

## ZONING CHANGE REVIEW SHEET

CASE: C14-2023-0110 (1230 E. 38<sup>th</sup> ½ Street)

DISTRICT: 9

ADDRESS: 1230 East 38th ½ Street, 1400 East 38th ½ Street, 1402 East 38th ½ Street, and 1406 East 38th ½ Street

ZONING FROM: CS-MU-V-CO-NP

TO: CS-MU-V-CO-NP

(change in condition of zoning to amend the conditional overlay by removing the height restriction maximum of forty (40) feet for the subject tract)

SITE AREA: approximately 4.4369 acres (approximately square feet)

PROPERTY OWNER: 38th Half St Holding LLC, 1230 E. 38th Half St Holding 2 LLC, Cherrywood Austin LLC, 706 W 34th LLC, Nasteb Keystone Family LTD

AGENT: Drenner Group, P.C., (Amanda Swor)

CASE MANAGER: Jonathan Tomko (512) 974-1057, [jonathan.tomko@austintexas.gov](mailto:jonathan.tomko@austintexas.gov)

STAFF RECOMMEDATION:

**Staff recommends granting the change in condition of zoning to amend the conditional overlay by removing the height restriction maximum of forty (40) feet for the subject tract.** See the *basis of recommendation* section below for additional information.

PLANNING COMMISSION COMMISSION ACTION / RECOMMENDATION:

January 23, 2024: Case is scheduled to be heard by Planning Commission.

CITY COUNCIL ACTION: TBD

ORDINANCE NUMBER: N/A

ISSUES: N/A

CASE MANAGER COMMENTS:

The subject tract includes a number of uses, Alma Cherrywood Apartment Complex (formerly known as Delwood Station Apartments); Westbank Dry Cleaning Warehouse; Cherrywood Coffeehouse; Monarch Food Mart, and GC Cleaners and Laundry. To the north (across the railroad tracks) are several duplexes that are part of what is known as “Duplex Nation,” a large collection of duplexes built in the late 1940s. To the east (across the railroad tracks) is Maplewood Elementary and several duplexes built in the late 1940s. To the west is Delwood Marketplace, a large shopping center of over 100,000 square feet built in approximately 1992. The shopping center includes a Fiesta Grocery Store and over 50,000 square feet of paved parking lot. To the south are several single family homes built in the 1940s and 1950s. There are at least three single family homes that operate small office uses, such as an acupuncture office, and some other home offices along the south side of East 38th 1/2 Street.

BASIS OF RECOMMENDATION:

**Granting of the request should result in an equal treatment of similarly situated properties.**

Granting of this request would result in equal treatment of this tract. Parcels just to the west of this tract do not have the 40 foot height restriction, so removing it would ensure this property is equitably treated.

**The rezoning should be consistent with the policies and principles adopted by the City Council or Planning Commission.**

The City Council and Planning Commission have made clear the need to promote housing density around transportation assets. This site is proximate to Manor Road, the Red Line Trail, and MLK Red Line Stop. Imposing height restrictions reduces the number of households that could benefit from being able to live near these transportation assets. The height restriction is inconsistent with policies and principles adopted by City Council and Planning Commission.

**The proposed zoning should satisfy a real public need and not provide special privilege to the owner.**

There is a real public need for more housing in central Austin. The limitation on height to 40 feet so close to I-35 (less than 1,000 feet to the west) may have been acceptable at one point in time; however, today it is limiting the site from potentially being redeveloped with additional height and housing density between the University of Texas and Mueller.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-V-CO-NP	Alma Cherrywood Apartment Complex (formerly known as Delwood Station Apartments); Westbank Dry Cleaning Warehouse; Cherrywood Coffeehouse; Monarch Food Mart, and GC Cleaners and Laundry
<i>North</i>	SF-3-NP (across railroad tracks)	Several duplexes that are part of what is known as “Duplex Nation,” a large collection of duplexes built in the late 1940s.
<i>South</i>	MF-3-NP, SF-3-NP and LO-MU-CO-NP	Several single family homes built in the 1940s and 1950s. An acupuncture office, and some other home office uses that appear as single family homes.

<i>East</i>	SF-3-NP (across railroad tracks)	Maplewood Elementary and several duplexes that are part of what is known as “Duplex Nation” a large collection of duplexes built in the late 1940s.
<i>West</i>	CS-MU-V-NP	Delwood Marketplace, a large shopping center of over 100,000 square feet built in approximately 1992. It includes a Fiesta Grocery Store and over 50,000 square feet of paved parking lot.

NEIGHBORHOOD PLANNING AREA: Upper Boggy Creek Neighborhood Plan  
Combining District

WATERSHED: Boggy Creek Watershed

SCHOOLS: A.I.S.D.

Maplewood Elementary School

Kealing Middle School

McCallum High School

COMMUNITY REGISTRY LIST:

Austin Independent School District, Austin Lost and Found Pets, Austin Neighborhoods Council, Cherrywood Neighborhood Assn., Del Valle Community Coalition, Friends of Austin Neighborhoods, Homeless Neighborhood Association, Neighborhood Empowerment Foundation, Neighbors United for Progress, Preservation Austin, Red Line Parkway Initiative, SELTexas, Sierra Club, Austin Regional Group, Upper Boggy Creek Neighborhood Planning Team

AREA CASE HISTORIES:

<b>Number</b>	<b>Request</b>	<b>Commission</b>	<b>City Council</b>
C14-2023-0001 (University Park North)	The Applicant is proposing to rezone approximately 1.24 acres from CS-MU-CO-NP to CS-MU-V-CO-NP.	07.25.2023: Motion to grant Staff’s recommendation of CS-MU-V-CO-NP combining district zoning for C14-2023-0001 - University Park North located at 3800,3808,3810 N IH 35; 1017 & 1015 E 38th Half St.; 1014 & 1016 E 38th St was approved on the consent agenda on the motion Commissioner Woods seconded by	09.14.2023: Approved on Council Member Ryan Alter’s motion, Council Member Kelly’s second on a 7-0 vote. Mayor Pro Tem Ellis was off the dais. Council Members Alison Alter, Harper-Madison, and Pool were absent.

		Commissioner Conolly on a vote of 11-0. Commissioner Mushtaler absent. One vacancy on the dais	
C14-2023-0012 (University Park South)	The Applicant is proposing to rezone approximately 0.5897 acres from CS-MU-NP to CS-MU-V-NP.	07.25.2023: Motion to grant Staff's recommendation of CS-MU-V-CO-NP combining district zoning for C14-2023-0012 - University Park South located at 1015 E 38th St.; 3703 Harmon Ave. was approved on the consent agenda on the motion Commissioner Woods seconded by Commissioner Conolly on a vote of 11-0. Commissioner Mushtaler absent. One vacancy on the dais.	09.14.2023: Approved on Council Member Ryan Alter's motion, Council Member Kelly's second on a 7-0 vote. Mayor Pro Tem Ellis was off the dais. Council Members Alison Alter, Harper-Madison, and Pool were absent.
C14-2007-0114 (Canales #1)	The applicant is requesting to rezone from SF-3-NP to GO-NP.	01.29.2008: Recommendation: To deny general office-neighborhood plan (GO-NP) combining district zoning.	03.20.2008: The public hearing was closed and the motion to deny the ordinance was approved on Council Member Leffingwell's motion, Council Member Kim's second on a 7-0 vote.
C14-2007-0262 (Central Austin Combined Neighborhood Planning Area Vertical Mixed Use)	The applicant is proposing Vertical Mixed Use Zoning.	01.13.2009: N/A	06.11.2009: Ordinance No. 20090611-056 with amendments and conditions was approved on Council Member Shade's motion, Council Member Leffingwell's

			second on a 6-0 vote. Council Member Cole was absent.
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RELATED CASES:

None

ADDITIONAL STAFF COMMENTS:Comprehensive Planning

**Project Name and Proposed Use:** 1230 E 38TH HALF ST. C14-2023-0110. 4.4369 acres from CS-MU-V-CO-NP to CS-MU-V-CO-NP. Upper Boggy Creek NP. FLUM: Mixed Use. The requested rezoning will amend the conditional overlay by removing the height restriction maximum of forty (40) feet. There are no other planned changes with this application. The Property is currently developed with multifamily residential, restaurant (general), laundry services, consumer repair services, and general retail sales (convenience). The purpose of the rezoning is to allow additional residential density on the Property. Demolish 74 multifamily units and build 250 multifamily units in its place

Yes	Imagine Austin Decision Guidelines
	<b>Complete Community Measures</b>
Y	<b>Imagine Austin Growth Concept Map:</b> 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. <b>Names of Activity Centers/Activity Corridors/Job Centers: 0.25 miles from Downtown Regional Center</b>
Y	<b>Mobility and Public Transit:</b> Located within 0.25 miles of public transit stop and/or light rail station.
Y	<b>Mobility and Bike/Ped Access:</b> Adjoins a public sidewalk, shared path, and/or bike lane.
Y	<b>Connectivity, Good and Services, Employment:</b> Provides or is located within 0.50 miles to goods and services, and/or employment center.
Y	<b>Connectivity and Food Access:</b> Provides or is located within 0.50 miles of a grocery store/farmers market.
Y	<b>Connectivity and Education:</b> Located within 0.50 miles from a public school or university.
Y	<b>Connectivity and Healthy Living:</b> Provides or is located within 0.50 miles from a recreation area, park or walking trail.
	<b>Connectivity and Health:</b> 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.)
Y	<b>Housing Choice:</b> 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.
	<b>Housing Affordability:</b> Provides a minimum of 10% of units for workforce housing (80% MFI or less) and/or fee in lieu for affordable housing.
	<b>Mixed use:</b> Provides a mix of residential and non-industrial uses.
	<b>Culture and Creative Economy:</b> Provides or is located within 0.50 miles of a cultural resource (ex: library, theater, museum, cultural center).
	<b>Culture and Historic Preservation:</b> Preserves or enhances a historically and/or culturally significant site.
	<b>Creative Economy:</b> Expands Austin's creative economy (ex: live music venue, art studio, film, digital, theater.)
	<b>Workforce Development, the Economy and Education:</b> Expands the economic base by creating permanent jobs, especially in industries that are currently not represented in a particular area or that promotes a new technology, and/or promotes educational opportunities and workforce development training.
	<b>Industrial Land:</b> Preserves or enhances industrial land.
8	<b>Total Number of "Yes's"</b>

Environmental

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Boggy Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

2. Zoning district impervious cover limits apply in the Urban Watershed classification.

3. According to floodplain maps there is no floodplain within or adjacent to the project location.
4. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.
5. At this time, site specific information is unavailable regarding vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.
6. This site is required to provide on-site water quality controls (or payment in lieu of) for all development and/or redevelopment when 8,000 s.f. cumulative is exceeded, and on site control for the two-year storm.
7. At this time, no information has been provided as to whether this property has any preexisting approvals that preempt current water quality or Code requirements.

#### Fire

No comments on rezoning

#### PARD – Planning & Design Review

PR1: Parkland dedication will be required at the time of subdivision or site plan application for new residential units, per City Code § 25-1-601, as amended. The proposed development meets the criteria for land dedication in City Code Title 25, Article 14. As such, a partial land dedication will be required, as well as any remaining fees in-lieu.

The site is currently considered park deficient, defined as being outside walking distance to existing parks. The development as proposed will require parkland dedication for the new residential units that will serve the surrounding community through the additional park investment. The Parks and Recreation Department (PARD) would consider a connection along the Red Line toward satisfying the requirement at time of permitting (whether subdivision or site plan). Such a connection would improve neighborhood connectivity, and satisfy an acquisition need for the Red Line Trail, a recommendation identified in the Parks and Recreation Department's Long Range Plan.

Should there be any remaining fees in-lieu, those fees shall be used toward park investments in the form of land acquisition and/or park amenities within the surrounding area, per the Parkland Dedication Operating Procedures § 14.3.11 and City Code § 25-1-607 (B)(1) & (2).

Should the applicant wish to discuss parkland dedication requirements in advance of site plan or subdivision applications, please contact this reviewer: [thomas.rowlinson@austintexas.gov](mailto:thomas.rowlinson@austintexas.gov). At the applicant's request, PARD can provide an early determination letter of the requirements as stated in this review.

#### Site Plan



SP 1. Site plans will be required for any new development other than single-family or duplex residential.

SP 2. Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

SP 3. Any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

FYI – This site is part of the Upper Boggy Creek neighborhood plan.

Transportation and Public Works Department – Engineering Review

ATD 1. Assessment of required transportation mitigation, including the potential dedication of right of way and easements and participation in roadway and other multi-modal improvements, will occur at the time of site plan application. The traffic impact analysis for this site is not required, the traffic generated by the proposal does not exceed the thresholds established in the City of Austin Land Development Code. [LDC 25-6-113].

ATD 2. The Austin Strategic Mobility Plan (ASMP) calls for 84 feet of right-of-way for E 38TH HALF ST. It is recommended that 42 feet of right-of-way from the existing centerline should be dedicated for E 38TH HALF ST according to the Transportation Plan with the first subdivision or site plan application. [LDC 25-6-51 and 25-6-55].

ATD 3. There is a proposed Urban Trail adjacent to this site, along the railroad to the east (Red Line Trail). The easement required is a minimum of 20 ft as this allows for a 12 ft trail (minimum trail width per the urban trails plan) and room for maintenance activity. This is the same for Tier I and Tier II trails.

EXISTING STREET CHARACTERISTICS:

Name	ASMP Classification	ASMP Required ROW	Existing ROW	Existing Pavement	Sidewalks	Bicycle Route	Capital Metro (within ¼ mile)
E 38TH HALF ST	Local Mobility - Level 2	84 feet	77 feet	39 feet	Existing 7 feet sidewalks	Shared lane (on-street)	Yes

TIA: A traffic impact analysis is NOT required. The traffic generated by the rezoning proposal does not exceed the threshold established in the Land Development Code. A traffic impact analysis may be required at time of site plan.

Austin Water Utility

AW1. No comments on zoning change.

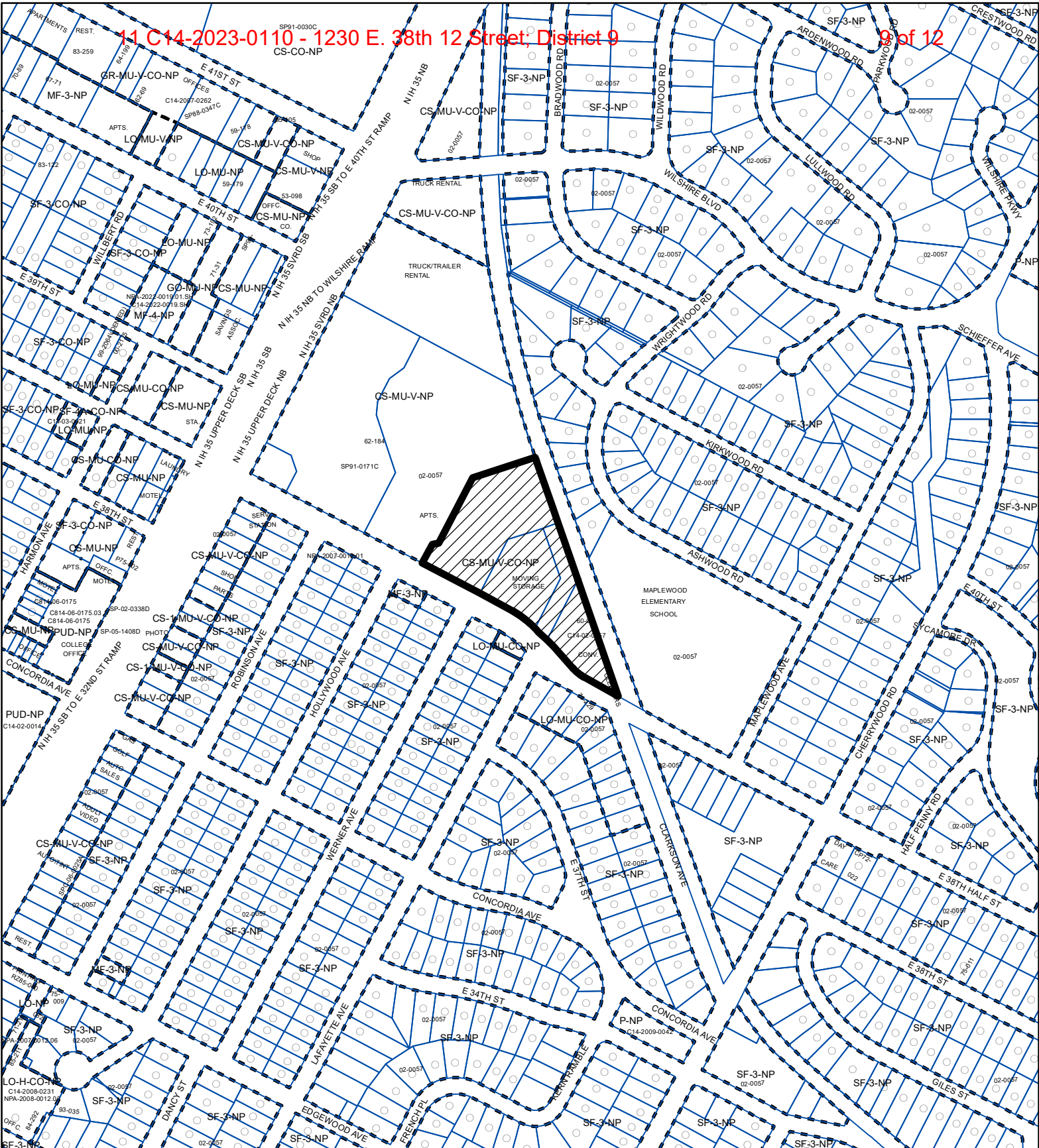
FYI: The landowner intends to serve the site with existing City of Austin water utilities.

Based on current public infrastructure configurations, it appears that service extension requests (SER) will be required to provide service to this lot. For more information pertaining to the Service Extension Request process and submittal requirements contact the Austin Water SER team at [ser@austintexas.gov](mailto:ser@austintexas.gov).

INDEX OF EXHIBITS AND ATTACHMENTS TO FOLLOW:

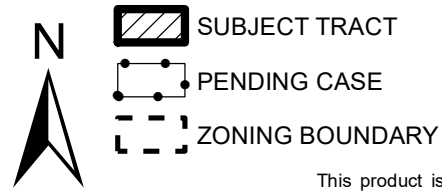
- A. Zoning Map
- B. Aerial Map
- C. Applicant's Summary Letter
- D. Correspondence from Interested Parties





# ZONING

ZONING CASE#: C14-2023-0110



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

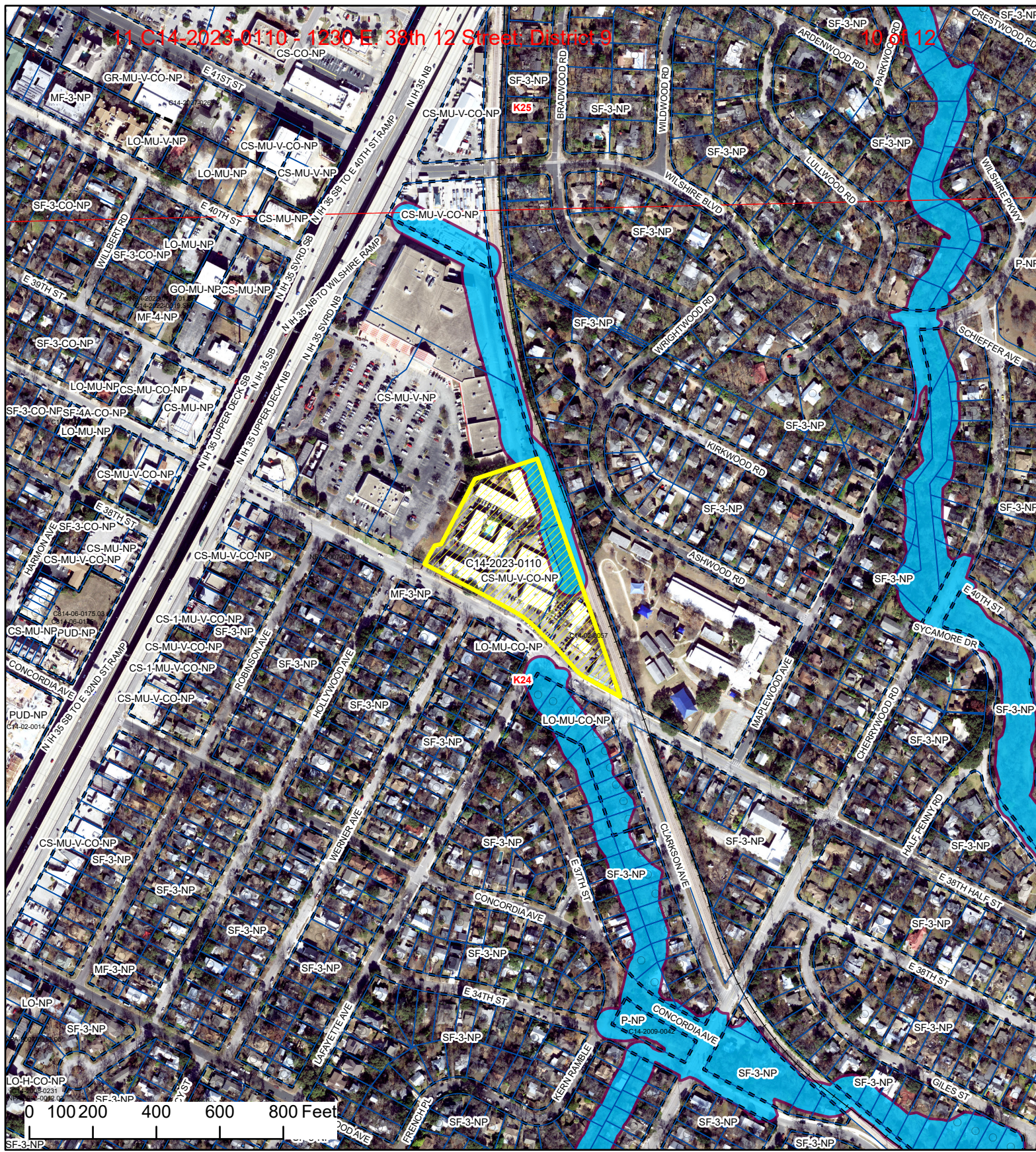
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Created: 9/19/2023







11 C14-2023-0110 - 1230 E. 38th 1/2 Street District 9

10/31/23



1230 E. 38th 1/2 Street



-  SUBJECT TRACT
-  ZONING BOUNDARY
-  PENDING CASE
-  CREEK BUFFER

ZONING CASE#: C14-2023-0110  
LOCATION: 1230 1/2, 1400, 1402,  
1406 E 38th 1/2 St  
SUBJECT AREA: 4.4369 Acres  
GRID: K24  
MANAGER: Jonathan Tomko



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

Created: 10/31/2023



# DRENNER GROUP

Amanda Swor  
[aswor@drennergroupp.com](mailto:aswor@drennergroupp.com)  
512-807-2904

August 31, 2023

Ms. Lauren Middleton-Pratt, Director  
Planning Department, City of Austin  
Street-Jones Building  
1000 East 11th Street, Suite 200  
Austin, Texas 78702

Via Electronic Delivery

Re: 1230 E. 38th 1/2 Street – Rezoning application for the approximately 4.44-acre piece of property located at 1230 E. 38th 1/2 St, 1300 E. 38th 1/2 St, 1400 E. 38th 1/2 St, 1402 E. 38th 1/2 St, and 1406 E. 38th St in the City of Austin, Travis County, Texas (the “Property”)

Dear Ms. Middleton-Pratt:

As representatives of the owner of the Property, we respectfully submit the enclosed rezoning application package. The project is titled 1230 E. 38th 1/2 Street and is approximately 4.44 acres of land, on the north side of 38<sup>th</sup> 1/2 Street between Werner Avenue and Clarkson Avenue. The Property is in the full purpose jurisdiction of the City of Austin.

The Property is currently zoned CS-MU-V-CO-NP (General Commercial Services – Vertical Mixed Use – Conditional Overlay – Neighborhood Plan). The requested rezoning will amend the conditional overlay by removing the height restriction maximum of forty (40) feet. There are no other planned changes with this application.

The Property is currently developed with multifamily residential, restaurant (general), laundry services, consumer repair services, and general retail sales (convenience). The purpose of the rezoning is to allow additional residential density on the Property.

The Property is within the Upper Boggy Creek Neighborhood Planning Area. The Neighborhood Plan was adopted August 1, 2002 and designates the Property as Mixed Use in the Future Land Use Map. Attached is a memorandum from Maureen Meredith dated January 17, 2023, confirming that a Neighborhood Plan Amendment application is not required.

A Traffic Impact Analysis ("TIA") is not required, per the attached TIA Determination Form dated January 23, 2023, and executed by Joan Minyard.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Very Truly Yours,

A handwritten signature in blue ink that reads "Amanda Swor". The signature is fluid and cursive, with the first name "Amanda" and last name "Swor" clearly distinguishable.

Amanda Swor

cc: Joi Harden, Housing and Planning Department (via electronic delivery)