

NEIGHBORHOOD PLAN AMENDMENT REVIEW SHEET

NEIGHBORHOOD PLAN: South Congress Combined (East Congress)

CASE#: NPA-2023-0020.01

DATE FILED: February 23, 2023

PROJECT NAME: 4201 S. Congress

PC DATE: December 12, 2023
October 24, 2023
September 26, 2023
August 8, 2023

ADDRESS/ES: 4201 S. Congress Avenue (Portion of)

DISTRICT AREA: 3

SITE AREA: 5.515 acres (portion of the 5.515 acres)

OWNER/APPLICANT: 4201 S. Congress Ave Owner, LLC a Delaware limited liability company

AGENT: Armbrust and Brown, PLLC (Ferris Clements)

CASE MANAGER: Maureen Meredith

PHONE: (512) 974-2695

STAFF EMAIL: Maureen.Meredith@austintexas.gov

TYPE OF AMENDMENT:

Change in Future Land Use Designation

From: Industry

To: Mixed Use

Base District Zoning Change

Related Zoning Case: C14-2023-0043

From: LI-CO-NP and LI-NP **To:** CS-MU-V-NP

NEIGHBORHOOD PLAN ADOPTION DATE: August 18, 2005

CITY COUNCIL DATE: January 18, 2024

ACTION:

PLANNING COMMISSION RECOMMENDATION:

December 12, 2023 – After discussion, approved staff recommendation for Mixed Use land use. [J. Mushtaler- 1st; F. Maxwell – 2nd] Vote: 8-1 [A. Phillips voted nay. G. Cox and J.P. Connolly abstained. N. Barrera-Ramirez and P. Howard absent].

November 28, 2023 – Due to posting error on the November 28, 2023 agenda, the case was renotified for December 12, 2023.

October 24, 2023 – Postponed to November 28, 2023 on the consent agenda at the request of the neighborhood. [G. Anderson – 1st; G. Maxwell – 2nd] Vote: 12-0 [C. Hempel recused from Items #8 and #9. T. Shaw absent].

September 26, 2023 - After postponement discussion, postponed to October 24, 2023. [G. Cox – 1st; A. Azhar – 2nd] Vote: 10-0 [C. Hempel, P. Howard and J. Mushtaler absent].

August 8, 2023 - Postponed to September 26, 2023 on the consent agenda at the request of staff. [A. Azhar – 1st; F. Maxwell – 2nd] Vote: 10-0 [J. Mushtaler and T. Shaw absent. Alberta Phillips off the dais pending completion of membership requirement].

STAFF RECOMMENDATION: Staff supports the applicant's request for Mixed Use land use.

BASIS FOR STAFF'S RECOMMENDATION: The property is a 5.15 acres tract of land the majority of which has Mixed Use land use with only a small part on the eastern side with Industry land use. Staff supports the applicant's request to change the land use from Industry to Mixed Use to have consistent land use on the entire tract.



LAND USE DESCRIPTIONS

EXISTING LAND USE ON THE PROPERTY

Industry - Areas reserved for manufacturing and related uses that provide employment but are generally not compatible with other areas with lower intensity use. Industry includes general warehousing, manufacturing, research and development, and storage of hazardous materials.

Purpose

1. To confine potentially hazardous or nuisance-creating activities to defined districts;
2. To preserve areas within the city to increase employment opportunities and increased tax base;
3. To protect the City's strategic advantage as a high tech job center; and
4. To promote manufacturing and distribution activities in areas with access to major transportation systems.

Application

1. Make non-industrial properties in areas with a dominant industrial character compatible with the prevailing land use scheme;
2. Where needed, require a buffer area for industrial property that abuts residentially used land;
3. Industry should be applied to areas that are not appropriate for residential or mixed use development, such as land within the Airport Overlay; 4. In general, mixed use and permanent residential activities are not appropriate in industrial areas. An exception may be the edge of an industrial area along the interface with an area in which residential activities are appropriate. Such exceptions should be considered case by case, with careful attention to both land use compatibility and design;
5. Industry should not be either adjacent to or across the road from single family residential or schools;
6. Use roadways and/or commercial or office uses as a buffer between residential and industry; and
7. Smaller scale "local manufacturing" districts may be appropriate in some locations to preserve employment opportunities and cottage industries of local artisans. In these areas, hazardous industrial uses (i.e. basic industry, recycling centers, and scrap yards) should be prohibited.

PROPOSED LAND USE ON THE PROPERTY

Mixed Use - An area that is appropriate for a mix of residential and non-residential uses.

Purpose

1. Encourage more retail and commercial services within walking distance of residents;

2. Allow live-work/flex space on existing commercially zoned land in the neighborhood;
3. Allow a mixture of complementary land use types, which may include housing, retail, offices, commercial services, and civic uses (with the exception of government offices) to encourage linking of trips;
4. Create viable development opportunities for underused center city sites;
5. Encourage the transition from non-residential to residential uses;
6. Provide flexibility in land use standards to anticipate changes in the marketplace;
7. Create additional opportunities for the development of residential uses and affordable housing; and
8. Provide on-street activity in commercial areas after 5 p.m. and built-in customers for local businesses.

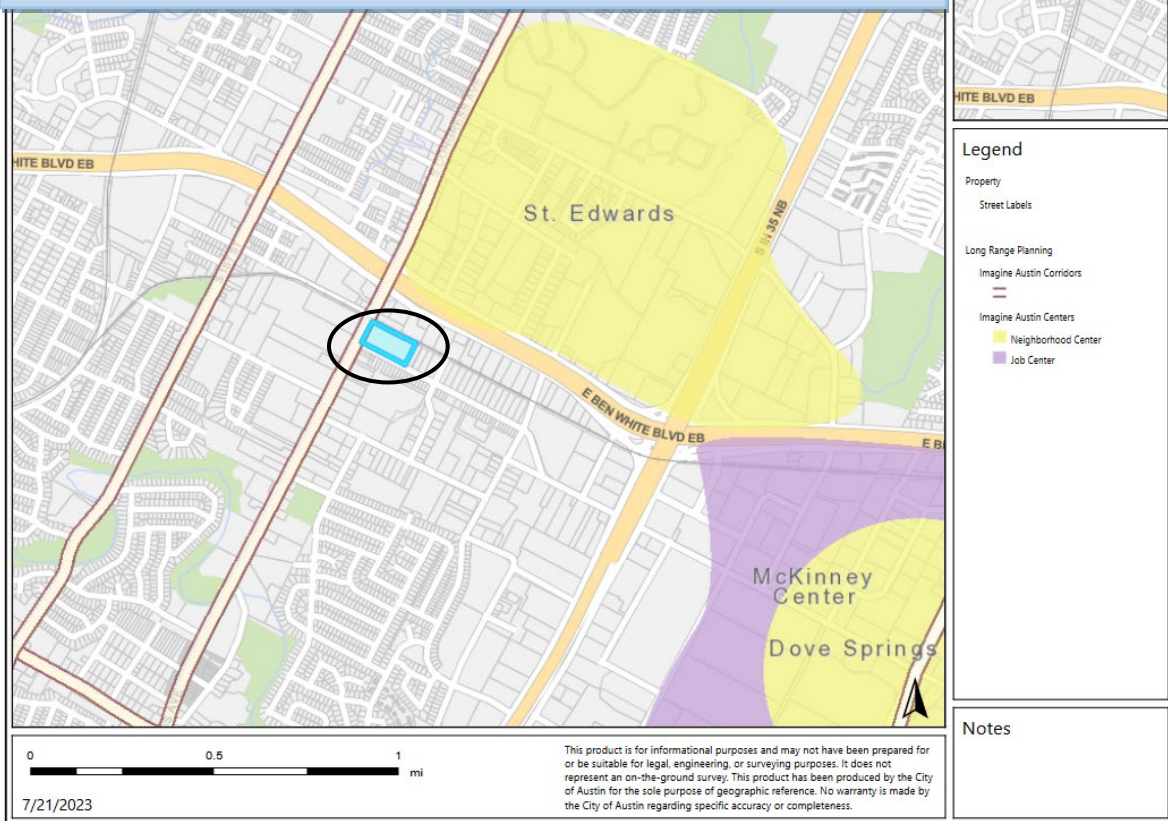
Application

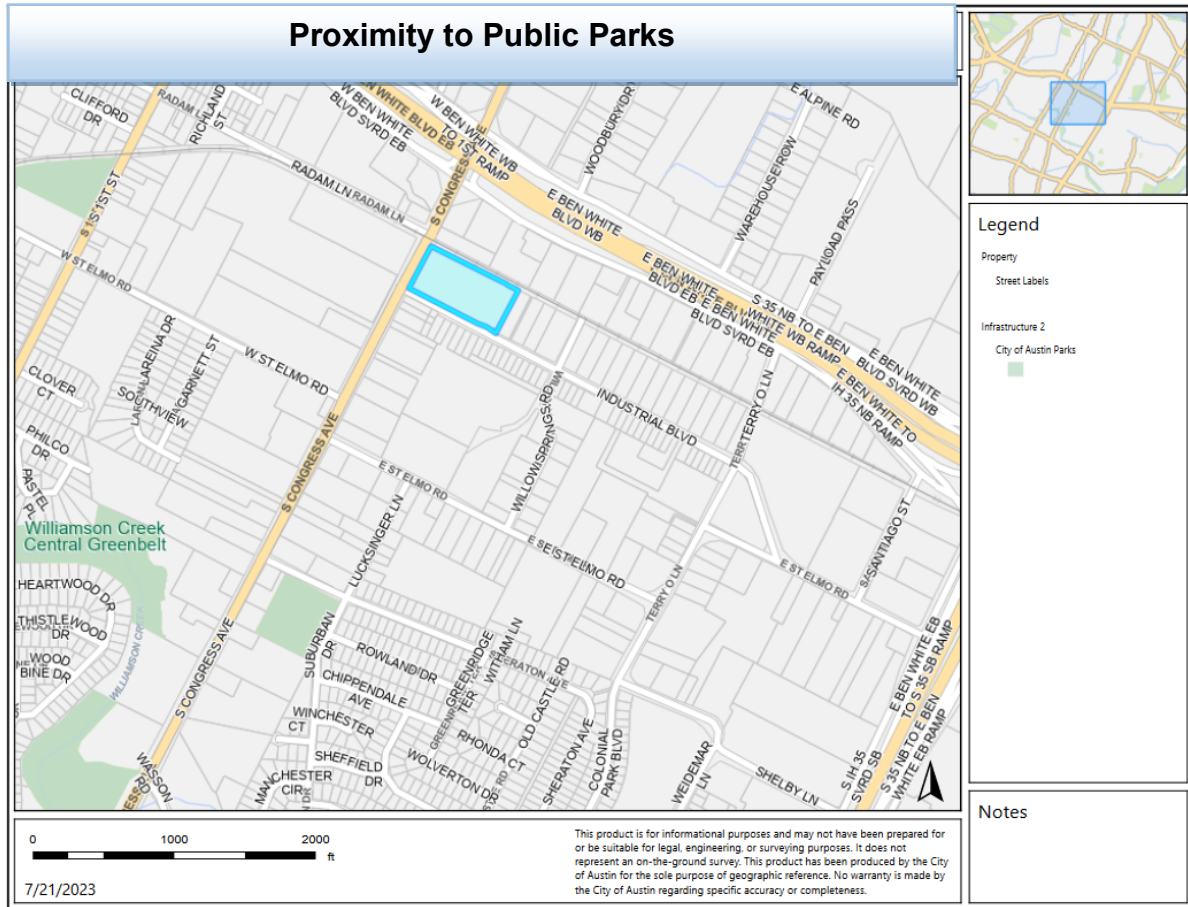
1. Allow mixed use development along major corridors and intersections;
2. Establish compatible mixed-use corridors along the neighborhood's edge
3. The neighborhood plan may further specify either the desired intensity of commercial uses (i.e. LR, GR, CS) or specific types of mixed use (i.e. Neighborhood Mixed Use Building, Neighborhood Urban Center, Mixed Use Combining District);
4. Mixed Use is generally not compatible with industrial development, however it may be combined with these uses to encourage an area to transition to a more complementary mix of development types;
5. The Mixed Use (MU) Combining District should be applied to existing residential uses to avoid creating or maintaining a non-conforming use; and
6. Apply to areas where vertical mixed use development is encouraged such as Core Transit Corridors (CTC) and Future Core Transit Corridors.

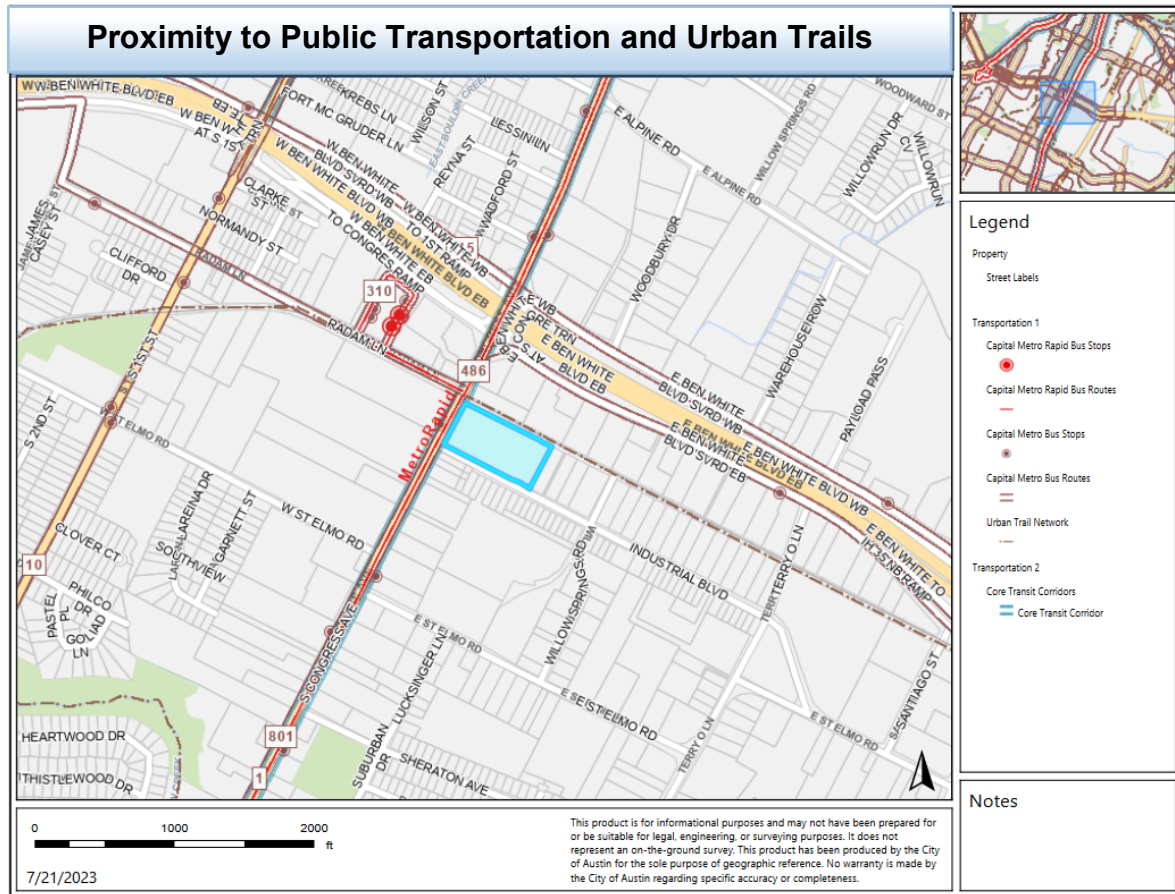
Yes	Imagine Austin Decision Guidelines
Complete Community Measures	
Yes	Imagine Austin Growth Concept Map: Located within or adjacent to an Imagine Austin Activity Center, Imagine Austin Activity Corridor, or Imagine Austin Job Center as identified the Growth Concept Map. Name(s) of Activity Center/Activity Corridor/Job Center: <ul style="list-style-type: none"> • Frontage on South Congress Avenue, an activity corridor. • Approx. 626 feet south of St. Edwards Neighborhood Center
Yes	Mobility and Public Transit: Located within 0.25 miles of public transit stop and/or light rail station.

Yes	Mobility and Bike/Ped Access: Adjoins a public sidewalk, shared path, and/or bike lane.
Yes	Connectivity, Good and Services, Employment: Provides or is located within 0.50 miles to goods and services, and/or employment center.
	Connectivity and Food Access: Provides or is located within 0.50 miles of a grocery store/farmers market.
Yes	Connectivity and Education: Located within 0.50 miles from a public school or university. <ul style="list-style-type: none"> • St. Edwards University to the north • St. Elmo Elementary School
Yes	Connectivity and Healthy Living: Provides or is located within 0.50 miles from a recreation area, park or walking trail. <ul style="list-style-type: none"> • Battlebend Springs Neighborhood Park • Williamson Creek Central Greenbelt • St. Elmo School Park
	Connectivity and Health: Provides or is located within 0.50 miles of health facility (ex: hospital, urgent care, doctor's office, drugstore clinic, and/or specialized outpatient care.) <ul style="list-style-type: none"> • 0.8 miles from St. David's South Austin Medical Center
	Housing Affordability: Provides a minimum of 10% of units for workforce housing (80% MFI or less) and/or fee in lieu for affordable housing.
	Housing Choice: Expands the number of units and housing choice that suits a variety of household sizes, incomes, and lifestyle needs of a diverse population (ex: apartments, triplex, granny flat, live/work units, cottage homes, and townhomes) in support of Imagine Austin and the Strategic Housing Blueprint.
Yes	Mixed use: Provides a mix of residential and non-industrial uses. <ul style="list-style-type: none"> • The proposed zoning stated on plan amendment application as CS-MU-V-NP, could provide a mixed of residential and commercial uses.
	Culture and Creative Economy: Provides or is located within 0.50 miles of a cultural resource (ex: library, theater, museum, cultural center).
	Culture and Historic Preservation: Preserves or enhances a historically and/or culturally significant site.
	Creative Economy: Expands Austin's creative economy (ex: live music venue, art studio, film, digital, theater.)
	Workforce Development, the Economy and Education: Expands the economic base by creating permanent jobs, especially in industries that are currently not represented in particular area or that promotes a new technology, and/or promotes educational opportunities and workforce development training.
	Industrial Land: Preserves or enhances industrial land.
7	Number of "Yes's"
Imagine Austin Priority Program PUD Specific Bonus Features	
n/a	Public Space Features and Public Art: Incorporates public space features and/or public art into project (Ex: plazas, streetscapes, gardens, and other people-friendly spaces where different ages can socially interact).
n/a	Integrates and/or Expands Green Infrastructure: Preserves or expands Austin's green infrastructure (ex: parkland, community gardens, green streets, creeks, stormwater features that mimic natural hydrology) into the urban environment and transportation network.
n/a	Protects the Environment: Reduces greenhouse gas emissions, water, energy usage, and/or increases waste diversion.
n/a	Protects Environmentally Sensitive Lands: Protects Austin's natural resources and environmental systems by limiting land use and transportation development over or near environmentally sensitive areas, preserves open space, and protects natural resources more than ordinance requirements.
n/a	Water/Wastewater Infrastructure: Sustainably manages Austin's water resources and stream corridors through on-site use of storm water, effective landscaping, flood mitigation, and other low-impact development techniques more than ordinance requirements.
PUD zoning is not proposed	Total Number of "Yes's"

Proximity to Imagine Austin Activity Centers and Corridors







IMAGINE AUSTIN GROWTH CONCEPT MAP

Definitions

Neighborhood Centers - The smallest and least intense of the three mixed-use centers are neighborhood centers. As with the regional and town centers, neighborhood centers are walkable, bikable, and supported by transit. The greatest density of people and activities in neighborhood centers will likely be concentrated on several blocks or around one or two intersections. However, depending on localized conditions, different neighborhood centers can be very different places. If a neighborhood center is designated on an existing commercial area, such as a shopping center or mall, it could represent redevelopment or the addition of housing. A new neighborhood center may be focused on a dense, mixed-use core surrounded by a mix of housing. In other instances, new or redevelopment may occur incrementally and concentrate people and activities along several blocks or around one or two intersections. Neighborhood centers will be more locally focused than either a regional or a town center. Businesses and services—grocery and department stores, doctors and dentists, shops, branch libraries, dry cleaners, hair salons, schools, restaurants, and other small and local businesses—will generally serve the center and surrounding neighborhoods.

Town Centers - Although less intense than regional centers, town centers are also where many people will live and work. Town centers will have large and small employers, although

fewer than in regional centers. These employers will have regional customer and employee bases, and provide goods and services for the center as well as the surrounding areas. The buildings found in a town center will range in size from one-to three-story houses, duplexes, townhouses, and rowhouses, to low-to midrise apartments, mixed use buildings, and office buildings. These centers will also be important hubs in the transit system.

Regional Centers - Regional centers are the most urban places in the region. These centers are and will become the retail, cultural, recreational, and entertainment destinations for Central Texas. These are the places where the greatest density of people and jobs and the tallest buildings in the region will be located. Housing in regional centers will mostly consist of low to high-rise apartments, mixed use buildings, row houses, and townhouses. However, other housing types, such as single-family units, may be included depending on the location and character of the center. The densities, buildings heights, and overall character of a center will depend on its location.

Activity Centers for Redevelopment in Sensitive Environmental Areas - Five centers are located over the recharge or contributing zones of the Barton Springs Zone of the Edwards Aquifer or within water-supply watersheds. These centers are located on already developed areas and, in some instances, provide opportunities to address long-standing water quality issues and provide walkable areas in and near existing neighborhoods. State-of-the-art development practices will be required of any redevelopment to improve stormwater retention and the water quality flowing into the aquifer or other drinking water sources. These centers should also be carefully evaluated to fit within their infrastructural and environmental context.

Job Centers - Job centers accommodate those businesses not well-suited for residential or environmentally- sensitive areas. These centers take advantage of existing transportation infrastructure such as arterial roadways, freeways, or the Austin-Bergstrom International airport. Job centers will mostly contain office parks, manufacturing, warehouses, logistics, and other businesses with similar demands and operating characteristics. They should nevertheless become more pedestrian and bicycle friendly, in part by better accommodating services for the people who work in those centers. While many of these centers are currently best served by car, the growth Concept map offers transportation choices such as light rail and bus rapid transit to increase commuter options.

Corridors - Activity corridors have a dual nature. They are the connections that link activity centers and other key destinations to one another and allow people to travel throughout the city and region by bicycle, transit, or automobile. Corridors are also characterized by a variety of activities and types of buildings located along the roadway — shopping, restaurants and cafés, parks, schools, single-family houses, apartments, public buildings, houses of worship, mixed-use buildings, and offices. Along many corridors, there will be both large and small redevelopment sites. These redevelopment opportunities may be continuous along stretches of the corridor. There may also be a series of small neighborhood centers, connected by the roadway. Other corridors may have fewer redevelopment opportunities, but already have a mixture of uses, and could provide critical transportation connections. As a corridor evolves, sites that do not redevelop may transition from one use to

another, such as a service station becoming a restaurant or a large retail space being divided into several storefronts. To improve mobility along an activity corridor, new and redevelopment should reduce per capita car use and increase walking, bicycling, and transit use. Intensity of land use should correspond to the availability of quality transit, public space, and walkable destinations. Site design should use building arrangement and open space to reduce walking distance to transit and destinations, achieve safety and comfort, and draw people outdoors.

BACKGROUND: The plan amendment application was filed on February 23, 2023, which is in-cycle for neighborhood planning areas located on the west side of IH-35.

The applicant proposes to change the land use on the future land use map from Industry to Mixed Use land use. The tract of land is 5.515 acres, but only a small part of the property on the eastern side of the tract has Industry land use. The majority of the tract has Mixed Use land use.

The applicant proposes to rezone the property from LI-CO-NP (Limited Industrial Services district – Conditional Overlay combining district – Neighborhood Plan) to CS-MU-V-NP (General Commercial Services district – Mixed Use combining district – Vertical Mixed Use Building combining district – Neighborhood Plan) for a mixed use development. For more information on the proposed rezoning, see case report C14-2023-0043.

PUBLIC MEETINGS: The ordinance-required community meeting was virtually held on April 19, 2023. The recorded meeting can be found here: <https://publicinput.com/neighborhoodplanamendmentcases> Approximately 564 community meeting notices were mailed to people who have utility accounts or own property within 500 feet of the subject tract, in addition to neighborhood and environmental groups who requested notification for the area. Two city staff members attended the meeting from the Planning Department, Maureen Meredith and Mark Walters. The applicant's agent, Ferris Clements, from Armbrust & Brown attended the meeting with Gavin Greenblum, Redcar Properties. Two people from the neighborhood also attended.

Below are highlights from Ferris Clement's presentation. His presentation is included in this report.

- The application we have today is amending the future land use map from Industry to Mixed Use, it does not change the development standards.
- The property is located at 4201 S. Congress Ave., just south of Ben White Blvd.
- The majority of the property has Mixed Use land use, with just a small portion with Industry, which we propose for Mixed Use land.
- The City's needs have grown since the neighborhood plan created the FLUM and has necessitated a need to amend the plan.
- There is a lot of mixed use in this neighborhood. Red Car has another case near here.
- We are still working on the plans for the site, but it will be a proposed mixed use project with office, retail, and multifamily uses.

Q: I'm with the Oldhom NA which is southwest of the property. What is the nature of the development proposed?

A: We are still working on the development of the project. We wanted to start with the future land use map. We have existing tenants, so it will be a while. We are looking at a mix of office, retail and housing, but unsure what will happen at the end of the day.

Comment:

- I just wanted to know what the build-out was going to be. I own property nearby. The traffic is unbearable and I'm concerned about adding more development to the neighborhood.

**Letter of Recommendation from the S. Congress Combined
Neighborhood Plan Contact Team**

DATE: December 11, 2023

TO: Maureen.Meredith@austintexas.gov, nancy.estrada@austintexas.gov
Planning & Zoning Departments

CC: Jose.Velasquez@austintexas.gov

FROM: South Congress Combined Neighborhood Plan Contact Team – SCCNPCT

Re: Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

Dear Planning & Zoning Departments,

We, the SCCNPCT, were informed that this case - NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress - is scheduled to be heard at the December 12, 2023 Planning Commission meeting.

After investing significant time and effort in negotiations, and based on the terms that the applicant, Redcar, is proposing, the SCCNPCT is unable to support an agreement prior to this item appearing again on Planning Commission's agenda this week.

After several attempts and finally nailing down the applicant to have conversations, we felt there'd been progress. Then the developer's plans took a sudden u-turn to instead propose an all retail vs. residential/mixed use project, derailing all of our work - and - which does not require a zoning change in order to move forward. Initially, the applicant stated they were going to build 400 rental units.

In addition, as is common practice in all other cases, the SCCNPCT has come to all prior agreements in the form of a Restrictive Covenant (RC), whereas this applicant has offered their current proposal in a "Letter of Agreement (LOA)" which would hold no validity should they decide to change their minds, again.

Overall, we have serious concerns in trusting and making sure what they say they're going to do vs. what they'll actually do, & when they might decide to make a decision and stick to it.

The SCCNPCT understands that now, the applicant only plans for retail, commercial, and restaurant zoning, for which the property is already zoned. Therefore, there is no reason for a zoning change. The property is already able to have retail, commercial, and restaurant as it currently stands.

Thus far, our time has been exhausted.

So with too much uncertainty of applicant's plans, the SCCNPCT currently has no choice but to NOT SUPPORT.

Please contact us if there are any questions.

Thank you,
Mario Cantu, Chair
SCCNPCT

**South Congress Cmb NPCT Postponement Request &
Applicant's Response**

DATE: September 19, 2023
TO: Maureen.Meredith@austintexas.gov, nancy.estrada@austintexas.gov
CC: Jose.Velasquez@austintexas.gov
FROM: South Congress Combined Neighborhood Plan Contact Team – SCCNPCT
Re: SCCNPCT Requesting Indefinite Postponement
Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

Dear Planning & Zoning Departments,

We, the SCCNPCT, were informed that this case - NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress - is scheduled to be heard at the September 26, 2023 Planning Commission meeting, and are requesting an indefinite postponement of this case to the City of Austin Planning and Zoning Dept.

On April 4, 2023, a notice from the City of Austin was received including detailing a planned Virtual Neighborhood Meeting with ways to participate on Wednesday, April 19, 2023 from 6:00p.m. – 7:30 p.m. At that time, the applicant had no information about the plans for the property information shared, concerns and issues from the neighborhood were not answered at that time. It was actually said that he "did not know or understand their scheme for this project".

The SCCNPCT was repeatedly crystal clear about the process in place for reviewing cases in the area, including requesting details at least twice, via our standard questionnaire, to no avail. We, in fact reached out multiple times prior to the case being set for Planning Commission this week.

Please pass along to the City's Plan Amendment and Zoning Teams re: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress about the issues resulting from that Virtual Neighborhood Meeting, including that information neighbors have been seeking is still unknown.

With several unanswered attempts to make contact since April, we, the SCCNPCT, are forced to seek an indefinite postponement on account of lack of information, intent, and any details regarding this case from the applicant. SCCNPCT still has not heard, nor met with the applicant to date.

Thank you,
Mario Cantu, Chair
SCCNPCT

From: Ferris Clements <>

Sent: Tuesday, September 19, 2023 5:25 PM

To: Meredith, Maureen <Maureen.Meredith@austintexas.gov>; Mario Cantu <mariocantu@>

Cc: Gavin Greenblum <>; rsuttle@; Estrada, Nancy <Nancy.Estrada@austintexas.gov>; Velasquez, Jose <Jose.Velasquez@austintexas.gov>; Harden, Joi <Joi.Harden@austintexas.gov>; Rivera, Andrew <Andrew.Rivera@austintexas.gov>

Subject: RE: SCCNPCT Requesting Indefinite Postponement Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

External Email - Exercise Caution

Mario,

We would be agreeable to an October 10th postponement request by the neighborhood group if this is acceptable with you all.

Thanks,
Ferris



From: Ferris Clements

Sent: Tuesday, September 19, 2023 11:17 AM

To: Mario Cantu <>; Meredith, Maureen <Maureen.Meredith@austintexas.gov>; Estrada, Nancy <Nancy.Estrada@austintexas.gov>; Velasquez, Jose <Jose.Velasquez@austintexas.gov>

Cc: Gavin Greenblum <>; rsuttle@[REDACTED]

Subject: RE: SCCNPCT Requesting Indefinite Postponement Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

Importance: High

Mario,

This is disconcerting as we have met with the neighborhood group as required by the City, and have had multiple conversations with you subsequent to that required neighborhood meeting. We are happy to provide the City evidence of these meetings/phone conversations if necessary. We filled out the neighborhood group's questionnaire as accurately as we could when received; however, many of these questions were not relevant to the entitlement process and instead dealt with site plan issues.

Our "intent" at this time, and subject to change, is to develop a mixed-used project on the Property.

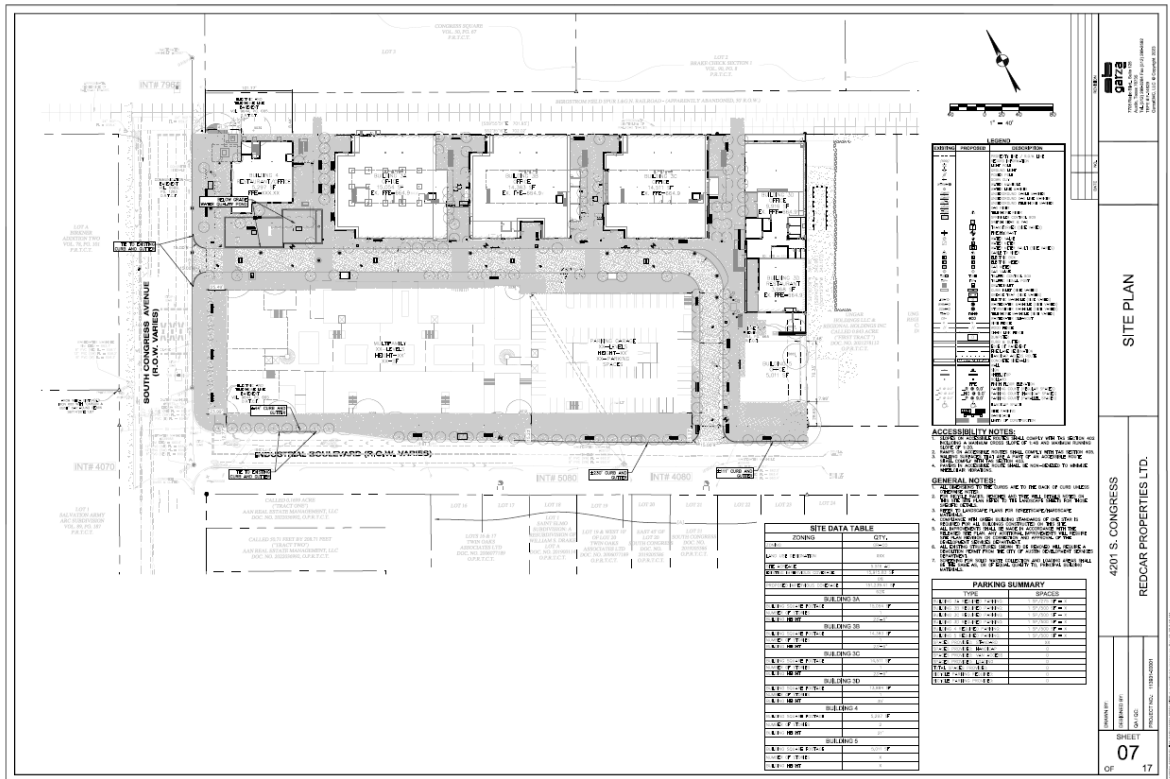
Attached is a copy of the proposed site plan for the project (which remains subject to change) – our team plans to submit this on Friday of this week. Note that we just received this from our engineers.

As you are aware, we have been trying to schedule a call with the SCCNPCT to discuss this case prior to Planning Commission. Note that I emailed you on 9/14/2023 trying to schedule a call, but we did not receive a firm date for this from the neighborhood.

Thanks,

Ferris

G. Ferris Clements, III
Associate
Armbrust & Brown, PLLC
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744
(512) 435-2337 - Direct
(512) 435-2360 - Facsimile
fclements@abaustin.com
www.abaustin.com



Applicant Summary Letter from Application

ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300
AUSTIN, TEXAS 78701-2744
512-435-2300

FACSIMILE 512-435-2360

FERRIS CLEMENTS
(512) 435-2337
fclements@ablaw.com

February 23, 2023

Joi Hardin, Interim Zoning Officer
Housing & Planning Department
City of Austin
1000 E. 11th Street, Suite 200
Austin, Texas 78702

Re: Neighborhood Plan Amendment Application for the Property (defined below) (the
"Application")

Dear Mrs. Hardin:

This letter, along with the Application is submitted to amend the Future Land Use Map ("FLUM") for a portion of the property located at 4201 S. Congress Avenue, Austin, Texas 78745 (TCAD Parcel #0412040101) (the "Property"). The Property is in the South Congress Combined (East Congress) Neighborhood Plan (the "Neighborhood Plan"). Currently the proposed redevelopment is for the construction of a mixed-use development to be located on the Property (the "Project").

In order to facilitate redevelopment of the Project, a zoning application will be submitted at a later date to rezone the Property from Limited Industrial Service – Conditional Overlay – Neighborhood Plan (LI-CO-NP) and Limited Industrial Service – Neighborhood Plan (LI-NP) to General Commercial Services - Mixed Use – Vertical – Neighborhood Plan (CS-MU-V-NP).

The FLUM established by the Neighborhood Plan identifies the majority of the Property as Mixed Use, and a small portion of the Property as Industry. This Application requests to change the FLUM on a portion of the Property from Industry to Mixed-Use in order for the FLUM to be consistent with (i) the FLUM for the majority of the Property, and (ii) future rezoning.

Thank you in advance for your time and consideration of this Application. If you have any questions or need additional information, please do not hesitate to contact me at (512) 435-2337.

ARMBRUST & BROWN, PLLC
Page 2

Very truly yours,

ARMBRUST & BROWN, PLLC


Ferris Clements

cc: Richard Suttle, Armbrust & Brown, PLLC
Gavin Greenblum, Redcar Properties
Vince Korth, Redcar Properties

{W1212406.1}

**Communication from the South Congress Combined
Neighborhood Plan Contact Team (NPCT)**

DATE: October 23, 2023

TO: Maureen.Meredith@austintexas.gov – Planning & Zoning
nancy.estrada@austintexas.gov – Housing & Planning

CC: Jose.Velasquez@austintexas.gov - Jose Velasquez, City of Austin Council Member-District 3
hpd@austintexas.gov - City Housing & Planning Department

FROM: South Congress Combined Neighborhood Plan Contact Team – SCCNPCT

Re: **Project clarification & SCCNPCT Requesting Postponement** to the November 28, 2023 Planning Commission for Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

Maureen & Nancy,

We would like to please clarify, case NPA-2023-0020.01 - C14-2023-0043, at 4201 South Congress Avenue in District 3, which is scheduled for the October 24, 2023 Planning Commission agenda, AND suggest that it be further postponed in order to understand how this Project can move forward.

Given that notification of an abrupt shift in plans, we were informed last week that the Project is now changing course to become a commercial only project to include only office, retail, and restaurant, *and* for which there is no site plan.

We understand now, without the formerly proposed residential mixed-use project, that any affordability negotiations would be off the table.

However, please help us to understand:

- What zoning change is the applicant now proposing?
- Doesn't the current zoning for this site already allow for commercial office, retail, and restaurant?
- What exactly is the process for an applicant who changes course like this, and who might try to move forward with an entirely different project?
- Isn't a site plan required?
- Does city staff get the opportunity to go back to the drawing board with new recommendations for what is now proposed?
- What becomes of the SCCNPCT's role in this case?
- Can an applicant state they will have one thing, get approved, and later decide not to follow through with what was approved without any oversight?
- Are we correct to assess that, to avoid including affordability, the applicant is now proposing a commercial project which still includes a "subject to change" clause, and later, it can become residential after all?

The applicant has also submitted a separate neighborhood plan amendment application to change the FLUM on a portion of this property from industry to Mixed-Use, justifying that the FLUM be consistent with the majority of the property, as well as future rezoning.

- How might the city consider this land use "consistent"?

We are hearing conflicting commitments and recommendations from both city staff and the applicant.

Thank you for clarification, Mario Cantu, Chair SCCNPCT

From: Estrada, Nancy <Nancy.Estrada@austintexas.gov>
Sent: Tuesday, October 24, 2023 5:14 PM
To: Mario Cantu <>; Meredith, Maureen <Maureen.Meredith@austintexas.gov>
Subject: RE: Oct. 24 PC Neigh Postponement Request?: NPA-2023-0020.01_4201 S. Congress Ave.

Hi Mario,

Please see the below information.

- What zoning change is the applicant now proposing? The original zoning request is for CS-MU-V-NP. This request has **not** been amended.
- Doesn't the current zoning for this site already allow for commercial office, retail, and restaurant? LI-NP & LI-CO-NP do allow for commercial, office, and restaurant use.
- What exactly is the process for an applicant who changes course like this, and who might try to move forward with an entirely different project? The proposed project would be reviewed during the site plan process. Regarding the zoning process, at this time, the original zoning request is CS-MU-V-NP. The application would need to be amended in order to request a different zoning. If the application is not amended, then a development would be subject to the site development standards under the (CS) base district. The applicant can also opt to develop with the (-V) combining district zoning.
- Isn't a site plan required? A site plan is not required during the zoning process.
- Does city staff get the opportunity to go back to the drawing board with new recommendations for what is now proposed? City staff has made a recommendation based on the current zoning application request. Since the request has not been amended, the recommendation will not change.
- What becomes of the SCCNPCT's role in this case? Per my understanding, the Community Mtg was held on April 19, 2023 which provided an opportunity for the SCCNPCT to receive information for the requested FLUM change.
- Can an applicant state they will have one thing, get approved, and later decide not to follow through with what was approved without any oversight? The applicant can **propose** a development that is allowed within the parameters of the requested zoning district. However, a site plan is reviewed and approved by the Development Services Dept. (DSD)

- Are we correct to assess that, to avoid including affordability, the applicant is now proposing a commercial project which still includes a “subject to change” clause, and later, it can become residential after all? **City staff cannot make this assessment. The applicant would need to provide this information.**

FLUM question:

- How might the City consider this land use “consistent”? **Staff considers the land use consistent given that there is Mixed Use land use to the north, south and west of the property and the property has almost 90% of the tract currently with Mixed Use land use.**



DATE: October 23, 2023

TO: Maureen.Meredith@austintexas.gov, nancy.estrada@austintexas.gov

CC: Jose.Velasquez@austintexas.gov

FROM: South Congress Combined Neighborhood Plan Contact Team – SCCNPCT

Re: SCCNPCT Requesting Postponement to the November 28, 2023 Planning Commission Meeting
For Case Number: NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress Ave.

Dear City of Austin Planning & Zoning Departments, Maureen Meredith and Nancy Estrada.

We, the SCCNPCT, have been informed that the case NPA-2023-0020.01 - C14-2023-0043 - 4201 South Congress is scheduled to be heard at the October 24, 2023 Planning Commission meeting. Due to the circumstances outlined below, the **SCCNPCT** is requesting postponement of this case to the **November 28, 2023 Planning Commission Meeting**.

On Thursday, October 19 – with just two business days remaining prior to the October 24, 2023 Planning Commission meeting – the developer’s representative sent the SCCNPCT a message in which they communicated that the developer had decided to make a fundamental change in the shape of the proposed development at 4201 South Congress Avenue, eliminating the planned large residential building and focusing solely on office, retail, and restaurant space: “At the time of our site plan completeness check submittal on September 28th for this site (previously provided), and up until this week, our team’s plan was development of an apartment building on the southern portion of the Property. However, market conditions have shifted and we are re-evaluating and modifying our plans for to be fully commercial (office, retail, and restaurant) at this time.”

The developer has no site-plan schematic for the modified plan, and has not provided the SCCNPCT any details on what they now intend.

Further, on October 20, the applicant’s representative, Mr. Ferris Clements, sent to the SCCNPCT a draft letter-of-agreement between the developer at 4201 South Congress Avenue and the SCCNPCT, a document that the applicant’s representative had committed to provide within several days of our online meeting of October 10. While the draft LoA does cover several items of concern to the SCCNPCT, it does not address such major areas as the provision of affordable housing units or affordable commercial space, and includes no commitment to parkland support. In its present form, the draft LoA is not acceptable to the SCCNPCT, and the parties will need to conduct further discussion, interaction, and negotiation to reach mutual agreement. In addition, we at the SCCNPCT take the position that the agreements reached should be recorded in a restrictive covenant, rather than a letter-of-agreement.

The SCCNPCT needs to receive clarifications and details regarding the developer’s new project plan for 4201 South Congress, and we then need to conduct discussions related to that new plan with the developer’s representative. Further, additional negotiation is needed regarding the content of the draft letter-of-agreement. The timing of the delivery of these communications and documents by the developer’s representative to the SCCNPCT make it impossible to take these steps prior to the Planning Commission meeting of October 24.

The SCCNPCT thus requests a postponement.

Thank you,
Mario Cantu, Chair
SCCNPCT

Meredith, Maureen

To: Mario Cantu; Ferris Clements; Gavin Greenblum
Cc: Gene S Adams; Howard Curtis; Velasquez, Jose
Subject: RE: 4201 S Congress - Zoning and NPA Cases

From: Mario Cantu <
Sent: Friday, October 20, 2023 10:32 AM
To: Ferris Clements <>; Gavin Greenblum <
Cc: Gene S Adams <>; Howard Curtis <>; Velasquez, Jose <Jose.Velasquez@austintexas.gov>; Meredith, Maureen <Maureen.Meredith@austintexas.gov>
Subject: Re: 4201 S Congress - Zoning and NPA Cases
Importance: High

External Email - Exercise Caution

Ferris & Gavin,

We sent over a Restrictive Covenant example within our request document awhile back (affordability see attached). We ask for an applicant within the SCCNPCT area to operate equal or greater than previous applicants with affordability, retail, office, or restaurant, not below, height is also taken into consideration.

We will need to request another postponement, our time is with other applicants working with the neighborhood(s). We know our wants and needs for the neighborhood(s) and we made it very clear twice during the two meetings with you and Gavin after PC, including details regarding the Restrictive Covenant.

The "Side Letter" you mentioned has not been received vs. Restrictive Covenant. Currently the area you are proposing has retail and we have mentioned about details with existing occupants, will they stay, how many exist, how many will be lost, will they be offered to come back etc. The initial plan has changed from the two meetings and we need new and current information related to the proposed development changing now over to retail, office, or restaurant.

M.

The related clause confirming affordability in a Restrictive Covenant may read, for example:

2. **Affordable Requirements for Rental Units.** If Owner seeks exemptions to the dimensional and parking requirements set forth in Subchapter E § 4.3.3.E of the Code, then Owner agrees that for a minimum of 40 years following the issuance of the certificate of occupancy, 5 percent of residential units in the VMU building of the total units the city will approve and the owner will build shall be reserved as affordable for rental or purchase by households earning no more than 60 percent of the Annual Median Family Income (MFI), and 5 percent of residential units in the VMU building of the total units the city will approve and the owner will build be reserved as affordable for rental or purchase by households earning no more

1

than 50 percent of the MFI (for a total of 10 % affordable units). In addition, the owner shall contract with a nonprofit organization to manage the affordable units.

On Oct 19, 2023, at 1:39 PM, Ferris Clements <FClements@abaustin.com> wrote:

SCCNPCT,

Do you all have availability for a call this week or next to discuss our zoning and NPA cases for 4201 S Congress? We apologize for the late notice on this – we’ve been going back and forth on proposed plans for this site internally, and at this time, are shifting the plans to be a commercial project (office, retail, and restaurant). Due to this recent shift in plans, we do not have a proposed site plan to provide you all with at this time unfortunately.

At the time of our site plan completeness check submittal on September 28th for this site (previously provided), and up until this week, our team’s plan was development of an apartment building on the southern portion of the Property. However, market conditions have shifted and we are re-evaluating and modifying our plans for to be fully commercial (office, retail, and restaurant) at this time. This is due, in part, to financial constraints and the increase in residential supply in the area. We would, however, like the ability to do residential for the Property and still are pursuing the CS-MU-V-NP zoning.

Please let us know a good time with you all and I will send out a Zoom invite.

Thanks,
Ferris



THE INFORMATION CONTAINED IN THIS E-MAIL MESSAGE IS CONFIDENTIAL AND IS INTENDED ONLY FOR THE NAMED ADDRESSEE(S). THIS MESSAGE MAY BE PROTECTED BY ATTORNEY/CLIENT PRIVILEGE. IF THE READER OF THIS E-MAIL MESSAGE IS NOT AN INTENDED RECIPIENT (OR THE INDIVIDUAL RESPONSIBLE FOR THE DELIVERY OF THIS E-MAIL MESSAGE TO AN INTENDED RECIPIENT), BE ADVISED THAT ANY REUSE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL MESSAGE IS PROHIBITED. IF YOU HAVE RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE NOTIFY THE SENDER AND DELETE THE MESSAGE. THANK YOU.

CAUTION: This is an EXTERNAL email. Please use caution when clicking links or opening attachments. If you believe this to be a malicious or phishing email, please report it using the "Report Message" button in Outlook or forward to cybersecurity@austintexas.gov.

DATE: October 1, 2023

TO: Ferris Clements, Armbrust & Brown PLLC Applicant's Representative

FROM: South Congress Combined Neighborhood Plan Contact Team (SCCNPCT)

CC: Maureen Meredith (City of Austin,) SCCNPCT Members

Re: Affordability and Benefits Scenarios based on height, to be confirmed in a Restrictive Covenant

For: Project Case number: NPA-2023-0020.1 Property at: 4201 S. Congress Ave, in South Austin - District 3
Zoning change request from Industry to Mixed Use

Proposed Zoning Change:

From: LI-CO-NP & LI-NP
To: CS-MU-V-NP (Industry to Mixed Use Land Use)

SCCNPCT Affordability Requests

(60 feet), SCCNPCT requests:

- A total of 10% of the units
 - with 5% offered at 50% MFI, and
 - with 5% offered at 60% MFI
- \$ 45,000.00 additional Parkland Fee donation
- \$ 5,000.00 Artist donation

(90 feet), SCCNPCT requests:

- A total of 15% of the units
 - with 5% offered at 50% MFI, and
 - with 5% offered at 60% MFI, and
 - with 5% offered @ 30% MFI
- \$ 60,000.00 additional Parkland Fee donation
- \$ 6,000.00 Artist donation

For number of affordable units in development with vertical maximum height of **120 feet**, SCCNPCT requests:

- A total of 20% of the units
 - with 10% offered at 50% MFI, and
 - with 5% offered at 60% MFI, and
 - with 5% offered @ 30% MFI
- \$ 120,000.00 additional Parkland Fee donation
- \$ 10,000.00 Artist donation

.....

From: Meredith, Maureen
Sent: Sunday, October 15, 2023 10:04 AM
Cc: Estrada, Nancy <Nancy.Estrada@austintexas.gov>; Ferris Clements <FClements@abaustin.com>
Subject: RE: South Congress NPCT Ltr Rec: NPA-2023-0020.01_4201 S. Congress Ave.
Importance: High

Dear South Congress Combined NPCT:
I'm following up on this request for a letter of recommendation from your team. The NPA and zoning cases are on the Oct. 24 PC hearing date. If you'd like to submit a letter to be included in our staff reports, please email it to me and Nancy **no later than Tuesday, Oct. 17 by 4:30** pm which is when our reports are due. If we receive it after this date and time, we will submit as late material to the Planning Commissioners.
Thanks.
Maureen

.....

From: Meredith, Maureen
Sent: Thursday, September 14, 2023 6:01 PM
Cc: Estrada, Nancy <Nancy.Estrada@austintexas.gov>
Subject: South Congress NPCT Ltr Rec: NPA-2023-0020.01_4201 S. Congress Ave.
Importance: High

Dear South Congress NPCT:
NPA-2023-0020.01 and C14-2023-0043_4201 S. Congress Ave are scheduled for the September 26, 2023 Planning Commission hearing date. If you'd like your NPCT's letter of recommendation included in the staff case report, please email it me and Nancy ***no later than Tuesday, Sept. 19 by 4:30 pm.*** If we get it after this date and time, we will submit it as late material to the Planning Commissioners.

Thanks.
Maureen

Letter of Recommendation from Oldham Neighborhood Assn.

From: Howard Curtis

Sent: Tuesday, October 17, 2023 12:53 PM

To: Meredith, Maureen <Maureen.Meredith@austintexas.gov>

Cc: Estrada, Nancy <Nancy.Estrada@austintexas.gov>; Woods, Alice - BC <BC-Alice.Woods@austintexas.gov>; nadia.mojica.barrera@[REDACTED]; Gene Adams <gsadams2003@[REDACTED]>; Mario Cantu <mariocantu@[REDACTED]>

Subject: Letter for Staff Report Regarding NPA-2023-0020.01_4201 S. Congress Ave.

Dear Maureen --

I am attaching a letter from Gene Adams and myself, both members of the Steering Committee of the Oldham Neighborhood Association, related to the proposed development at 4201 South Congress Avenue (NPA-2023-0020.01). My understanding is that a proposed zoning change for this property will be on the agenda of the October 24 Planning Commission meeting.

In preparing this letter expressing our current views on the matter, Gene Adams and I have been in consultation with Mario Cantu of the SCCNPCT. We wish to request, with Mr. Cantu's support, that his letter be included with the staff case report in preparation for the hearing.

Please feel free to contact me with any questions.

Best regards,

Howard Curtis

Steering Committee -- Oldham Neighborhood Association

E-mail: : hcurtistx@[REDACTED]

Cell: (512)-547-7116

October 17, 2023

Dear Members, Austin Planning Commission:

We are members of the Steering Committee of the Oldham Neighborhood Association in South Austin. .

The Oldham Neighborhood is located immediately south of St. Elmo between South Congress Avenue and South First Street, and thus will be impacted by current and future development along South Congress between Ben White and Stassney.

Over the last six months, we have been working with Mario Cantu and other members of the South Congress Neighborhood Plan Contact Team (SCCNPCT) in discussions and negotiations with the developers' representatives for three major projects planned for the South Congress Corridor. These projects are located at 5400 South Congress (NPA2023-0020.02 and C14-2023-0034), 300/440/600 Industrial Boulevard (NPA2023-0020.03 and C14-2023-0046), and 4201 South Congress (NPA-2023-0020.01 and C14-2023-0043).

It has been our experience in these interactions that the developers at 5400 South Congress and at the Industrial Boulevard properties have proactively engaged with our SCCNPCT group, have taken serious account of our neighborhoods' concerns, and have worked to address these needs and requests, including concessions and accommodations.

Unfortunately, the same cannot be said for the developer that plans to create a mixed-use project at 4201 South Congress – Redcar, Ltd. of Santa Monica, California. Until the last several weeks, it has been difficult for the Contact Team to secure the participation of the developer's representative, Mr. Ferris Clements, in meetings with our group. While the developer has now agreed to SCCNPCT requests in certain areas, such as sidewalks and lighting, we believe that the commitments the developer has made are primarily those required by City of Austin building codes, and that the developer has not shown willingness to go beyond what the City requires of them.

There are three areas, in particular, where we think that Redcar and their representatives need to demonstrate more flexibility and a spirit of compromise in addressing neighborhood requests. Specifically –

- The SCCNPCT wants the developer to commit to the inclusion of affordable units in the proposed project that go somewhat beyond the levels currently required by the City, whether this would take the form of more affordable residential units, affordable retail space, or some combination of the two. The developer has shown no willingness to provide more than the required minimums.
- The SCCNPCT seeks a Parkland Donation from the developer -- funds that would enhance public parks in the South Congress Corridor, to support the growing population in the area that is a direct result of major residential developments. Thus far, the developer has refused to make such a commitment.

- The SCCNPCT has requested that the developer confirm their commitments to our neighborhoods through the execution of a restrictive covenant, which would bind future development of the property consistent with the agreements reached between the developer and the SCCNPCT, in return for the zoning change which the developer seeks from the City. The use of a restrictive covenant would be consistent with what other developers along the South Congress corridor have previously provided. However, Redcar and their representatives have refused to execute a restrictive covenant, arguing that they prefer a letter-of-agreement, and that an LoA should be sufficient for our purposes. It is our belief that an LoA is a weaker legal instrument than a restrictive covenant, in that it binds two parties rather than imposing conditions on the development of the property itself. It is quite possible, for example, that the terms agreed to in an LoA could be found invalid after the zoning change, should the developer sell the property to a third party.

Further, the circumstances the SCCNPCT finds itself in at this point in our negotiations with the developer and their representatives at 4201 South Congress raise issues of equity. Whereas other developers along the South Congress Corridor have been proactive in negotiating with the SCCNPCT and responding to our reasonable requests in the areas documented above, Redcar has thus far resisted doing so. For the Planning Commission to respond by approving the applicant's request for a zoning change at this juncture would create a situation that is unfair to the majority of developers. It will also undercut the credibility and leverage that the SCCNPCT can bring to the table in future interactions with the development community.

While the Oldham Neighborhood Association is just one of the member organizations of the SCCNPCT, unless circumstances change, we will be advising Mr. Cantu, on behalf of our neighborhood, that we cannot recommend that the SCCNPCT express support for the agreement with the developer of 4201 South Congress Avenue, on the terms that are currently being proposed to us by the developer and their representative.

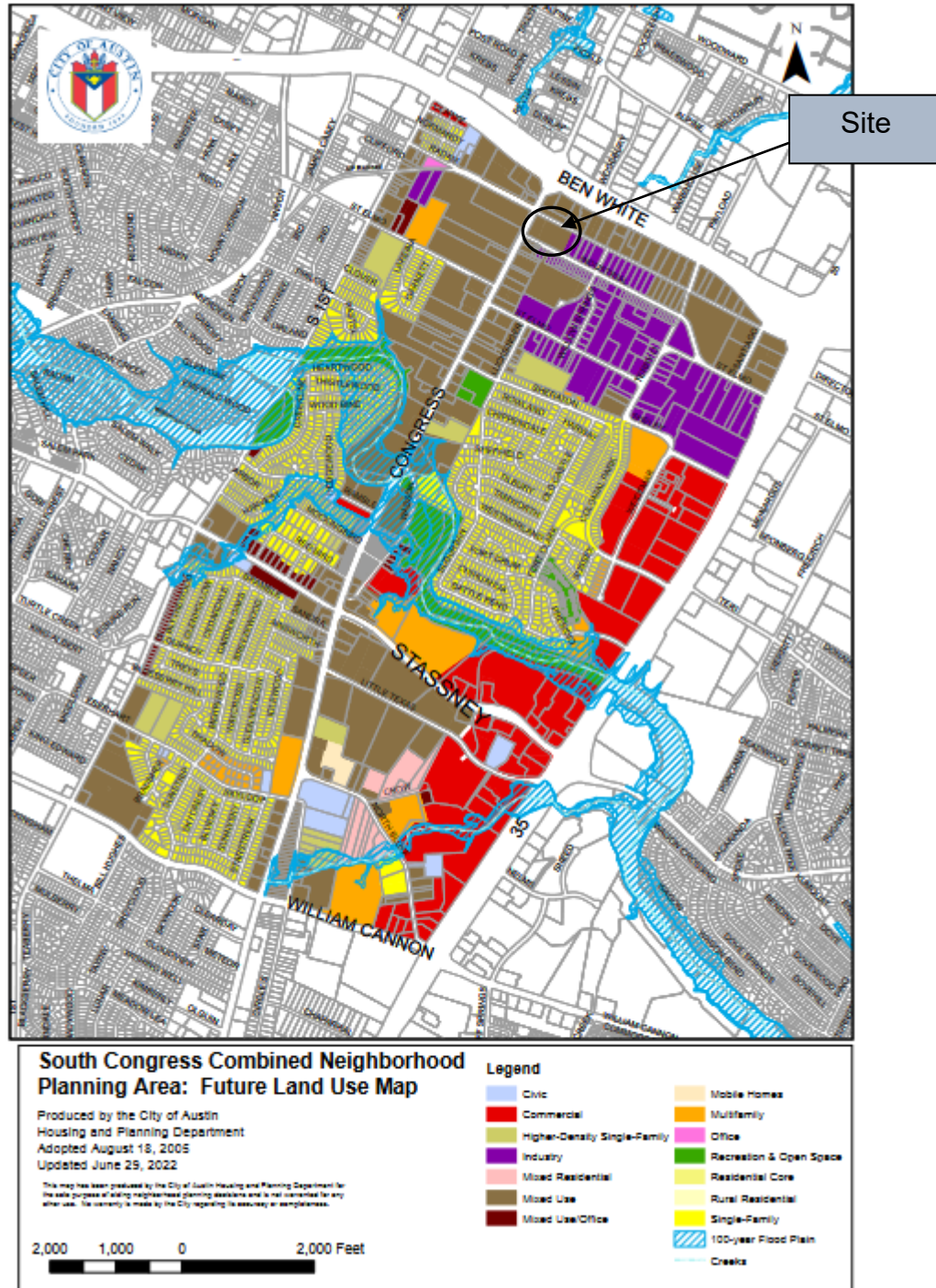
Please feel free to contact us with questions, or if clarifications are needed.

Best regards,

Howard Curtis; Gene Adams
Steering Committee, Oldham Neighborhood Association

Cc: Mario Cantu, SCCNPCT; Alice Woods, Planning Commission – District 2; Nadia Barrera-Ramirez, Planning Commission – District 3

E-mail:
Cell: (512)-547-7116





South Congress Combined Neighborhood Planning Area **NPA-2023-0020.01**

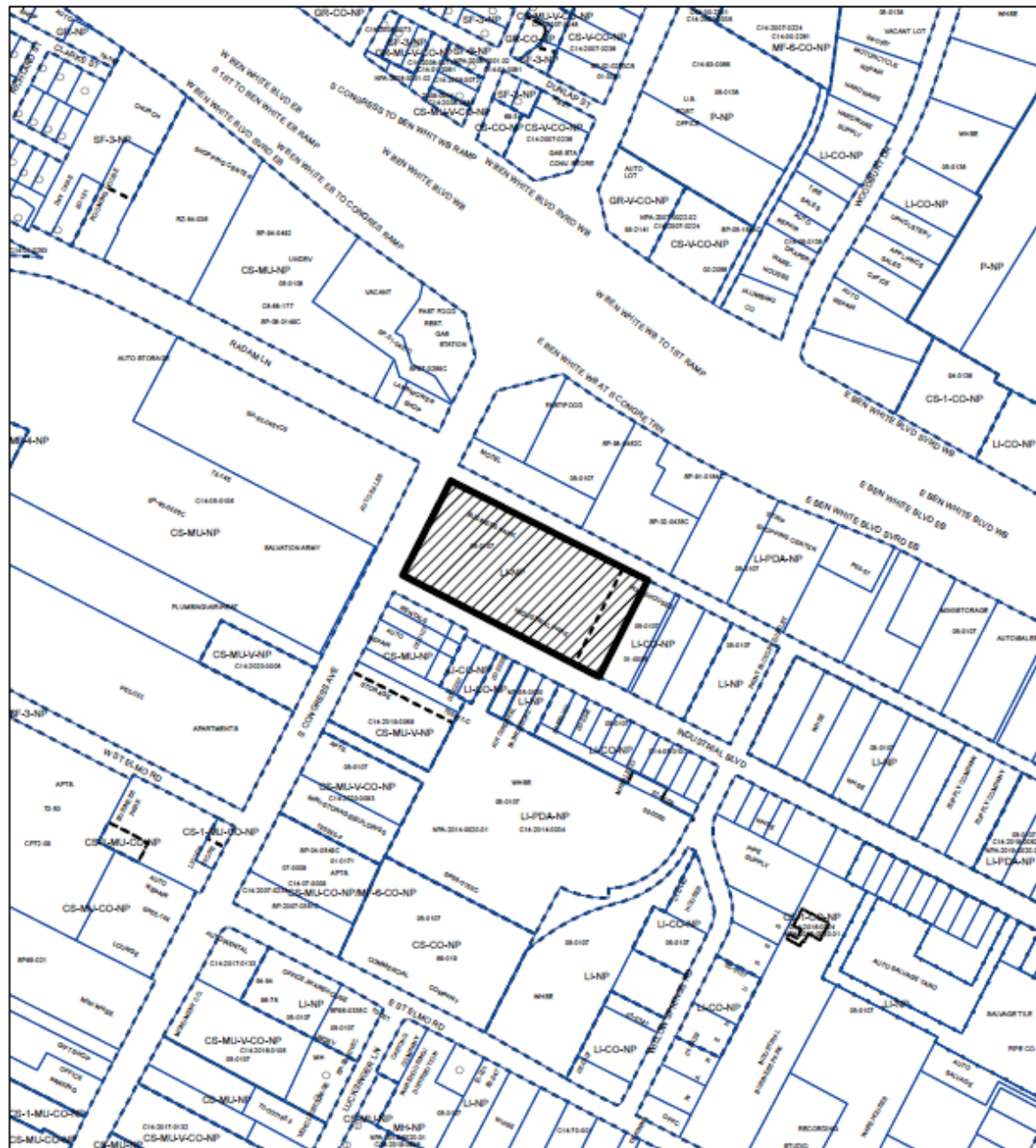
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





This product has been produced by the Housing and Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



City of Austin
Housing and Planning Department
Created on 3/27/2023, by: MeeksS

Future Land Use	
	Subject Tract
	500 ft. notif. boundary
	Civic
	Commercial
	Industry
	Mixed Use
	Multi-Family
	Office
	Recreation & Open Space
	Single-Family
	Transportation




 SUBJECT TRACT
 PENDING CASE
 ZONING BOUNDARY

$$1'' = 400'$$

ZONING

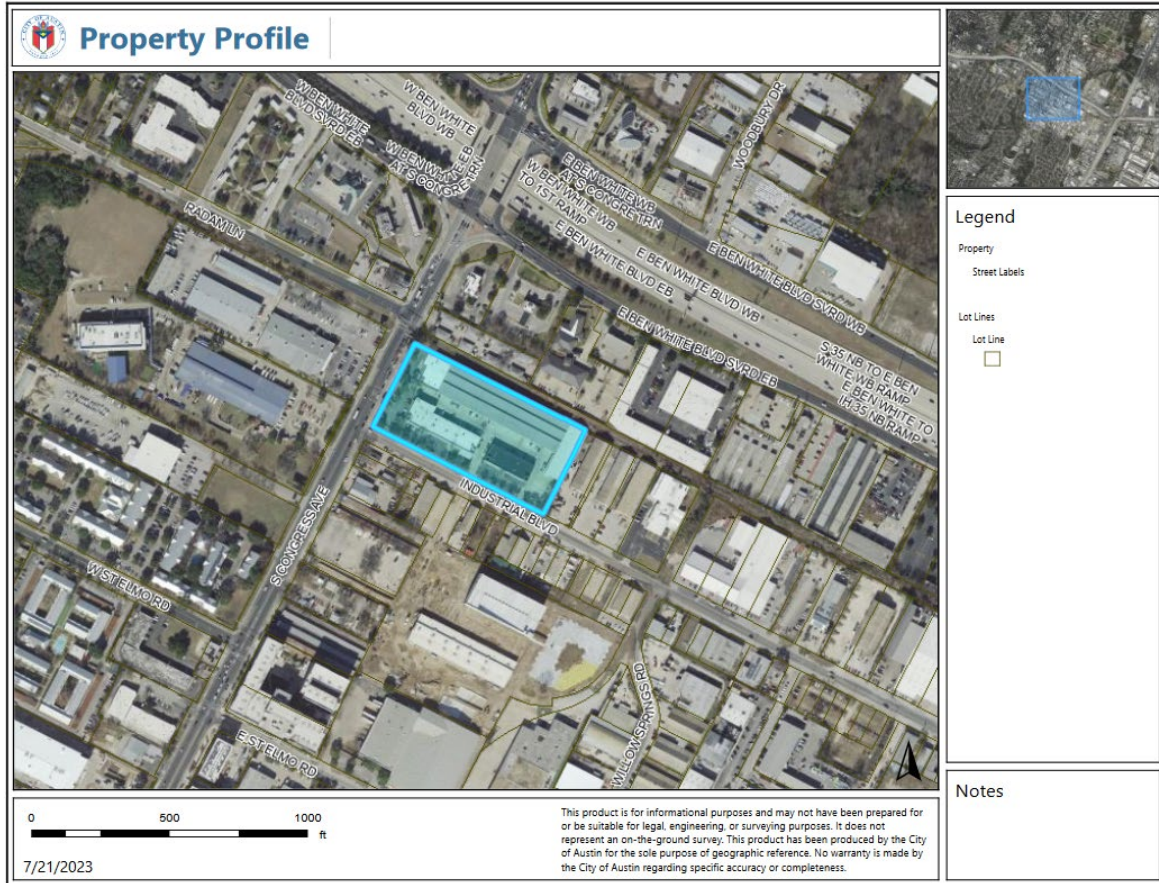
ZONING CASE#: C14-2023-0043

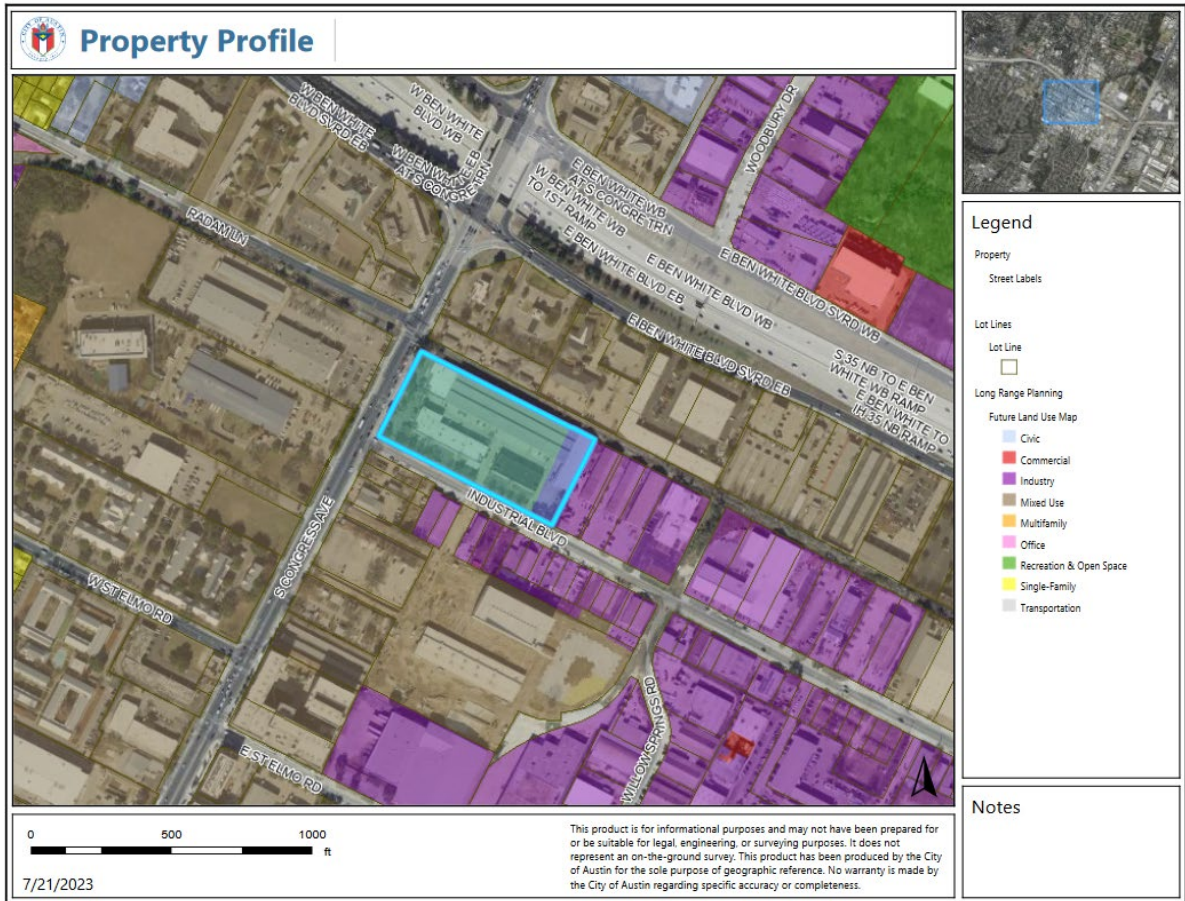
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

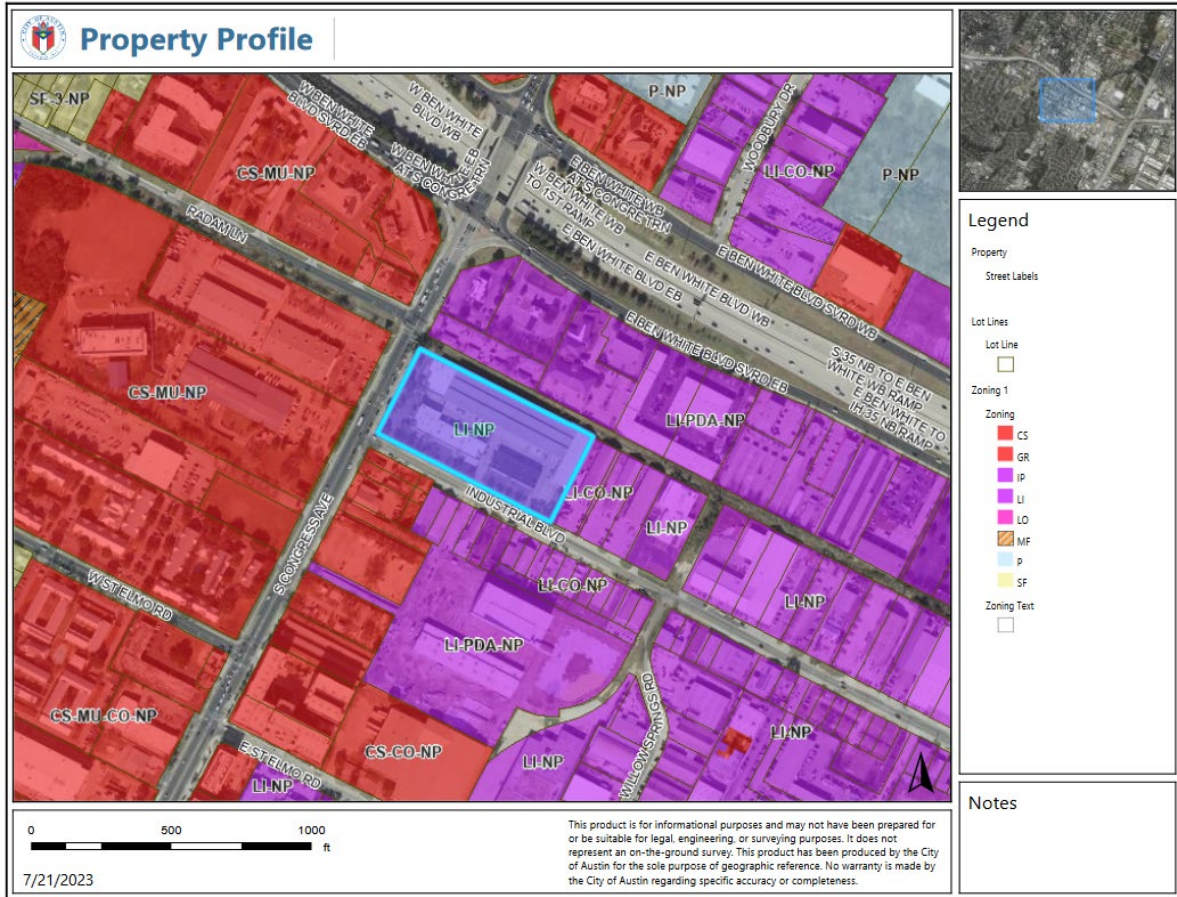
This product has been produced by the Housing and Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or



Created: 4/7/2023







**Ferris Clement's Presentation at the April 19, 2023 Virtual
Community Meeting**

4201 S CONGRESS (NPA-2023-0020.01)

Gavin Greenblum – Redcar Properties Ltd.

Ferris Clements – Armbrust & Brown, PLLC

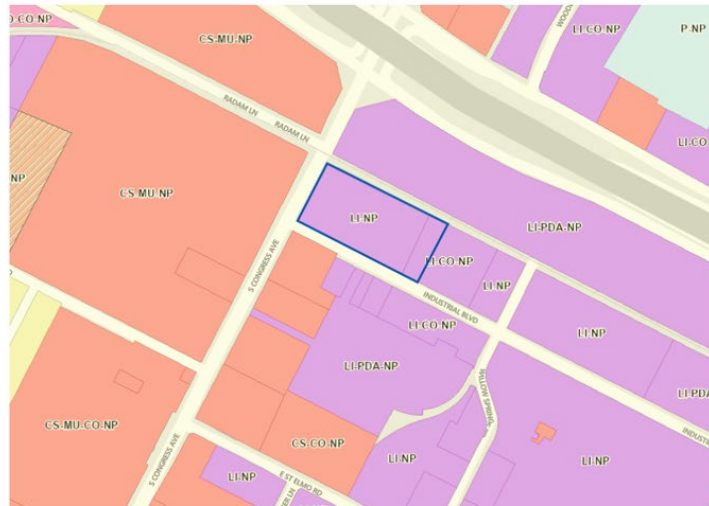


The Property



Current Zoning:

Limited Industrial Service – Conditional Overlay – Neighborhood Plan (LI-CO-NP) and Limited Industrial Service – Neighborhood Plan (LI-NP)



Current Future Land Use Map (FLUM): *Mixed Use and Industrial*



*Property outlined in blue above. FLUM request is for the "Industry" portion of the Property.

Request

- **Future Land Use Map (“FLUM”)**
 - Future Land Use Map change from Industry to Mixed Use.
- **Zoning Change General Commercial Services-Vertical Mixed Use-Neighborhood Plan (CS-V-MU-NP).**
- **Proposed Use:**
 - Mixed-Use project with office, retail, and multifamily housing.

QUESTIONS

Ferris Clements – fclements@abaustin.com

512-435-2337

**ArmBrust
& Brown**
PLLC

Correspondence Received

-----Original Message-----

From: Timothy Gallego

Sent: Wednesday, August 2, 2023 7:27 PM

To: Meredith, Maureen <Maureen.Meredith@austintexas.gov>

Subject: Public hearing

Hi,

I'd like to vote FOR the following cases:

NPA-2023-0020.03

C14-2023-0043

NPA-2023-0020.01

Thanks,

Timothy Gallego

From: Howard Curtis

Sent: Thursday, September 21, 2023 9:56 PM

To: Meredith, Maureen <Maureen.Meredith@austintexas.gov>

Cc: Velasquez, Jose <Jose.Velasquez@austintexas.gov>; Estrada, Nancy <Nancy.Estrada@austintexas.gov>; Ferris Clements <FClements@abaustin.com>; Oldham Neighborhood Association < >

Subject: Support From Oldham Neighborhood Association for Postponement

External Email - Exercise Caution

Dear Maureen:

I drafted the communication I am appending below before I saw a copy of Ferris Clements's message to Mario Cantu this afternoon, proposing a postponement of the developer's presentation to the Austin Planning Commission, regarding the potential project at 4201 South Congress, until October 10.

The willingness of the developer to accept a postponement is welcome and appreciated. However, in addition to agreeing to the postponement itself, I think that the developer's representatives and the SCCNPCT need to agree to what process will be pursued, and what issues addressed, between now and the date the developer makes their presentation to the Planning Commission.

In this context, I think the content of my original message remains relevant.

To me, the date of October 10 creates a tight deadline. But, if the developer's representatives and the SCCNPCT communicate frequently and work together in good faith in coming weeks, it is potentially achievable. I am personally willing and available to participate in the discussions as needed.

Please feel free to follow up with me with any questions, or for discussion. My contact points appear below, at the end of my original communication.

Best regards,

Howard Curtis
Steering Committee, Oldham Neighborhood Association