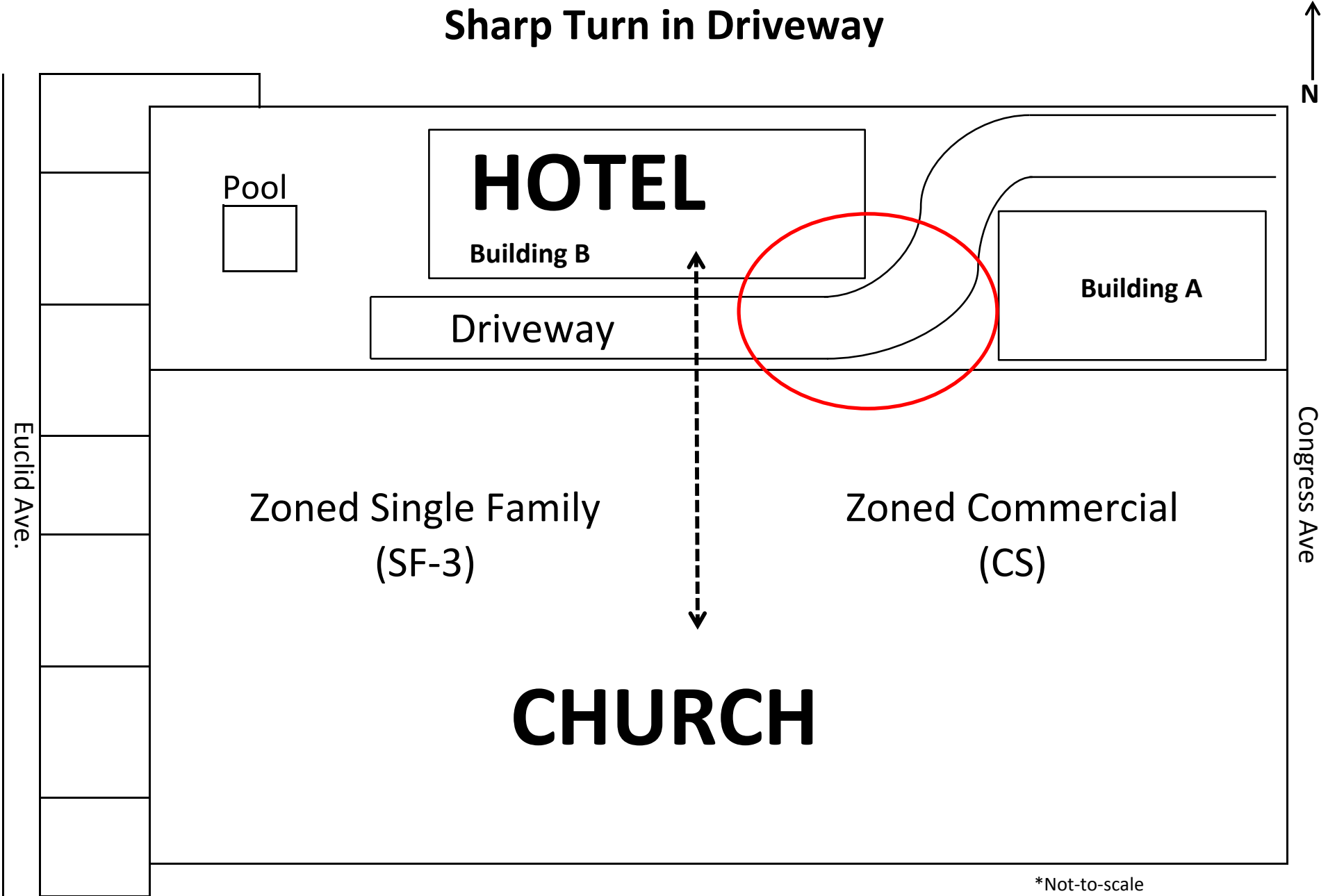


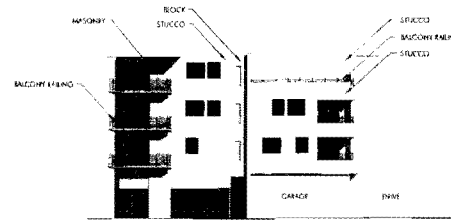
Exhibit 3

Sharp Turn in Driveway

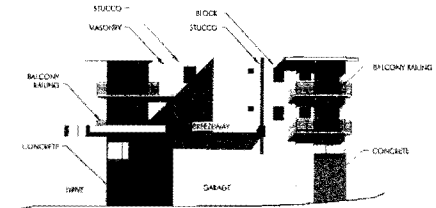


*Not-to-scale

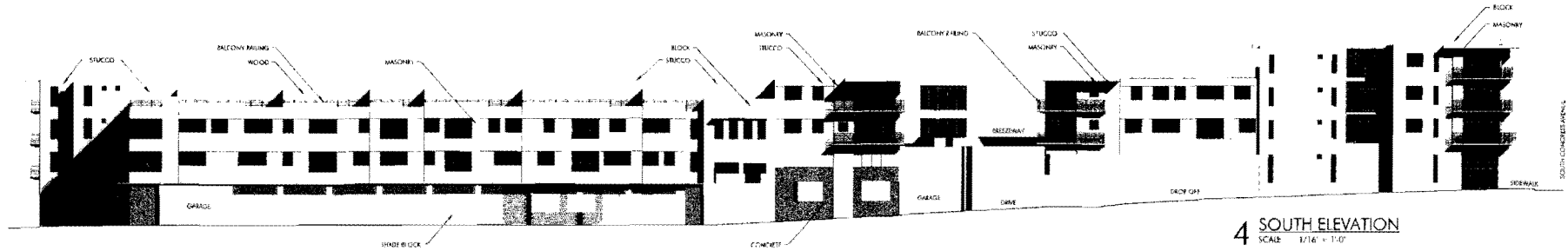
Exhibit 4



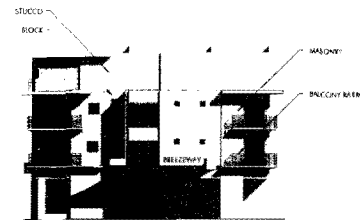
6 WEST ELEVATION - BUILDING 2
SCALE: 1/16" = 1'-0"



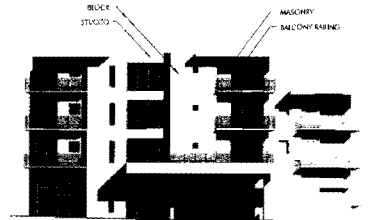
5 EAST ELEVATION - BUILDING 2
SCALE: 1/16" = 1'-0"



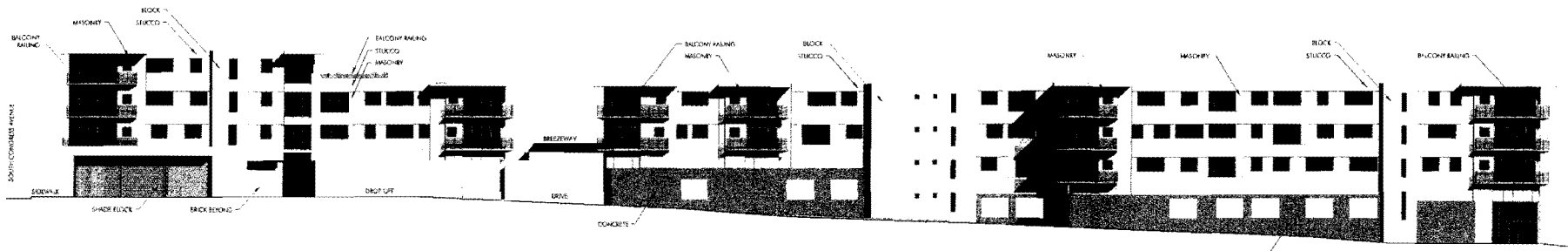
4 SOUTH ELEVATION
SCALE: 1/16" = 1'-0"



3 WEST ELEVATION - BUILDING 1
SCALE: 1/16" = 1'-0"



2 EAST ELEVATION - BUILDING 1
SCALE: 1/16" = 1'-0"



1 NORTH ELEVATION
SCALE: 1/16" = 1'-0"

Architects
LEVY

3000 West 10th
Austin, Texas 78704
(512) 344-9300

www.levyarchitects.com

PRELIMINARY

This document was issued on
10/10/10
for the 10/10/10
Project of 10/10/10
For the 10/10/10 project,
preliminary or consultation.

FIELD INSPECTION REPORT

Prior to performing any building
new construction, and/or repairs,
general contractor shall meet the
this inspection drawing
conditions, and report any
discrepancies to the architect.

The Guesthouse Hotel
2510 South Congress Avenue
Austin, Texas 78704

DATE: 10/10/10 FOR

PROJECT NUMBER: 101010

DATE: 10/10/10

10 EXTERIOR ELEVATIONS

SPo.1

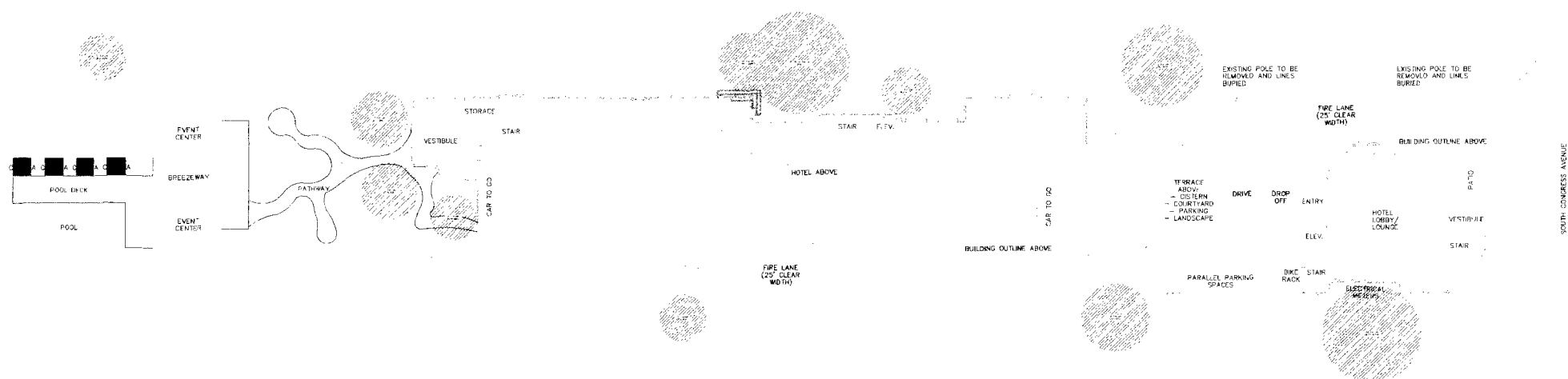
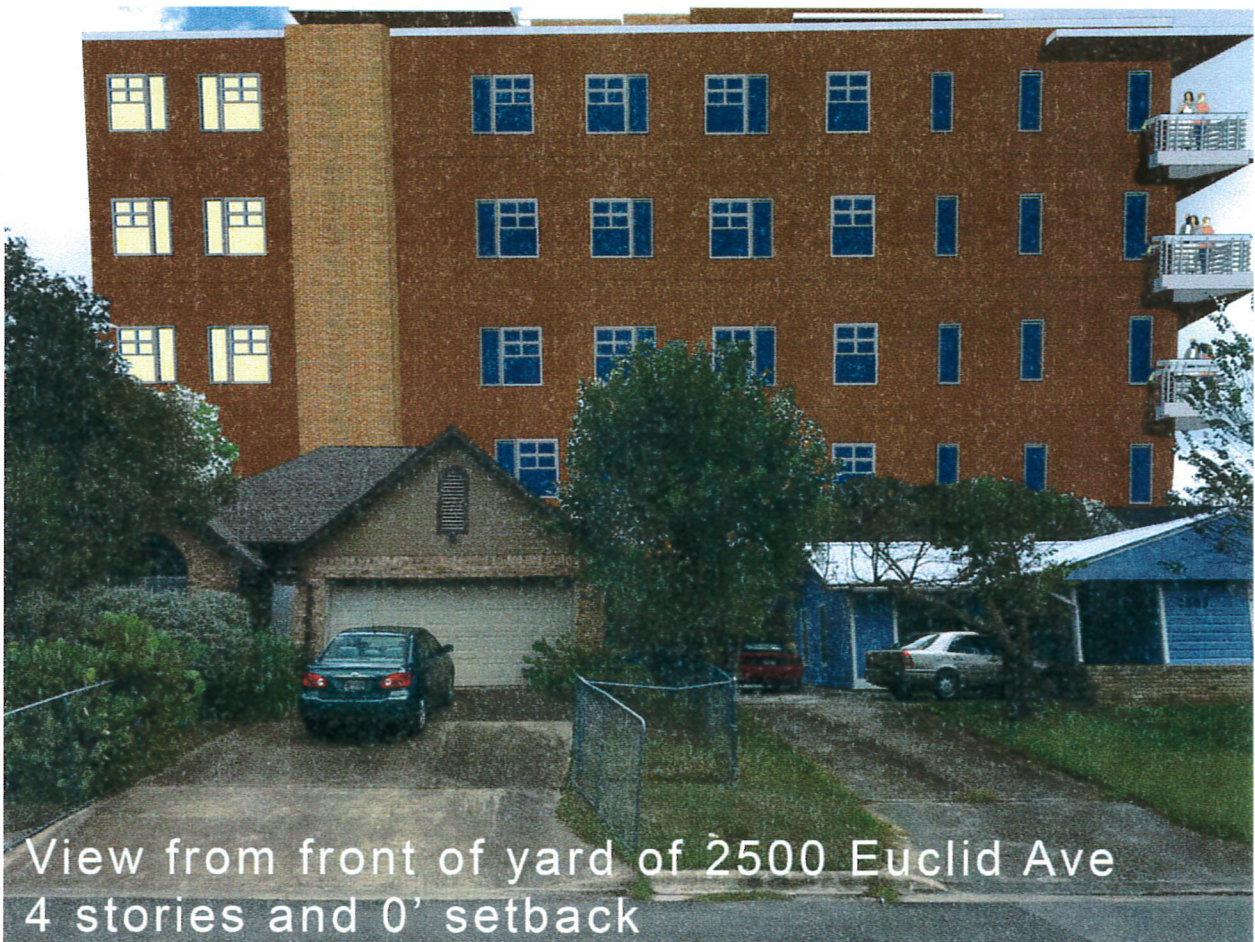


Exhibit 5

(see enlarged physical copies of Exhibit 4 provided at the hearing)



View from front yard of 2500 Euclid Ave



View from front of yard of 2500 Euclid Ave
4 stories and 0' setback

