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## General Statements

The approach to the rewriting of the land development code should be future-focused. While it will be hard to disregard the ordinances and code amendments of the past, not doing so puts the future of our city at risk. We should not redline the current code, but instead start with a blank slate and write the code with the best future for our rapidly growing city as the primary goal and using the Imagine Austin Comprehensive Plan as the roadmap. This means not just pacifying the residents here today but planning for those who will grow up and one day raise their own families here or who move to Austin in the decades ahead. Redevelopment and density are needed not only in Imagine Austin centers and corridors; it has been predicted that the current growth concept map will only account for one-third of Austin's projected growth.

The difficult question facing our community - and where consultant advice is need - is how to weigh the different forms of stakeholder input provided. The public input process is biased towards the "squeaky wheel" – it often gets the grease. But perhaps that is how we ended up with the piecemeal code we have today. Opponents of density argue that projects can still be profitable with fewer units. Even if this were true, four fewer units on a center-city site, for example, can mean four more people in single-occupancy vehicles on the roads, four fewer walking to local business, etc. How do we overcome "not in my backyard (NIMBY)" ways of thinking in order to make Austin the best city it can be, not only right now, but also in the decades ahead?

**Example:** Little Woodrow's on Burnet (5425 Burnet Road). Many in the community wanted to see this project happen, but you don't go down to City Hall when you want something in a general way. You go down to City Hall when you are passionate, and often when you are passionately against a pending proposal. The reason this project was opposed was fears related to parking and bars degrading single-family neighborhoods. Furthermore, a more straightforward code will make it easier for commissioners and elected officials to hear public testimony and make decisions aligned with city priorities and planning goals.

**Example:** Pending multi-family project located at 3215 Exposition Boulevard. The property owner re-applied for a zoning change in fall 2013. The project would include 34 condominiums, age-restricted for people 55 years and older. The first re-zoning was attempted in 2007. The SF to MF change was needed to add an extra story over underground parking. Though Exposition Boulevard is the neighborhood's primary north-south roadway and carries more than 10,000 vehicles per day, the neighborhood fought the re-zoning and density.

## Current Code: Comments, Questions, and Suggestions

### *General zoning*

- Many “uses” have additional zoning requirements that differ from the base zoning district site development regulations. This contradiction is confusing and makes it challenging to understand which regulations apply. For example, see Article 4 of Chapter 25-2 entitled ‘Additional Requirements for Certain Uses.’
- Similarly, many “zoning districts” have additional requirements that apply and vary from the zoning site development standards. For example, see Article 3 of Chapter 25-2 entitled ‘Additional Requirements for Certain Zoning Districts.’
- Eliminate and consolidate the various overlay districts; it is not uncommon to see zoning districts, such as CS-MU-V-CO-NP, that are intended to define the base zoning district and combining overlay zoning districts regulations. These abbreviated overlays do not even include the Waterfront Overlay, Downtown Creeks, Hill Country Roadway, Scenic Roadway, Congress Avenue, etc. These additional overlays referenced in Article 3, Division 5 of Chapter 25-2 are in addition to any zoning conditional overlays or zoning combining district overlays. The current zoning system needs simplification and clarity.
- Missing middle housing is a much discussed community issue. San Antonio has an “infill” zoning category, which is not very restrictive, to help address this. Maybe this should be considered for Austin?
- DMU lots should be allowed to achieve greater height by right. The impacts are seen on downtown churches and many other types of projects.
- Re-examine the permitted land use chart. There are many idiosyncrasies. For example, private schools are a conditional use, while public schools are permitted. If public schools are permitted, private schools should be too.
- Use classifications are now on certificates of occupancy instead of zoning. This creates confusion, especially with grandfathering cases.
- Eliminate a Conditional Use Permit (CUP) requirement when a conditional zoning is required. (e.g., CS-1 requires a spot-zoning to allow for alcohol sales, and once an applicant receives Planning Commission and City Council approval, the applicant then has to submit a CUP site plan application and go through a site plan review and another public hearing to ultimately get the bar or cocktail lounge approved on the property. This is an unnecessary step and adds time to the process.)

**Example:** The 704 (3401 S. Lamar Boulevard). A bar within The 704, a VMU project along a core transit corridor, is required to spot zone to CS-1-V to permit alcohol sales. Once that was approved, the process requires a CUP site plan permit, which necessitates review by approximately eight City departments (even though there is no construction proposed and it’s merely a land use notation). This process adds approximately three to four months to the zoning process that has already taken four months. It’s redundant and unnecessary. Once the zoning is approved, an administrative revision to the site plan should be permitted to note the bar/cocktail lounge use.

### *Lot size and small lots*

- Minimum lot size was originally a planning tool utilized to ensure housing was of a certain quality. Today there are many other standards that allow the City to achieve this goal, and a minimum lot size is not necessary. In fact, smaller lot sizes are essential for economic vibrancy and affordability, especially in the center city.

- When you can technically redevelop on a small lot today according to the land development code, the project is often thwarted by other requirements, such as utilities.
- Clearly defined flag lot criteria should be sufficient for proper regulation. Designating all flag lot re-subdivisions as variance cases creates an expensive and uncertain six month process that often results in wasted efforts for the City and property owners. Flag lots can contribute to market rate affordable housing in the central city.
- Small projects should be better distinguished from large projects within the re-subdivision review process and site plan permitting process. Small projects such as infill re-subdivisions and small paving projects are regulated by the same tools as large subdivisions and road projects.

#### *Compatibility standards*

- Compatibility setbacks and the associated height restrictions, while they can at times protect neighborhood character, also reduce opportunities for redevelopment along corridors and other areas where Imagine Austin calls for density. A more context-sensitive approach is desired.
- The 540' radius, the SF land use, and the SF-5 or more restrictive zoning that trigger compatibility should be re-analyzed.
- The applicability of compatibility standards should look at the less restrictive designation between zoning and use. There should also be some ability for administrative variances.
- Compatibility standards should not apply in downtown. Please see recommendations from the Downtown Austin Plan (DAP). Look at downtown Austin differently and develop an approach for “hold out” single-family homes in commercial areas. The economic vibrancy of downtown Austin is critical for the well-being of our city and region.
- A compatibility setback should not apply on a site plan when a single-family home is put next to single-family homes.

**Example:** Howard’s Nursery on Koenig (111 E Koenig Lane). Many developers have tried to make use of the site but have failed every time because of neighborhood opposition to modify compatibility standards contextually in a modest and reasonable fashion. The proposed redevelopment of the site fits with Imagine Austin. See case study **APPENDIX A**.

**Example:** Mary Lee Foundation (deeply) affordable housing project. Zilker Neighborhood Association liked the project but fought the height because of “precedent”; we need to stop that way of thinking and utilize administrative approval in these types of situations. See case study **APPENDIX B**.

**Example:** Camden Lamar Heights (5400 N. Lamar Boulevard). The property was up-zoned to VMU. The developer worked with the neighborhood before the 2008 recession, but because of a newly constructed duplex, compatibility standards were triggered after the project had received its zoning and site plan, so the developer had to go to the Board of Adjustment to eventually receive a variance. The process was needlessly cumbersome and made the project more expensive. See case study **APPENDIX C**.

**Example:** The Chicon (12<sup>th</sup> Street and Chicon Street). The site development permit for the proposed S.M.A.R.T. housing (affordable housing) project was delayed by five months because of variances for reducing setbacks. See case study **APPENDIX D**.

### *McMansion Ordinance and Duplex Regulations*

- The McMansion Ordinance should not carry over into the new code. The intent of the ordinance should be reexamined in the context of Imagine Austin.
- The McMansion Ordinance, specifically the tent, becomes more difficult to adhere to with smaller lots.
- When you're building homes on adjacent lots, should you have an exception from the McMansion Ordinance? As it is today, builders are invoking McMansion setbacks on themselves.
- The McMansion Ordinance creates a hardship for duplexes because it does not extend the allowance for a 200 square foot deduction for an attached parking area from your total allowed gross floor area (GFA) to the second habitation. It only permits up to 200 square feet; this should be up to 400 square feet if it's a duplex structure.
- Current duplex rules do not allow for creative in-fill by strictly regulating, among other factors, party walls, garage connections and door placement.
- See **APPENDIX E** for an example of a classic Austin duplex no longer permissible because of the garage connection.
- Why is single-family attached housing, though allowed in many zoning categories, permitted only under such specific circumstances? This housing type is important to address the "missing middle" housing problem.
- Requiring detached condos to have apartment building parking does not make sense; additionally, some in-fill developers who wanted to use more innovative water quality controls (e.g., rain gardens) are ready to give up and just put in detention ponds. Is this what the city wants?

### *Density and How It is Measured*

- Greater height allows for greater efficiency of land use. Stories are used as the measure of height in many form based codes. Maybe that's a better approach for Austin.
- There are numerous definition issues in the current code. Does floor-to-area ratio (FAR) include elevators and mechanical areas? How do you measure building height? There are differences between the building code and zoning approaches and multiple considerations when a building is demolished.
- In general, there is consensus that the University Neighborhood Overlay (UNO) did a good job defining height. (However, let's steer clear of more overlays in the new code!)
- The land development code did not initially intended to force height issues to the Board of Adjustment, but that practice evolved into what it is today. Subject matter experts (i.e., city staff) should make those decisions.
- Design can suffer when builders are trying to get under height limits. Builders and engineers should be able to adjust slab elevations based on drainage and site constraints.

### *Subchapter E*

- Subchapter E was initially commercially driven, and it has evolved into something much greater and now includes projects with a residential use. Please see the Subchapter E background and intent statements; the initial resolution directed the City Manager to "prepare recommendations for citywide design standards for commercial and retail development." The ordinance applies to commercially zoned properties and in some cases all zoning districts. It casts a wide net on the types of projects and uses (e.g., offices, multi-family projects, private schools, churches, etc.). The majority of projects (greater than 80% when last checked by City staff) request some form of alternative equivalent compliance because they are unable to comply with the ordinance.

- Design standards should be integrated into the code in another way (e.g., through zoning, regulating plans). Subchapter E as it exists today should not carry over into the new code.

**Example:** Ramble Lane Multi-family (5100 S. Congress Avenue). The property is made up of two lots being developed as one project. The property is divided by a creek and the two tracts created by the division are each less than five acres, the standard for internal circulation routes (ICR) under Subchapter E. However, the City is now requiring the ICR, which moves the project into alternative equivalent compliance (AEC), which requires time and money to negotiate. See case study **APPENDIX F**.

#### *Heritage Tree Ordinance*

- The goal of our tree ordinance should be to maximize trees for the next generation. Often times this goal would mean a replanting was preferred over a single tree relocation, some of which have costs as much as half a million dollars for a single tree.
- Allow re-plantings by right. Large trees are not inherently spiritual, and perhaps the use of word “heritage” should be re-evaluated. We are talking about large trees.
- Maintaining caliper inches is what’s important. Under the current Heritage Tree Ordinance it is quite possible that we are losing net trees and experiencing unintended consequences.
- The Heritage Tree Ordinance is often in conflict with other city policies (e.g., trees in the ROW greater than four inches are protected, but another City department also wants more sidewalks.)
- How do you determine value of tree in the ROW? The City checklist is not public, and private assessments seem to come in lower. This was the case with South Shore PUD.
- In general, the impervious cover allowed may conflict with the percentage of trees needing to be preserved. What is reasonable?
- The tree ordinance should contemplate lot size and density. Small lots should have a lower bar with regard to tree protection, as should lots zoned for greater density.
- It is hard to ask small residential developers to sign a legal document stating trees will live; a fee is often the easiest “out”, but there is concern over how/when fees are spent.
- How can PARD and PDRD work more cooperatively on the issues of trees?
- See **APPENDIX G** for photographs demonstrating how the tree canopy we have today developed since the 1950s.

#### *Subdivision regulations*

- The rewriting of the subdivision regulations should happen under the oversight of the consultant team and the Code Advisory Group, not through a separate process.
- These regulations should acknowledge, like the new code, that differing levels of connectivity, environmental protection, and other factors make sense in different contexts.
- The subdivision code should allow single-family attached homes on a small lot without kicking into commercial.
- See **APPENDIX H** for RECA Resolution dated June 19, 2013.

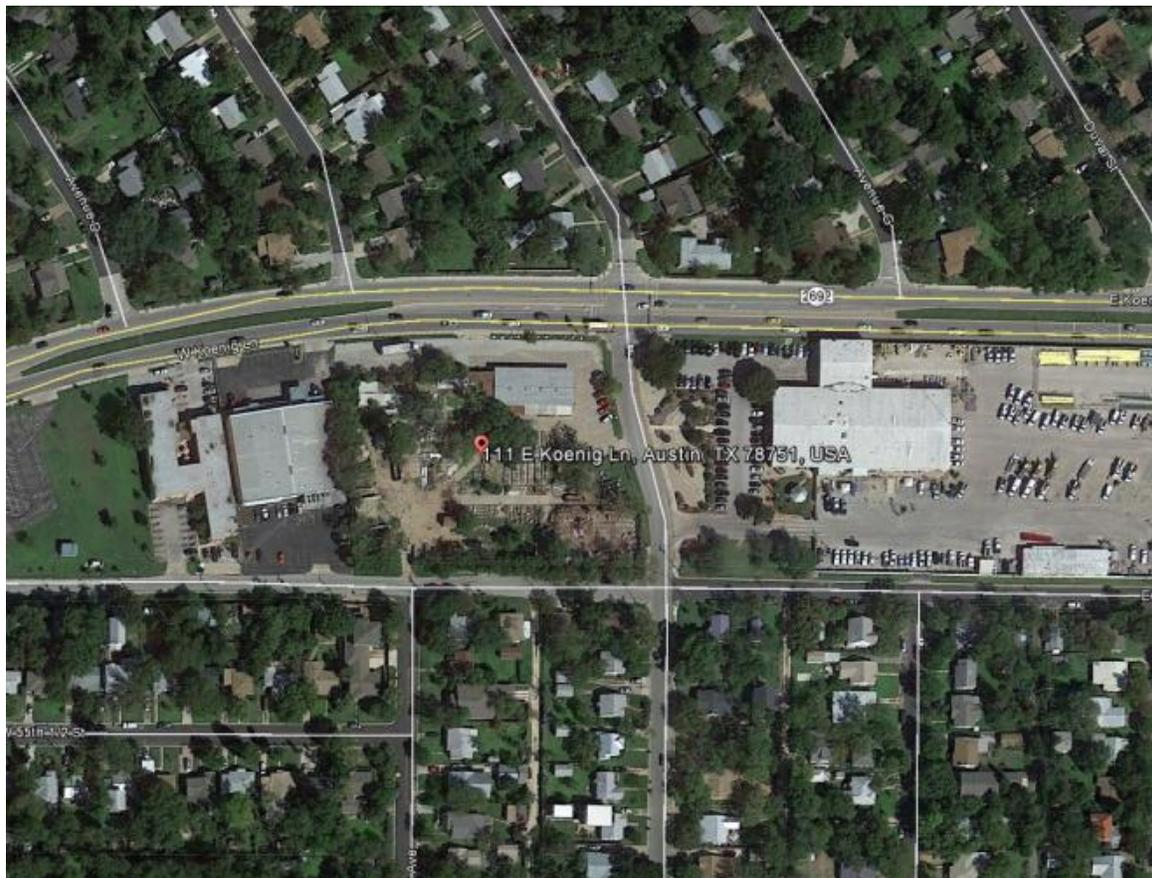
## Process Concerns and Other Thoughts

- All boards and commissions should be reviewed, as is currently underway. Decisions should be pushed down at every level.
- In assessing the draft code, it would make sense to run “test projects” through the code and processes. To make this a more realistic simulation, RECA members would be happy to help the City in this process.
- Less legalese in the land development code would help both staff and practitioners.
- Consistent theme: the review period is too long while expirations on permits/projects are too short.
- If the code is clearer, there are not as many decisions to be made and therefore, fewer bottlenecks.
- Once a project has zoning, the owner/developer should know what is allowed; focus less on use after that.
- What is the future of neighborhood plans?
- When and how will technical criteria manuals be addressed through the code rewrite? We would recommend that technical manuals undergo revisions once a draft of the code has been agreed upon, and then further adjusted as new draft codes are produced. The manuals should be adopted simultaneously with the new code.
- Neighborhoods should not be able to appeal a building permit. The interested party should have the opportunity to appeal earlier in the process, but the building permit stage is too late. If a building permit is issued in error, there should be an avenue to a variance for the applicant.
- A repository for code interpretations that is easily accessible to the public would be extremely helpful; one such issue is land status determinations. Right now memos are available, but they are not in one spot. San Antonio does this. Similarly, could potential code amendments be posted to one website to inform the public of stakeholder review opportunities, the proposed code amendment process, and to alert the public before they are at Planning Commission?
- Perhaps code amendments should only be permitted once or twice per year. Going out of cycle would happen only under emergency circumstances, if at all.
- Alternative equivalent compliance (AEC) is helpful to some projects in some instances, but it is problematic when going through an AEC negotiation with staff is the default, not the exception.
- Conflicts with the water and electric utilities are an on-going struggle for the development community.
- To receive a variance you should not have to present a detailed site plan.
- When departments are in conflict, the City Manager should require that the parties meet in person with the applicant to resolve the conflict. Sometimes City staff members say they will not meet because “their code” is clear.
- In general, applicants need recourse if they are not being responded to. Should plans be deemed approved if not reviewed within the stated timeframe?
- Our cumbersome code can lead to a practice where applicants use the Planning Department as a code checking process, which is different than review.
- Dedicated review teams were used by the City in the early 2000s; RECA members found this system of organization much more helpful. A project manager responsible for coordinating reviewers and ushering a project through should be considered.
- The practice of requiring the zoning use classification, in addition to the building code use classification, to now be on the certificate of occupancy has been troublesome. If you do not have the zoning use described, the City is not recognizing the certificate of occupancy as valid.
- License agreements and legal review need an improved process and clear timelines.

**Project:** Howard Nursery

**Location:** 111 E. Koenig Lane

**Issue:** The site sits on a major corridor that has been identified for development and redevelopment of Vertical Mixed Use (VMU) buildings. It was zoned CS-MU-V-CO-NP and opted into the VMU by the North Loop neighborhood. Compatibility standards limit the development of a VMU building on the urban infill site due to the fact that it is bounded by single-family uses and zoning. Compatibility standards compliance forces the allowable height to stair-step across the site, increasing in the middle to a maximum height of 52' and back down to 40' on the site's northern and southern boundaries. The varying allowable height makes it extremely difficult to construct an urban, infill, VMU building on site. A variance was requested from the Board of Adjustment to increase the maximum compatibility height requirement from three (3) stories and forty (40) feet in height to four (4) stories and forty (40) feet in height to allow for a uniform height. The row of units along 56<sup>th</sup> Street was proposed in the variance request to remain at three (3) stories, which met compatibility standards as well as refraining from constructing roof top decks and no 56<sup>th</sup> Street facing balconies. Also, the developer agreed to additional measures that provided sensitivity to the single-family uses and neighborhood character including: limiting entrance to parking garage to a single entrance on Avenue F; providing \$75,000 towards traffic calming devices in the neighborhood to combat cut-through traffic; planting street trees along Koenig Lane; constructing a bus pull-out bay on the west side of Avenue F along with other bus stop enhancements; and maintaining a tree-based vegetative buffer along 56<sup>th</sup> Street with a 4' sidewalk north of the vegetative buffer. The variance request was denied on the grounds of failing to present a hardship that was not economic.



APPENDIX A



**Project:** The Willows Apartments, Mary Lee Foundation

**Location:** 1332 Lamar Square

**Issue:** The Mary Lee Foundation's properties on Lamar Square provide affordable housing for people with disabilities and special needs. In 2008, the Foundation decided to upgrade its facilities to increase the number of units available for its growing waiting list. A single-family property triggered compatibility. The property owner wrote a letter of support for the compatibility waiver, but the Zilker Neighborhood Association, which liked the project, fought the height out of concern that it would set a precedent. When the Board of Adjustment postponed action because of the neighborhood opposition, the Mary Lee Foundation withdrew the waiver request and redesigned a proposed three-story building to be a building that was two, three, and four stories and did not require a waiver and did not reduce the number of people who would be served. Because part of the building was now four stories instead of three, the costs for an adequate foundation system increased as did the costs for roof systems at different heights. This was particularly challenging and expensive in a part of Austin where limestone needed to be removed for the foundation system.

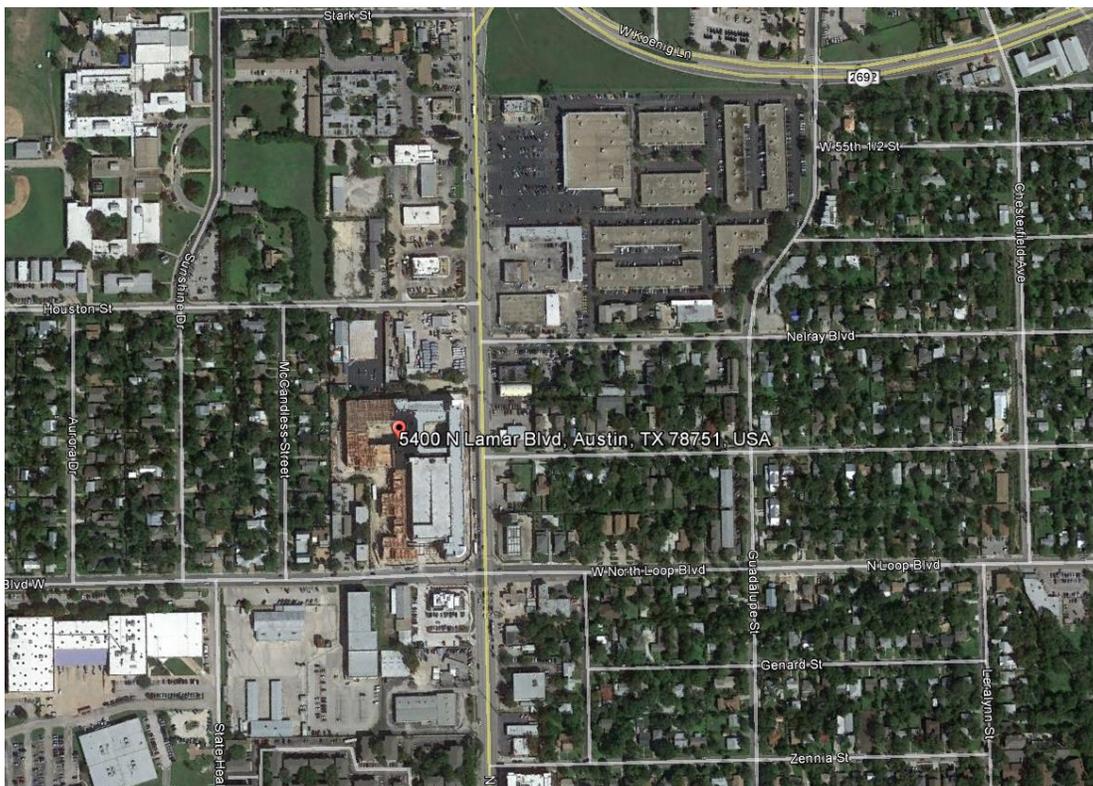




**Project:** Camden Lamar Heights

**Location:** 5400 N. Lamar Boulevard

**Issue:** The tract is located on a Core Transit Corridor (North Lamar). It was opted into the Vertical Mixed Use (VMU) Ordinance and voted unanimously by City Council in 2008 during the Brentwood neighborhood planning processes. In conjunction with the zoning change, restrictions were placed on the site including increased building/landscape setback areas, prohibition of balconies adjacent to single family residences, enhanced compatibility lighting, and prohibition against any exposed parking structure. The site is surrounded by single-family zoning and uses to the west, as well as a recently developed duplex/condo within a CS-MU-CO-NP zoning district, which triggers compatibility. A VMU building was planned on the site whereby the owner agreed to honor all compatibility setbacks and heights on the property, while increasing the setback for an increased landscape area. The project was designed and ready to be developed but was put on hold during the recent economic downturn. During that time a duplex/condo use was redeveloped on the adjacent property zoned CS-MU-CO-NP. Camden Lamar Heights was designed to be placed as far away from the traditional single-family homes as possible and thus pushed closer to the tract that triggered compatibility. The change in use of the adjacent property did not require notification and was not discovered until a site visit prior to site plan submittal. The property is exceeding compatibility setbacks from the true single-family zoning uses (50' no build setback) but was in need of a compatibility variance from the newly developed duplex/condo use located within a commercial zoning district. A variance for compatibility standards was taken to the Board of Adjustment and granted, but only after a long, costly, and unnecessary process.

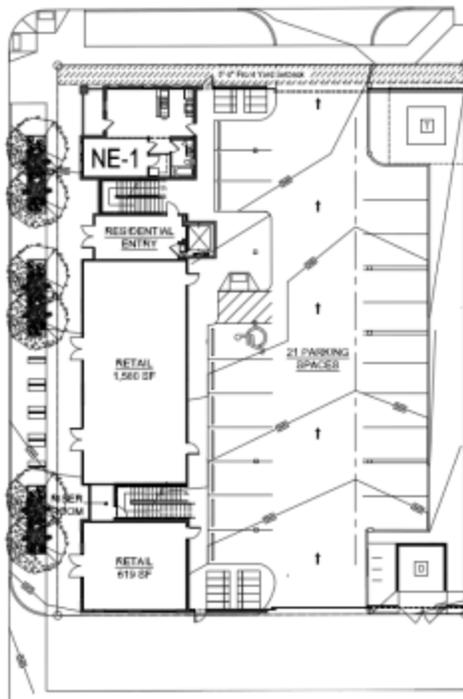




**Project:** The Chicon

**Location:** 12<sup>th</sup> and Chicon

**Issue:** The Chicon is a proposed S.M.A.R.T. Housing project being built on three separate lots by non-profit developer Chestnut Neighborhood Revitalization Corporation (CNRC), which will deliver 45 units of affordable owner-occupied units. The northeast tract is subject to compatibility standards, which prohibited the dumpster location, designed as such to meet parking requirements. A variance was sought to reduce parking and driveways setbacks to 5' adjacent to SF-3 zoning and reducing the building setback from 25' to 5' from the right of way line. The variance was granted but not before the site development permit was delayed five months.



SF-3 Zoning

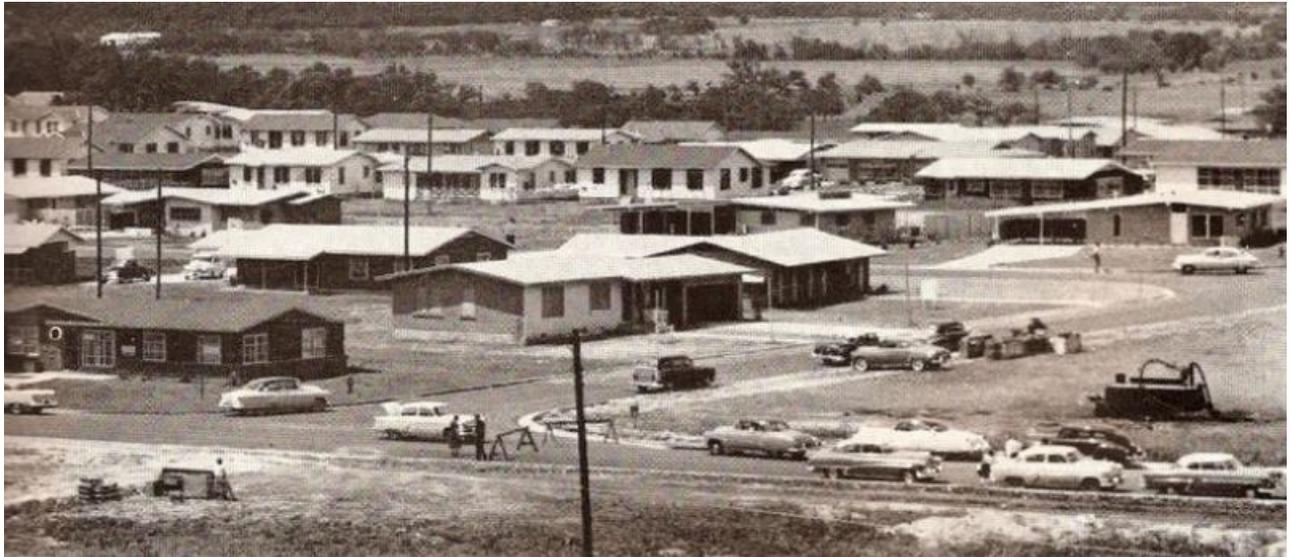


**Classic Austin duplex that is no longer permissible under current code because of the garage connection.**



Today's Heritage Tree Ordinance does not account for the development of the tree canopy over time.

**Allandale neighborhood, Twin Oaks Drive and Daugherty Street**  
(source: [www.allandaleneighbor.com](http://www.allandaleneighbor.com) and Google maps)



**Crestview neighborhood, facing west on Dartmouth Avenue**  
(source: [www.violetcrownvoices.com](http://www.violetcrownvoices.com) and Google maps)





**THE REAL ESTATE COUNCIL OF AUSTIN, INC.  
BOARD OF DIRECTORS RESOLUTION  
IN OPPOSITION TO THE REDRAFTING OF THE SUBDIVISION REGULATIONS**

**WHEREAS**, the unanimously approved Imagine Austin Comprehensive Plan highlights both “compact and connected” growth as well as “household affordability” as equal priorities; and

**WHEREAS**, The Real Estate Council of Austin, Inc. champions affordability, especially through market rate housing product; and

**WHEREAS**, the financial burden of unnecessary regulation makes housing product less affordable for Austin residents; and

**WHEREAS**, there is market demand for suburban style product in some parts of Austin and this is not in conflict with the Imagine Austin growth concept map; and

**WHEREAS**, market forces will adjust in time as consumer preferences evolve and business enterprises respond to incentives, as opposed to mandates; and

**WHEREAS**, the City of Austin is undergoing a great deal of change with regards to regulations, including but not limited to the current rewriting of the land development code and the overhaul of the watershed protection ordinance; and

**WHEREAS**, The Real Estate Council of Austin, Inc. and other stakeholders, such as the Home Builders Association of Greater Austin, thoroughly vetted from 1995-2005 many of the issues now again on the table and at that time demonstrated the significant cost implications of these subdivision regulations.

**NOW, THEREFORE, BE IT RESOLVED** that The Real Estate Council of Austin, Inc. opposes the redrafting of the subdivision regulations and transportation criteria manual (TCM).

**BE IT FURTHER RESOLVED** the goal of “compact and connected” should not trump other values of the Austin community, such as affordability and consumer choice.

Adopted on this 19<sup>th</sup> day of June 2013 by The Real Estate Council of Austin, Inc.

A handwritten signature in black ink that reads "Nikelle S. Meade".

Nikelle Meade  
President, Board of Directors  
The Real Estate Council of Austin, Inc.