

ZONING STAFF REPORT

CASE: C14-78-220 (RCT) - Montopolis – Ben White Subdivision

P.C. DATE:

October 25, 2016
November 8, 2016
December 13, 2016
January 10, 2017
June 27, 2017
July 11, 2017
August 8, 2017

ADDRESS: 6700 & 6800 E. Ben White Blvd and 2601 Montopolis Drive **AREA:** 18.61 acres

DISTRICT: 3

OWNER: Ocampo Partners Ltd

APPLICANT: Coats Rose (John Joseph)

NEIGHBORHOOD PLAN AREA: Montopolis Neighborhood Planning Area

REQUEST: Terminate Public Restrictive Covenant as it relates to this property.

SUMMARY STAFF RECOMMENDATION

Terminate Restrictive Covenant.

PLANNING COMMISSION RECOMMENDATION:

OCTOBER 25, 2016: POSTPONED TO NOVEMBER 8, 2016 AT THE REQUEST OF THE MONTOPOLIS NEIGHBORHOOD ASSOCIATION ON CONSENT, VOTE 12-0 [J. SCHISSLER, P. SEEGER 2ND, J. SHIEH ABSENT].

NOVEMBER 8, 2016: POSTPONED TO DECEMBER 13, 2016 BY STAFF, VOTE 12-0 [P. SEEGER, F. KAZI 2ND, A. PINEYRO DEHOYOS ABSENT].

DECEMBER 13, 2016: POSTPONED TO JANUARY 10, 2017 BY STAFF, VOTE 9-0 [P. SEEGER 1ST, T. WHITE 2ND, A. PINEYRO DEHOYOS, T. NUCKOLS, J. SHIEH ABSENT].

JANUARY 10, 2017: INDEFINATE POSTPONEMENT AT THE REQUEST OF THE APPLICANT ON CONSENT, VOTE 13-0 [N. ZARAGOZA 1ST, F. KAZI 2ND].

JUNE 27, 2017: POSTPONED TO JULY 11, 2017 BY STAFF, VOTE 7-0 [J. SCHISSLER 1ST, J. SHIEH 2ND].

JULY 11, 2017: POSTPONED TO AUGUST 8, 2017 BY THE APPLICANT, VOTE 13-0 [J. SCHISSLER 1ST, P. SEEGER 2ND].

DEPARTMENTAL COMMENTS:

The subject property for which this amendment is proposed, consists of 3 tracts totaling 18.61-acres located between E. Ben White Boulevard and Montopolis Drive (see Exhibit A). The property is also subject to a proposed neighborhood plan amendment (Case NPA-2016-0020.02) and a rezoning request (Case C14-2016-0085); please refer to the backup materials or other documents associated with those applications for additional information on those requests.

Staff's recommendation of terminating the public restrictive covenant is not contingent on approval of the referenced neighborhood plan amendment and rezoning. Staff is not recommending approval of those other cases.

BASIS FOR RECOMMENDATION:

The restrictive covenant is consistent with others in the area. In 1979, many tracts in this area were zoned industrial. The covenants provided protection to surrounding neighborhoods that a future industrial use would require a Planned Development Area Agreement (PDA). As set forth in Land Development Code Section 25-2-441, the regulations of a planned development area (PDA) may modify: 1) permitted or conditional uses authorized by the base zoning district, 2) site development regulations except for compatibility standards, and 3) off-street parking or loading regulations, sign regulations or screening regulations applicable in the base district. PDAs require approval by City Council.

The first provision of the public restrictive covenant states:

- 1. No use shall be maintained with respect to all or any portion of the subject property which could not be maintained if same were on property in the City of Austin which was zoned "C" Commercial, First Height and Area, under the zoning ordinance as the same existed January 4, 1979 unless and until a Planned Development Area Agreement (or Agreements) is executed by and between the then owner (or owners) of the Subject Property and City of Austin with respect to that portion of Subject Property upon which such use is to be maintained, and such Planned Development Area Agreement is recorded in the Deed Records of Travis County, Texas. As such time as a Planned Development Area Agreement is executed and recorded in accordance herewith, that portion of the Subject Property subject to such Planned Development Area Agreement shall no longer be subject to the restrictions contained in this restrictive covenant and this covenant shall be of no force and effect whatsoever with respect to such portion of the Subject Property.*

In 1979, "C" Commercial was inclusive, meaning any use less restrictive was allowed. This would include a residential use. Today, the property is zoned limited industrial services – neighborhood plan (LI-NP) which does not allow a residential use. Additionally, PDAs are now addressed through zoning cases (such as a LI-PDA) which is not necessary as the property is currently zoned LI and would allow an industrial use.

Because the property was zoned LI during the neighborhood planning process staff believes it is unnecessary to require a PDA as the area has been identified to provide these uses.

CITY COUNCIL ACTION: Scheduled for consideration August 8, 2017

CASE MANAGER: Andrew Moore
e-mail address: Andrew.moore@austintexas.gov

PHONE: 512-974-7604

RESTRICTIVE COVENANT

THE STATE OF TEXAS 10-7925- 1834 * 9.00

2-01-4553

C14-78-220

COUNTY OF TRAVIS

S

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS Roberta P. Crenshaw ("Owner") is the Owner of that certain tract of land of 39.973 acres, more or less (said 39.973 acre tract being hereinafter called the Subject Property), in the City of Austin, Travis County, Texas, said tract being more particularly described on Exhibit A attached hereto and made a part hereof; and,

WHEREAS, as a condition to the rezoning of the Subject Property "DL", Office, First Height and Area, under the zoning ordinance of the City of Austin, Texas, and for the better development of the Subject Property, the City Council of the City of Austin, desires that Owner execute and deliver for the benefit of the City of Austin, a municipal corporation, the following restrictive covenant;

NOW, THEREFORE, Owner does hereby place upon and charge the Subject Property with the following restrictive covenant which shall, subject to the following provisions hereof, be deemed a covenant running with the land for the benefit of the City of Austin and binding upon Owner, her heirs and assigns, to-wit:

1. No use shall be maintained with respect to all or any portion of the Subject Property which could not be maintained if same were on property in the City of Austin which was zoned "C" Commercial, First Height and Area, under the zoning ordinance as the same existed January 4, 1979, unless and until a Planned Development Area Agreement (or Agreements) is executed by and between the then owner (or owners) of the Subject Property and City of Austin with respect to that portion of Subject Property upon which such use is to be maintained, and such Planned Development Area Agreement is recorded in the Deed Records of Travis County, Texas. As such time as a Planned Development Area Agreement is executed and recorded in accordance herewith, that portion of the Subject Property subject to such

DEED RECORDS

Travis County, Texas

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Planned Development Area Agreement shall no longer be subject to the restrictions contained in this restrictive covenant, and this covenant shall be of no force and effect whatsoever with respect to such portion of the Subject Property.

2. For the purposes of this restrictive covenant the term "Planned Development Area Agreement" shall mean any agreement executed by the City of Austin and the owner or owners of land designating all or a part of such land as a "Planned Development Area."

3. If the Subject Property is hereafter divided so that it consists of or includes all or part of two or more lots, this restrictive covenant will be applied on an individual lot basis, to each respective individual lot severally. If the Subject Property is not hereafter divided so that it consists of or includes all or part of two or more lots, this restrictive covenant will apply to it as if it were all one lot (until it is so divided so that it consists of or includes all or part of two or more lots, at which time the application will be on an individual lot basis, severally as to each respective individual lot).

4. This restrictive covenant can be enforced by, and only by, the City of Austin.

5. If any person or persons shall violate or attempt to violate the foregoing restriction and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or persons violating or attempting to violate such restriction or covenant, and either to prevent him or them from so doing or to collect damages for such violation.

6. This restrictive covenant can be amended or revoked by joint action of the City of Austin (acting pursuant to majority vote of a quorum of the City Council of the City of Austin, or of such other governing body of said city as may succeed its City Council) and the then owner of the particular lot in question out of the Subject Property.

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7. Any suit brought to interpret or enforce this restrictive covenant, or to determine the validity, as reasonable or otherwise, of any failure to refusal to issue a building permit shall be brought in a District Court in Travis County, Texas.

EXECUTED this 6th day of February, 1979.

Robert P. Crenshaw
Robert P. Crenshaw

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared ROBERTA P. CRENSHAW, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day of February, 1979.

NOTARY SEAL

Nancy C. Deater
Notary Public, in and for
Travis County, Texas
NANCY C. DEATER

FIELD NOTES

2-01-4556

FIELD NOTES FOR 39.973 acres of land out of that certain 250.4 acre survey out of the Bartlett Sims and N. E. Warrows Surveys in the Santiago Del Valle Grant in Travis County, Texas, which was conveyed to W. F. Friedrich by deed of record in Volume 727, Page 293, Deed Records of Travis County, Texas, which tract of land containing 39.973 acres is more particularly described by metes and bounds as follows:

BEGINNING at an iron stake found in the east line of Montopolis Drive at the most northerly corner of said 250.4 acre tract;

THENCE with the northeast fence line of said 250.4 acre tract of land, the following six (6) courses:

- (1) S 45 deg. 22' E 294.39 feet to an iron pipe set;
- (2) S 45 deg. 41' E 357.23 feet to an iron pipe found at the most westerly corner of a tract of land conveyed to Carl M. Smith by deed of record in Volume 3487, at Page 2238, Deed Records of Travis County, Texas;
- (3) S 44 deg. 55' E 136.27 feet to an iron stake;
- (4) S 45 deg. 12' E at 136.80 feet pass the most southerly corner of the said Smith tract, same being the most westerly corner of a tract of land conveyed to John Joseph and Donald S. Thomas by deed of record in Volume 2208 Page 413, Deed Records of Travis County, Texas, in all a distance of 270.53 feet to an iron stake;
- (5) S 45 deg. 29' E 425.58 feet to an iron stake; and
- (6) S 45 deg. 45' E 424.67 feet to an iron stake found at the most southerly corner of the said Joseph tract in the Northwest line of Ben White Boulevard;

THENCE with the north line of Ben White Boulevard, S 70 deg. 28' W 1731.05 feet to an iron stake found at the most southerly corner of a 5.00 acre tract of land conveyed to Dennis Bolding by deed of record in Volume 3557, Page 2239, Deed Records of Travis County, Texas, same being the most southerly corner of a 23.07 acre tract conveyed to Udo Haufler by deed of record in Volume 3557, Page 2248, Deed Records of Travis County, Texas;

THENCE N. 15 deg. 11' E 518.48 feet to an iron stake found at the most easterly corner of the said Bolding tract;

THENCE N 13 deg. 14' E at 572.06 feet pass an iron stake at the most easterly corner of said 23.07 acre tract of land, same being the most southerly corner of a 0.60 acre tract of land conveyed to Udo Haufler by deed of record in Volume 3924 at Page 298, Deed Records of Travis County, Texas, in all a distance of 426.61 feet to an iron stake at the most easterly corner of a 0.60 of one acre tract;

THENCE N 33 deg. 32' W 517.34 feet to an iron stake found at the most northerly corner of said 0.60 of one acre tract in the southeast line of Montopolis Drive;

THENCE with a fence along the southeast line of Montopolis Drive the following three (3) courses:

- (1) N 29 deg. 54' E 452.02 feet to an iron stake;
- (2) N 30 deg. 16' E 251.74 feet to an iron stake; and
- (3) N 30 deg. 05' E 251.15 feet to the POINT OF BEGINNING.

STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this Instrument was FILED on the date and at the time stamped herein by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Travis County, Texas, as Stamped herein by me, as

MAY 10 1979



EXHIBIT A
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED
MAY 10 10 19 AM '79
TRAVIS COUNTY CLERK
TRAVIS COUNTY, TEXAS

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