

## NEIGHBORHOOD PLAN AMENDMENT REVIEW SHEET

**NEIGHORHOOD PLAN:** Central Austin Combined (West University)

**CASE#:** NPA-2024-0019.02

**DATE FILED:** December 4, 2024

**PROJECT NAME:** 34<sup>th</sup> and West – FLUM Amendment

**PC DATE:** July 22, 2025  
July 8, 2025

**ADDRESS/ES:** 715, 725, 800, 801, 804, 806, 808, 901, 905, 907 W 34TH ST, 3301, 3404, 3406 West Ave and 3316 Grandview St.

**DISTRICT AREA:** 9

**SITE AREA:** 4.94 acres

**OWNER/APPLICANT:** West 34<sup>th</sup> Street Neighborhood Improvement Company, LLC

**AGENT:** Armbrust & Brown, PLLC (Michael J. Whellan)

**CASE MANAGER:** Maureen Meredith **PHONE:** (512) 974-2695

**STAFF EMAIL:** Maureen.Meredith@austintexas.gov

**TYPE OF AMENDMENT:**

**Change in Future Land Use Designation**

**From:** Mixed Use/Office and Single Family **To:** Mixed Use

**Base District Zoning Change**

**Related Zoning Case:** C14-2025-0006, C14-2025-0007, C14-2025-0008, C14-2025-0009

**From:** LO-ETOD-DBETOD-NP, LO-CO-ETOD-DBETOD-NP, CS-CO-ETOD-DBETOD-NP

**To:** CS-MU-V-DB90-ETOD-DBETOD-NP

**NEIGHBORHOOD PLAN ADOPTION DATE:** August 26, 2004

**CITY COUNCIL DATE:**  
**September 11, 2025**

**ACTION:** *(action pending)*

**PLANNING COMMISSION RECOMMENDATION:**

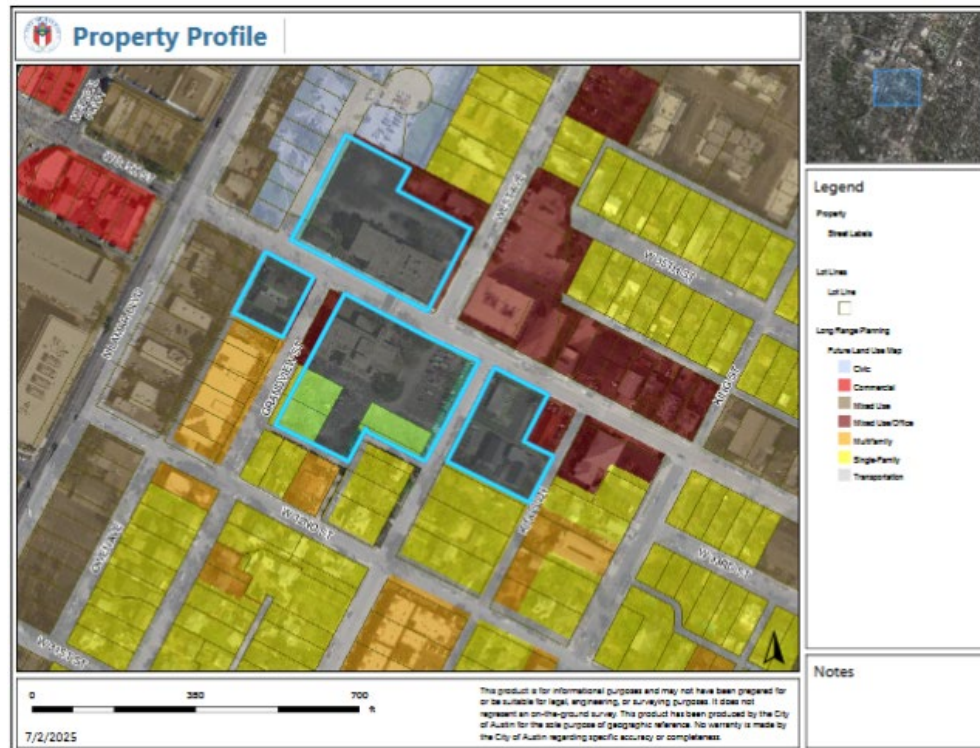
***July 22, 2025 – July 22, 2025*** – Approved on the consent agenda Staff’s recommendation and the Applicant’s request for Mixed Use land use. [N. Barrera- Ramirez – 1<sup>st</sup>; I. Ahmed – 2<sup>nd</sup>] Vote: 10-0 [C. Haney abstained from items #8 – 12. F. Maxwell abstained from item #16. A. Azhar, A. Lan, and A. Powell absent].

***July 8, 2025*** – The motion to approve the Neighborhood’s postponement request to July 22, 2025, was approved on the consent agenda. [A. Powell – 1<sup>st</sup>; F. Maxwell – 2<sup>nd</sup>] Vote: 10—0 [N. Barrera-Ramirez, P. Breton, and P Howard were absent].

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

**BASIS FOR STAFF’S RECOMMENDATION:** Staff supports the applicant’s request for Mixed Use land use due to the changing nature of the area. The plan amendment application includes multiple properties located on the north and south side of West 34<sup>th</sup> Street. The properties are near North Lamar Blvd and approximately 0.19 miles south of West 38<sup>th</sup> Street which are activity corridors and have multiple public transportation options within walking distance to the properties. At North Lamar Blvd and West 34<sup>th</sup> Street is a proposed ETOD Seton Medical Center Station. Transitioning the land uses from Mixed Use/Office and Single Family to Mixed use is appropriate for this area.

The applicant is proposing a mixed-use development to include ground-floor commercial uses and residential dwelling units that will include affordable housing units. The development will help meet the City’s Austin Strategic Housing Blueprint’s goal of creating 60,000 affordable housing units to ensure there is affordable housing throughout the city and provide more neighborhood-serving uses within walking distance to the residents.



Below are sections of the neighborhood plan for this area. Although the plan expresses concerns about increased density and compatibility of new multifamily developments adjacent to single family uses, staff believes the changing nature of the city and the area with the proposed ETOD stations, expanded public transportation options near the properties and the City's need for more housing options that includes affordable units, are reasons to support for the applicant's request.

**Objective 1.1:** Rezone property as needed to ensure that new development is compatible with the desired residential character of each neighborhood.

**Recommendation 2** Identify areas where mixed use would enhance the livability of the neighborhoods and rezone accordingly.

**Objective 1.3:** Promote quality multi-family redevelopment that is compatible with single-family neighborhoods and preserves neighborhood ambiance.

**Objective 1.4:** Limit new commercial and multi-family spread into the single-family core of the neighborhoods by establishing a perimeter of apartments, offices, and commercial uses.

**Recommendation 6** Preserve the commercial, office, and multi-family zoning surrounding the neighborhood and create a

"hard edge" to prohibit incursions into the neighborhood.

**Objective 1.6:** Reduce the negative effects of multi-family housing on the West University Neighborhood.

**Recommendation 8** Reduce the height and density of future multi-family projects surrounding the West University neighborhood.

## **LAND USE DESCRIPTIONS:**

### **EXISTING LAND USE:**

**Single family** - Single family detached or up to three residential uses at typical urban and/or suburban densities.

#### **Purpose**

1. Preserve the land use pattern and future viability of existing neighborhoods;
2. Encourage new infill development that continues existing neighborhood patterns of development; and
3. Protect residential neighborhoods from incompatible business or industry and the loss of existing housing.

#### **Application**

1. Existing single-family areas should generally be designated as single family to preserve established neighborhoods; and
2. May include small lot options (Cottage, Urban Home, Small Lot Single Family) and two-family residential options (Duplex, Secondary Apartment, Single Family Attached, Two-Family Residential) in areas considered appropriate for this type of infill development.

**Mixed Use/Office** - An area that is appropriate for a mix of residential and office uses.

#### **Purpose**

1. Accommodate mixed use development in areas that are not appropriate for general commercial development; and
2. Provide a transition from residential use to non-residential or mixed use.

#### **Application**



1. Appropriate for areas such as minor corridors or local streets adjacent to commercial areas;
2. May be used to encourage commercial uses to transition to residential use; and
3. Provide limited opportunities for live/work residential in urban areas.

### **PROPOSED LAND USE:**

**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.

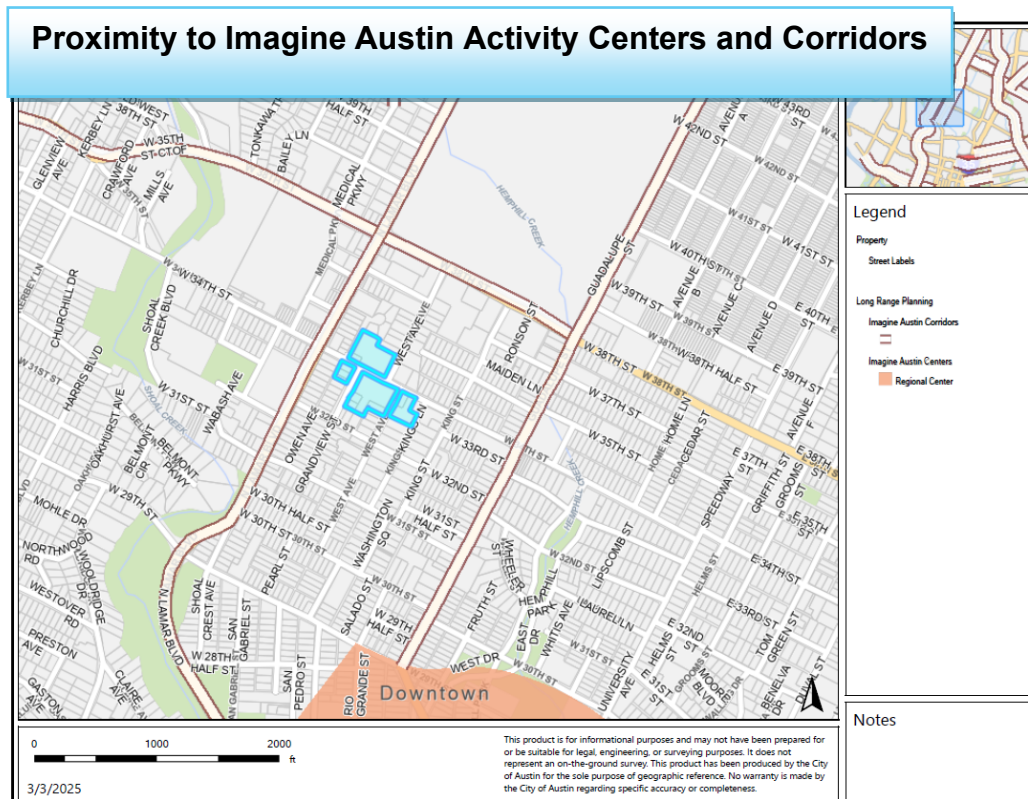
### **Application**

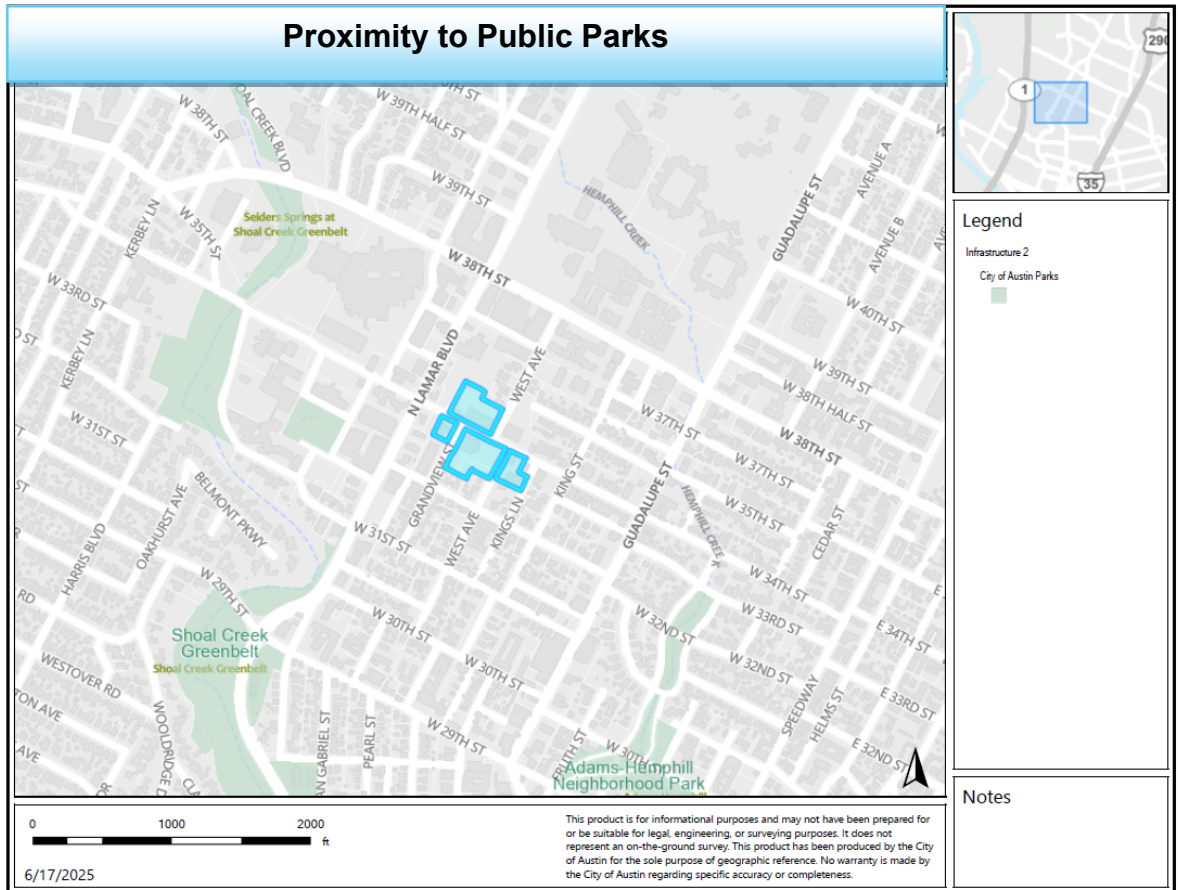
1. Allow mixed use development along major corridors and intersections;
2. Establish compatible mixed-use corridors along the neighborhood's edge
3. The neighborhood plan may further specify either the desired intensity of commercial uses (i.e. LR, GR, CS) or specific types of mixed use (i.e. Neighborhood Mixed Use Building, Neighborhood Urban Center, Mixed Use Combining District);

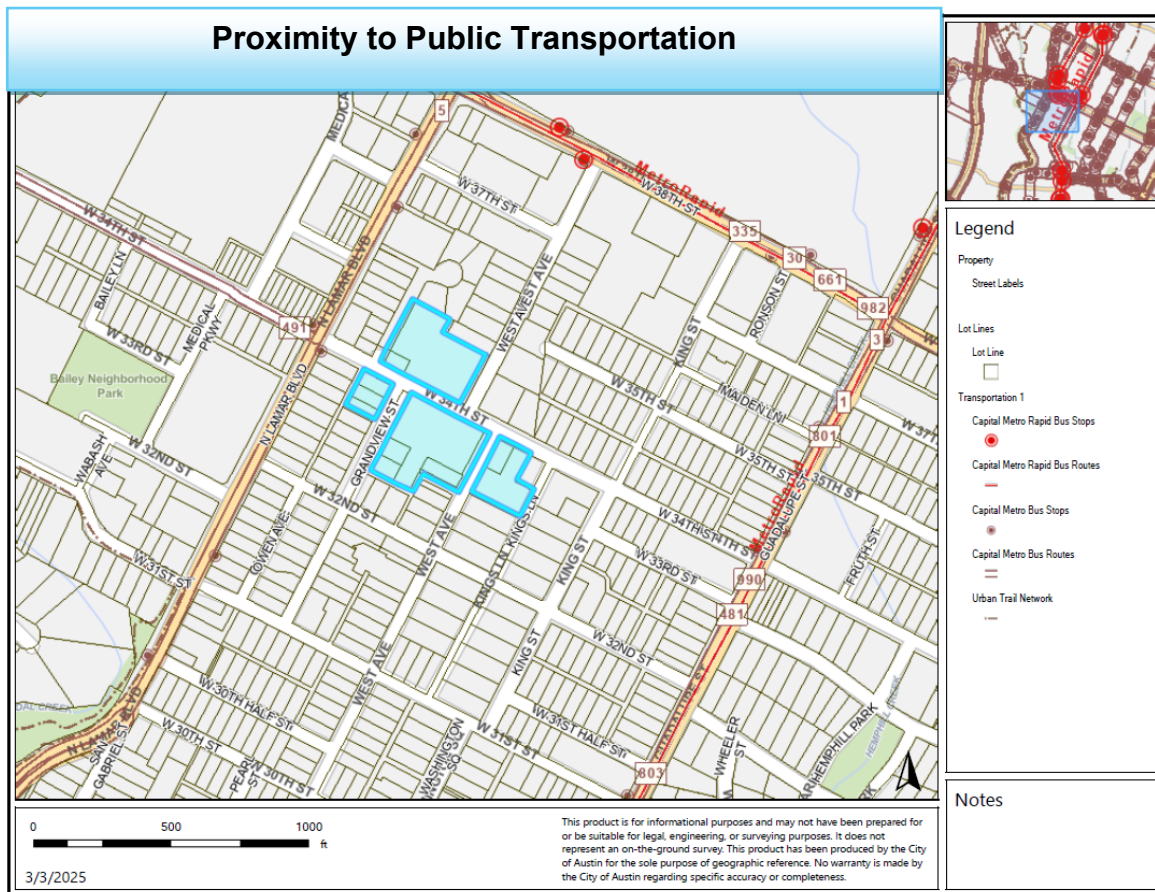
4. Mixed Use is generally not compatible with industrial development, however it may be combined with these uses to encourage an area to transition to a more complementary mix of development types;
5. The Mixed Use (MU) Combining District should be applied to existing residential uses to avoid creating 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	<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>Name(s) of Activity Center/Activity Corridor/Job Center:</b> <ul style="list-style-type: none"> <li>• <b>0.6 miles east of North Lamar Blvd, an activity corridor</b></li> <li>• <b>0.16 miles south of W. 38<sup>th</sup> Street, an activity corridor</b></li> </ul>
Yes	<b>Mobility and Public Transit:</b> Located within 0.25 miles of public transit stop and/or light rail station. <ul style="list-style-type: none"> <li>• <b>Multiple bus routes near the property</b></li> </ul>
Yes	<b>Mobility and Bike/Ped Access:</b> Adjoins a public sidewalk, shared path, and/or bike lane.
Yes	<b>Connectivity, Good and Services, Employment:</b> Provides or is located within 0.50 miles to goods and services, and/or employment center.
No	<b>Connectivity and Food Access:</b> Provides or is located within 0.50 miles of a grocery store/farmers market. <ul style="list-style-type: none"> <li>• <b>0.7 miles from Central Market</b></li> </ul>
No	<b>Connectivity and Education:</b> Located within 0.50 miles from a public school or university. <ul style="list-style-type: none"> <li>• <b>0.6 miles from Bryker Woods Elem. School</b></li> </ul>
Yes	<b>Connectivity and Healthy Living:</b> Provides or is located within 0.50 miles from a recreation area, park or walking trail. <ul style="list-style-type: none"> <li>• <b>0.3 miles from Bailey Neighborhood Park</b></li> </ul>
Yes	<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.) <ul style="list-style-type: none"> <li>• <b>0.4 miles from Central Park Medical</b></li> <li>• <b>0.5 miles from Ascension Seton Medical Center Austin</b></li> </ul>
Yes	<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. <ul style="list-style-type: none"> <li>• <b>Applicant says they will use one or more of the affordable housing components of the zoning change requests VMU, DB90, DBETOD which requires affordable housing.</b></li> </ul>
Yes	<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. <ul style="list-style-type: none"> <li>• <b>Applicant says the proposed development will include commercial and</b></li> </ul>

	<b>residential uses</b>
Yes	<b>Mixed use:</b> Provides a mix of residential and non-industrial uses.
No	<b>Culture and Creative Economy:</b> Provides or is located within 0.50 miles of a cultural resource (ex: library, theater, museum, cultural center). <ul style="list-style-type: none"> <li>• <b>2 miles from Howson Branch Library</b></li> </ul>
Not Known	<b>Culture and Historic Preservation:</b> Preserves or enhances a historically and/or culturally significant site.
Not known	<b>Creative Economy:</b> Expands Austin's creative economy (ex: live music venue, art studio, film, digital, theater.)
Not known	<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 particular area or that promotes a new technology, and/or promotes educational opportunities and workforce development training.
No	<b>Industrial Land:</b> Preserves or enhances industrial land.
9	<b>Total Number of "Yeses"</b>







## 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 applicant proposes to change the land use on the future land use map (FLUM) from Mixed Use/Office and Single Family to Mixed Use for a mixed-use development.

The applicant proposes to change the zoning on the property from **LO-ETOD-DBETOD-NP** (Limited Office district – Equitable Transit-Oriented Development combining district – Density Bonus Equitable Transit-Oriented Development combining district – Neighborhood Plan), **CS-CO-ETOD-DBETOD-NP** (General Commercial Services district – Conditional Overlay combining district – Equitable Transit-Oriented Development combining district – Density Bonus Equitable Transit-Oriented Development combining district – Neighborhood Plan), and **LO-CO-ETOD-DBETOD-NP** (Limited Office district – Conditional Overlay combining district – Equitable Transit-Oriented Development combining district – Density Bonus Equitable Transit-Oriented Development combining district – Neighborhood Plan) **TO** **CS-MU-V-DB90-ETOD-DBETOD-NP** (General Commercial Services district – Mixed Use combining district – Vertical Mixed Use Building combining district – Density Bonus 90 combining district – Equitable Transit-Oriented Development combining district – Density Bonus Equitable Transit-Oriented Development combining district – Neighborhood Plan). For more information on the proposed zoning cases, see reports for C14-2025-0006, C14-2025-0007, C14-2025-0008, and C14-2025-0009.

**PUBLIC MEETINGS:** The ordinance-required community meeting was virtually held on March 10, 2025. The recorded meeting can be found here: <https://publicinput.com/neighborhoodplanamendmentcases> with the full discussion of the cases. Approximately 544 meeting notices were mailed to people who has utility accounts or owns property within 500 feet of the subject property, in addition to neighborhood and environmental groups who requested notification for the area. Two city staff members from the Planning Department attended, Maureen Meredith and Mark Walters, in addition to Michael Whellan and Michael Gaudini, the applicant's agents from Armbrust and Brown, PLLC. Approximately 27 people from the neighborhood attended.

Below are highlights from Michael Whellan's presentation:

- The properties are primarily older offices. The properties are located in an area with multifamily and commercial offices.



- The zoning requests will support the city's housing and transit goals, will encourage active ground-floor commercial, provide more cohesive regulations, and maximize affordability options.
- Currently the properties have different zonings districts across the properties.
- Most of the commercial uses allowed today are for office and residential uses. The proposed zoning will allow for more commercial uses which will allow for more active ground-floor uses.
- The proposed zoning will allow us to participate in all three affordable housing programs: Vertical Mixed-Use, Density Bonus 90 and Density Bonus DB90.
- Any site development on the properties will go through site plan review. Although the developer is not ready to develop now but will need to be redeveloped soon because the buildings are old.
- Development will need to be developed under separate site plans because it cannot cross right-of-way.
- The developer has voluntarily submitted a Traffic Study for the project. It was not required. Staff could assess the traffic impacts and what mitigation might be required.
- The properties were rezoned to ETOD as part of City-initiated effort, but due to overlapping regulations, with different height standards and limited allowable uses, we are proposing the CS-MU-V-DB90-ETOD-DBETOD-NP zoning to make the property eligible for a range of affordable housing programs.

***Q: Can you define what you mean by “auto centric” uses?***

A: Yes, it's the automobile-related uses.

***Q: Some of our neighborhood concerns are regarding recreation. We want to make sure there is some consideration for recreation, such as playgrounds.***

A: At the time of site plan there is a parkland dedication ordinance that requires either parkland to be provide on-site, or paid fee-in-lieu.

***Q: This neighborhood has missing-middle housing. How will the proposed development support the missing-middle, sustainable and affordable housing?***

A: I don't know the values of the homes in the neighborhood which could be considered missing middle, but the two DB 90 overlays require residential component, whereas the current zoning does not. The current ETOD does not have the flexibility in design to encourage more ground floor commercial. The proposed zoning also requires affordable housing units. Over 50% of the people in Austin are renters and this project would provide housing for them.

***Q: Why not just pick one overlay that will work for this neighborhood and will keep our walkability? It's hard for us to support it if we don't know what will be built.***

A: The zoning has already prohibited auto-centric uses. That is an example of a protection that is already built in. Also, the VMU has specific requirements that require the ground floor to have commercial uses. The sustainability of the commercial uses is also dependent on the number of residential uses in proximity.

***Q: What will be the impact of the commercial uses on our residential streets?***

A: This is why we are doing a transportation study and can make it available to you. These overlays promote ground-floor retail that is pedestrian friendly. The current zoning prohibits food sales, personal services, and retail uses.

***Q: How do the developers plan to build with low-impact materials to affect the heat impact? Also, how will the trees be preserved?***

A: City Code has an Environmental Criteria Manual which has new landscaping requirements, new Green Building requirements, have biofiltration storm water detention, and water forward requirements with purple pipes for reclaimed water. Also, any trees larger than 19 inches and Heritage Trees must be preserved on site. Single-occupancy vehicles has caused climate change. Our site has multiple bus routes around it and also cross town and local routes.

***Q: Why not just make the development 100% housing?***

A: It's my understanding that the ETOD overlay on the property requires commercial uses.

***Q: Will there be a massive parking infrastructure?***

A: Most neighborhoods want sufficient parking on site, so people don't park in the neighborhood. City Council has removed parking minimum requirements, but people are still expecting sufficient parking on the site.

***Q: Are Hotels and Hospitals allowed in the proposed zoning?***

A: Hotel is allowed. Hospital Limited is allowed, but it's also allowed in the LO, the current zoning.

***Q: What commitments will your client make to work with us? We're concerned about the building height.***

A: The site has various height maximums under the current zoning. We can reach out to the person(s) in your group to continue the discussions.

***Q: Can you work with us on prohibiting uses?***

A: Absolutely, we are willing to work with the neighborhood and will go through the list with you.

***Q: Can we get a bedroom count with multi-bedrooms that is conducive to families?***

A: The pro rata bedroom requirements are in DB90 and DBETOD overlay.

***Q: When will this project be solidified?***

A: We still need to get the rezoning, then there is site plan review, building permits, then construction, so it will be years from now.

***Q: Is there a process to remove a Heritage Tree?***

A: Yes, there is a process to remove a Heritage Tree. We will have to do a tree survey at the time of site plan and the survey will assess the health of the trees.

## Applicant's 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

March 18, 2025

Joi Harden, Zoning Officer  
Planning Department  
6310 Wilhelmina Delco Dr.  
Austin, Texas 78752

Subject: Rezoning and neighborhood plan amendment applications related to 800, 804, 806, 808 W. 34th St. and 3404, 3406 West Ave. ("Tract 1"), 901, 905, 907 W. 34th St., 3316 Grandview St., and a portion of 3317 N. Lamar Blvd. ("Tract 2"), 801 W. 34th St. ("Tract 3"), and 715, 725 W. 34th St. and 3301 West Ave. ("Tract 4") (collectively, the "Property")

Dear Ms. Harden,

On behalf of West 34th Street Neighborhood Improvement Company, LLC (the "Owner"), I am submitting five applications related to four tracts at the intersection of West 34th Street and West Avenue. Together, these applications will better align the city's land use regulations to provide for a broader mix of uses at this 'node.' This letter replaces the letter dated December 3, 2024.

#### Applicant Request

The Property consists of four tracts as shown in Figure 1 below.

Figure 1. The Property – Tract Map



Today, the Property features a variety of zoning and Future Land Use Map ("FLUM") designations. We are requesting consolidating these designations into one comprehensive, unified designation for both the FLUM (Mixed-Use) and for zoning (CS-MU-V-DB90-ETOD-DBETOD-NP), as shown in Figure 2 below. This includes removing the existing conditional overlay, which has largely been superseded by the ETOD and DBETOD combining districts.

Importantly, the Property already features the DBETOD designation, which allows increased height today.

**Figure 2. Future Land Use Map and Zoning – Current Designations and Request**

Tract	FLUM Designation	Request (FLUM)	Zoning Designation	Subdistrict	Request (Zoning)	Request (Subdistrict)
1-A	Mixed-Use/Office	Mixed-Use	LO-ETOD-DBETOD-NP	2	CS-MU-V-DB90-ETOD-DBETOD-NP	2
1-B	Mixed-Use/Office		LO-ETOD-DBETOD-NP	2		2
2-A	Mixed-Use		CS-CO-ETOD-DBETOD-NP	2		2
2-B	Mixed-Use/Office		LO-ETOD-DBETOD-NP	2		2
3-A	Mixed-Use/Office		LO-ETOD-DBETOD-NP	1		1
3-B	Single-Family		LO-CO-ETOD-DBETOD-NP	2		1
3-C	Single-Family		LO-CO-ETOD-DBETOD-NP	1		1
4-A	Mixed-Use/Office		LO-ETOD-DBETOD-NP	1		1
4-B	Mixed-Use/Office		LO-ETOD-DBETOD-NP	1		1

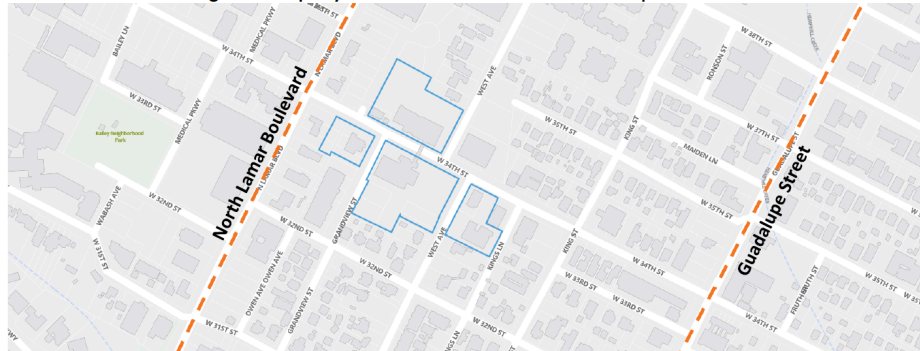
This request would also re-designate Tract 3-B from Subdistrict 2 to Subdistrict 1 within the DBETOD combining district, to match Tracts 3-A and 3-C (which are already designated today for Subdistrict 1).

#### Site Context

The Property consists of four distinct tracts along West 34th Street, near its intersection with West Avenue. The area is characterized by the following land use context:

- **The Property is within a 10-minute walk of 10 bus routes**, including both of the two existing MetroRapid routes (801 and 803), one of only five Night Owl routes (481), an Express route (982), a Crosstown route (335), and five Local routes (1, 3, 5, 30, and 491).
- **The Property is within three City-identified ETOD Station Areas**, including the Seton Medical Center Station Area, the Hyde Park (38th) Station Area, and the Rosedale Station Area.
- **The Property is located on West 34th, which connects two major corridors (North Lamar and Guadalupe)**. The four tracts that constitute the Property span roughly half of the distance between the two corridors, as shown in Figure 3 below.
- **The Property has both north-south and east-west connectivity**. The four tracts are generally oriented around West 34th's intersection with West Avenue. While West Avenue 'jogs' slightly as it crosses West 34th Street, it is one of only two north-south connections between North Lamar and Guadalupe (the other being King Street), forming a key 'node' between the two corridors.
- **The city has designated West 34th generally for mixed-use zoning districts and FLUM categories**, including CS and LO base zoning districts (as well as a small amount of P and SF-3 base zoning) and Mixed-Use and Mixed-Use/Office FLUM designations (as well as a small amount of Civic and Single-Family).
- **The city has designated West 34th for mixed-use, equitable transit-oriented development** by applying the ETOD and DBETOD combining districts to most properties along West 34th Street between North Lamar and Guadalupe. This designation currently provides between 70 ft. to 120 ft. of height along this street

Figure 3. Property Context – North Lamar and Guadalupe Corridors



### Applicant Request

As noted, the Owner is applying to designate the Property for “Mixed-Use” on the Future Land Use Map, rezone the Property to CS-MU-V-DB90-ETOD-DBETOD-NP, and designate Tract 3-B for Subdistrict 1 within the DBETOD combining district. This request would:

- **Update the Future Land Use Map to designate the Property for “Mixed-Use,”** which better reflects the city’s new equitable transit-oriented development policies.
- **Establish General Commercial Services (CS) as the new base zoning,** which would allow for a more diverse mix of walkable uses (with the safeguard that the ETOD combining district restricts less desirable uses).
- **Allow the full range of available density bonus options,** including Vertical Mixed-Use and Density Bonus 90, in addition to Density Bonus ETOD, to allow for future optionality while encouraging affordability.
- **Remove the existing conditional overlay,** which currently consists primarily of outdated height restrictions that the DBETOD combining district has since superseded and use restrictions that the ETOD combining district now regulates. (See Attachment A for existing conditional overlay provisions.)
- **Provide consistent regulations for Tract 3** by matching Tract 3-B’s subdistrict designation within the DBETOD combining district to the designation already provided for Tracts 3-A and 3-C (Subdistrict 1).

### Case Rationale

We believe that this request is appropriate for the following reasons:

- **This request will support the city’s housing goals** by making the Property eligible for a range of different city-run affordable housing bonus programs. Providing this optionality will encourage future projects on the Property to proceed in a manner that requires on-site affordability, whether at 60 ft., 90 ft. or 120 ft.
- **This request is consistent with the city’s land use policies for West 34th Street.** The city has already designated this street for a mix of commercial and residential uses as well as for additional ‘transit-oriented’ height. The Owner’s request supports this policy direction by allowing a greater mix of walkable uses – with the additional safeguard that the ETOD combining district restricted auto-oriented and less desirable uses.
- **This request will support the city’s transit and ‘mode-shift’ goals** by allowing a broader range of walkable commercial uses within a 10-minute walk of 10 different transit routes and within three ETOD station areas.

For context, the Austin Strategic Mobility Plan ("ASMP") sets a '50/50 mode split' goal aiming to have half of residents commuting via an alternative to a single-occupancy vehicle by 2039. To reach this goal, the ASMP specifies that "Allowing for mixed-use and infill development can increase access to safe and convenient transportation options beyond car travel by providing pedestrian, bicycle, and transit access to many types of nearby destinations."

This request helps accomplish that by providing a mix of housing and commercial uses with easy access to both MetroRapid routes (each of which features 10-minute frequency during regular weekday hours), a Night Owl route (with service until 3am), and a Crosstown route (with east-west connectivity to Cherrywood and Mueller), among other routes. Together, these 10 available routes allow direct transit access to downtown, the University of Texas at Austin, the Texas Capitol, Auditorium Shores, Zilker Park, South Congress, Southpark Meadows, the Domain, Burnet Road, North Lamar, South Lamar, Mueller, the Grove at Shoal Creek, East 12th Street, Menchaca Road, and Slaughter Lane, among other areas.

#### **Conclusion**

We believe that our requests for a Mixed-Use FLUM designation, for CS-MU-V-DB90-ETOD-DBETOD-NP zoning, and for designating Tract 3-B for Subdistrict 1 within the DBETOD combining district are appropriate, consistent with the land-use context, and would support the city's housing and transit goals. I appreciate your consideration and am available if you have questions or if you would like to discuss this case further.

Respectfully,

A handwritten signature in black ink, appearing to read 'Michael J. Whellan', written in a cursive style.

Michael J. Whellan

**Attachment A – Existing Conditional Overlay Provisions  
(Excerpted from Ordinance No. 040826-57)**

- **Tract 2-A** is subject to the following conditional overlay provisions:
  - Maximum Height: 50 ft.
  - Conditional Uses:
    - Automotive Rentals, Sales, or Repair Services
    - Club or Lodge
    - Commercial Blood Plasma Center
    - Building Maintenance Services
    - Hospital Services (General)
    - Residential Treatment
    - Hotel-Motel
    - Service Station
    - Laundry Services
    - Transitional Housing
    - Research Services
  - Prohibited Uses:
    - Agricultural Sales and Services
    - Automotive Washing (Of Any Type)
    - Campground
    - Maintenance and Service Facilities
    - Convenience Storage
    - Drop-Off Recycling Collection Facilities
    - Outdoor Sports and Recreation
    - Pawn Shop Services
    - Transportation Terminal
    - Indoor Sports and Recreation
    - Kennels
    - Limited Warehousing and Distribution
    - Commercial Off-Street Parking
    - Construction Sales and Services
    - Monument Retail Sales
    - Outdoor Entertainment
    - Electronic Prototype Assembly
    - Equipment Repair Services
    - Equipment Sales
    - Vehicle Storage
- **Tract 3-B** is subject to the following conditional overlay provisions:
  - Maximum Height: 30 ft.
- **Tract 3-C** is listed with a conditional overlay combining district, but no such conditional overlay provisions have yet been identified.



**July 8, 2025 PC - Postponement Request**

---

**From:** Michael Whellan <  
**Sent:** Wednesday, July 2, 2025 10:30 AM  
**To:** Jenny Carlson <>; Tomko, Jonathan <[Jonathan.Tomko@austintexas.gov](mailto:Jonathan.Tomko@austintexas.gov)>  
**Cc:** Harden, Joi <[Joi.Harden@austintexas.gov](mailto:Joi.Harden@austintexas.gov)>; Thomas, Eric  
<[Eric.Thomas@austintexas.gov](mailto:Eric.Thomas@austintexas.gov)>; Laura Grim <>; Michael Gaudini <>; Deller, Natalie <  
Michael Whellan <[MWhellan@abaustin.com](mailto:MWhellan@abaustin.com)>  
**Subject:** RE: Request postponement for 34th and West rezoning cases

Correct; applicant does not oppose the postponement.

See everyone on July 22nd.

MJW.

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

**From:** Jenny Carlson <  
**Sent:** Wednesday, July 2, 2025 10:27 AM  
**To:** Jonathan Tomko <[Jonathan.Tomko@austintexas.gov](mailto:Jonathan.Tomko@austintexas.gov)>  
**Cc:** Joi Harden <[Joi.Harden@austintexas.gov](mailto:Joi.Harden@austintexas.gov)>; Eric Thomas  
<[Eric.Thomas@austintexas.gov](mailto:Eric.Thomas@austintexas.gov)>; Laura Grim <>; Michael Whellan  
<[MWhellan@abaustin.com](mailto:MWhellan@abaustin.com)>; Michael Gaudini <[natalie.deller@austintexas.gov](mailto:natalie.deller@austintexas.gov)>  
**Subject:** Request postponement for 34th and West rezoning cases

Dear Jonathan,

This morning we reached agreement with the applicant on the four zoning cases at 34th and West. I am writing on behalf of the HNA to request a postponement until the Planning Commission meeting on July 22nd to ensure that we have adequate time to formally execute a private restrictive covenant with the applicant.

I will also follow up shortly with a list of uses that we have jointly agreed can be prohibited and made conditional in the CO for the affected tracts.

Thank you all very much for your efforts with these cases.

Sincerely,  
Jenny Carlson

**Letter of Recommendation from the CANPAC  
Neighborhood Plan Contact Team**

(No letter as of August 22, 2025)

.....

**From:** Meredith, Maureen  
**Sent:** Thursday, June 5, 2025 4:39 PM  
**To:** 'adam.stephens@[REDACTED]' <bart.whatley@[REDACTED]>;  
'betsy.greenberg@[REDACTED].com' 'lindabethteam@[REDACTED]' <<bhfairchild@[REDACTED]>>;  
'rs01@[REDACTED]' <'cochlea1@[REDACTED]' 'a.jarry@[REDACTED]' 'jfoxworth@[REDACTED]' >;  
<wwukasch@[REDACTED]>; 1 sarah.campbell@[REDACTED]>; <hparsegian@[REDACTED]>;  
'mclvinx@[REDACTED]' <<pambell.nuna@[REDACTED]>>; 'xcjkw636@[REDACTED]>;  
**Cc:** Tomko, Jonathan <Jonathan.Tomko@austintexas.gov>  
**Subject:** CANPAC NPCT Rec?: NPA- 2024-0019.02\_34th & West

Dear CANPAC NPCT:

Cases **NPA-2024-0019.02**, **C14-2025-0006**, **-0007**, **- 0008**, and **-0009\_34<sup>th</sup> & West** are scheduled for the **July 8, 2025 Planning Commission** hearing. Public hearing notices will be mailed on or about June 26, 2025.

If your team would like to have your letter of recommendation included in the staff case reports, please email it to me and Jonathan Tomko, the zoning case manager, **no later than Wednesday, July 2, 2025 by 3:00 pm**. If we get it after this date and time, we will submit your recommendation letter as late material to the Planning Commission.

Thanks.  
Maureen



**Maureen Meredith** (she/her)  
Senior Planner, Long-Range Planning  
Planning Department  
512-974-2695  
[maureen.meredith@austintexas.gov](mailto:maureen.meredith@austintexas.gov)

***Please Note:*** Correspondence and information submitted to the City of Austin are subject to the Texas Public Information Act (Chapter 552) and may be published online.

***Por Favor Tome En Cuenta:*** La correspondencia y la información enviada a la Ciudad de Austin está sujeta a la Ley de Información Pública de Texas (Capítulo 552) y puede ser publicada en línea.

## Resolution from the Heritage Neigh. Assn.



**Whereas** the Heritage Neighborhood, bordered by Guadalupe, Lamar, 29<sup>th</sup>, and 38<sup>th</sup> Streets is a neighborhood with a mix of housing types, commercial uses on the borders, and high walk, bike, and transit scores, and

**Whereas** the properties at 34<sup>th</sup> and West constitute about 5 acres of land in the middle of the neighborhood containing surface parking and primarily vacant office buildings, and

**Whereas** with the exception of the property at 3317 N Lamar Blvd, the properties at 34<sup>th</sup> and West all have Limited Office (LO-ETOD-DBETOD-NP) or (LO-CO-ETOD-DBETOD-NP) zoning, and

**Whereas** the property at 3317 N. Lamar Blvd has General Commercial Services (CS-CO-ETOD-DB-ETOD-NP) zoning with an extensive list of conditional and prohibited uses, and

**Whereas** the applicant has requested CS-MU-V-DB90-ETOD-DBETOD-NP on all tracts and presented a traffic study proposing to add 17,000 square feet of retail and 950 residential units that would more than double the residential density and traffic in the Heritage neighborhood, and

**Whereas** on May 16, 2024, the City Council rezoned all multifamily and commercial properties in the Heritage neighborhood with ETOD-DBETOD, allowing for up to 100' of height on Tracts 3 and 4, up to 90' on Tract 2, and up to 70' on Tract 1, heights that are sufficient to greatly expand the housing opportunities in our neighborhood, and

**Whereas** the properties at 34<sup>th</sup> and West are in the middle of the neighborhood with single family and small multifamily apartments adjacent, it is not desirable to allow further increased heights, all CS uses, and traffic that will be incompatible with neighboring residents, and

**Whereas** DBETOD provides for both market rate and affordable housing, active ground floor uses, and requires 25% higher fee in lieu compared to DB90, and deeper affordability requirements compared to VMU.

**Therefore, be it resolved** that the Heritage Neighborhood Association requests that uses at 34<sup>th</sup> and West be expanded to encourage neighborhood shopping, restaurants, and facilities for the benefit of the neighborhood, by not opposing the proposed neighborhood plan amendments (NPA), but restricting the uses to only include those allowed in Neighborhood Commercial (LR) zoning, and

**Be it further resolved** that the Heritage Neighborhood requests that there be no additional height increases beyond those allowed with the current zoning with the DBETOD, by changing the zoning on LO tracts to LR instead of CS, and

**Be it further resolved** that the Heritage Neighborhood requests that the use of DBETOD be encouraged by not including V and DB90 in any zoning change, and

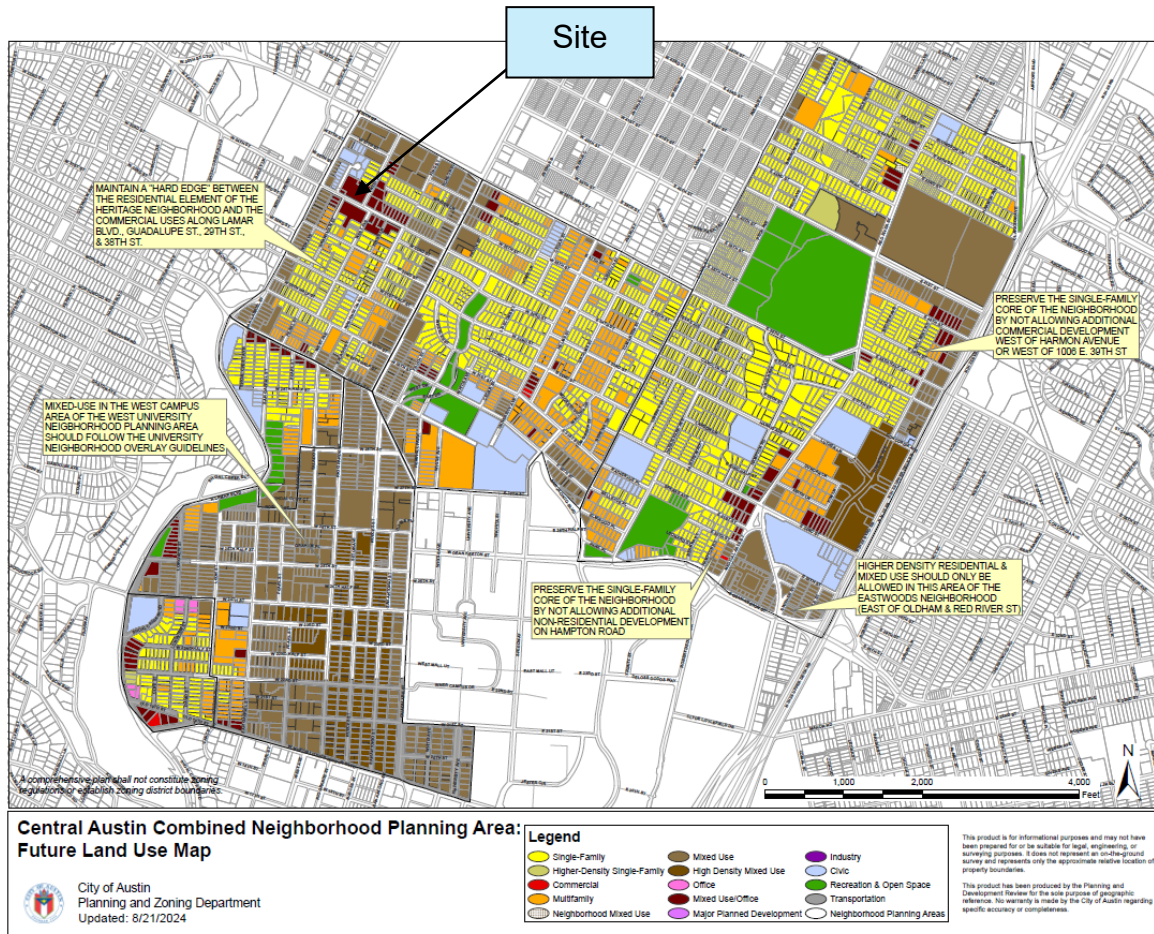
**Be it further resolved** that the Heritage Neighborhood requests that there be no removal of Heritage trees at 34<sup>th</sup> and West and that any required parkland dedication requirements be used to support an on-site community garden.

**Be it further resolved** that the Heritage Neighborhood Association is open to further discussion and negotiation in hopes of coming to an agreement that benefits both the applicant and neighborhood.

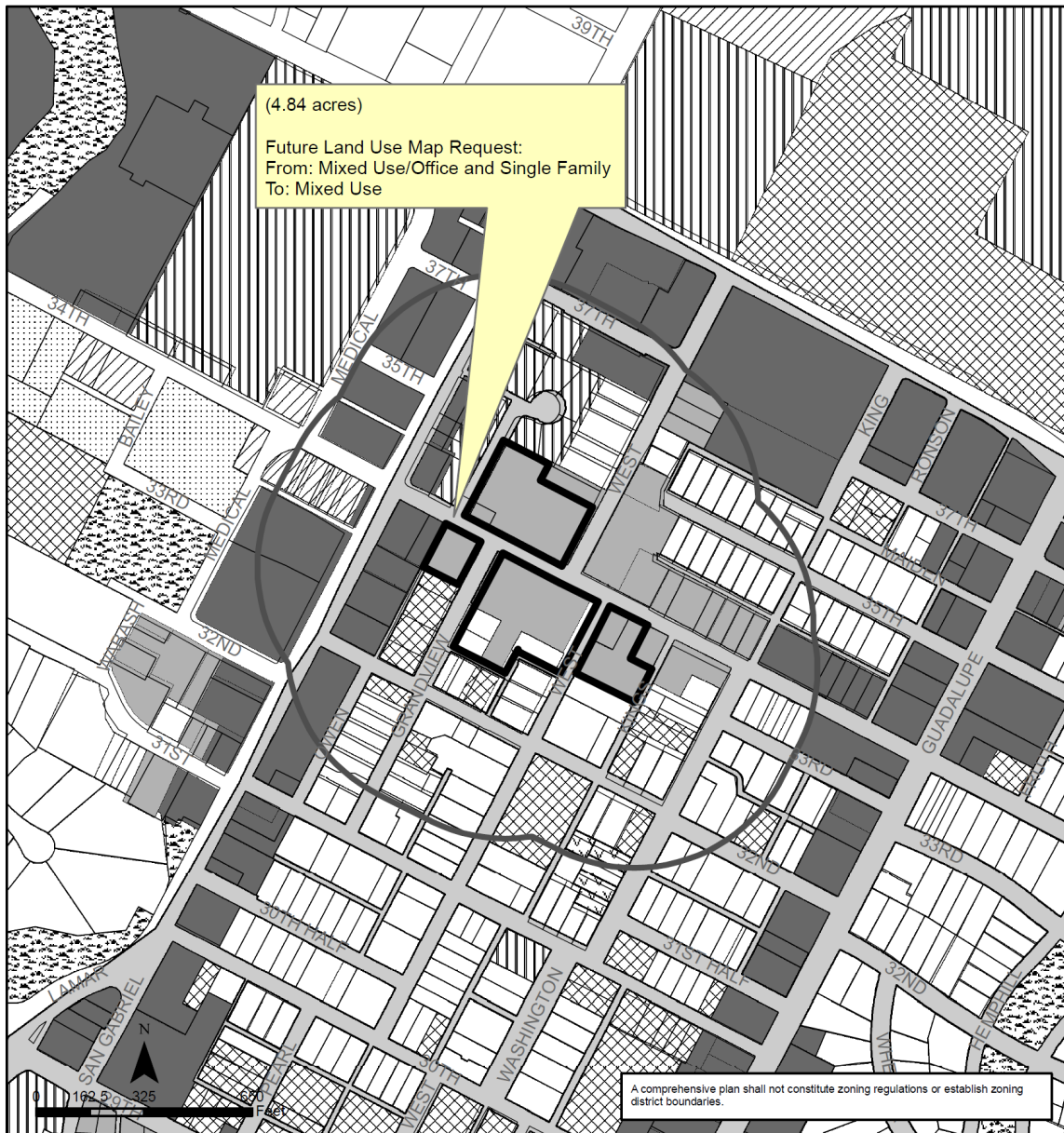
Approved unanimously by the Heritage Neighborhood Association on June 2, 2025.

A handwritten signature in black ink, appearing to read 'Laura Grim', with a stylized flourish at the end.

Laura Grim  
Heritage NA president







## Central Austin Combined (West University) Neighborhood Planning Area NPA-2024-0019.02

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.

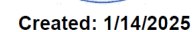
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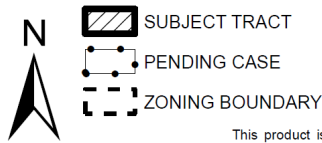
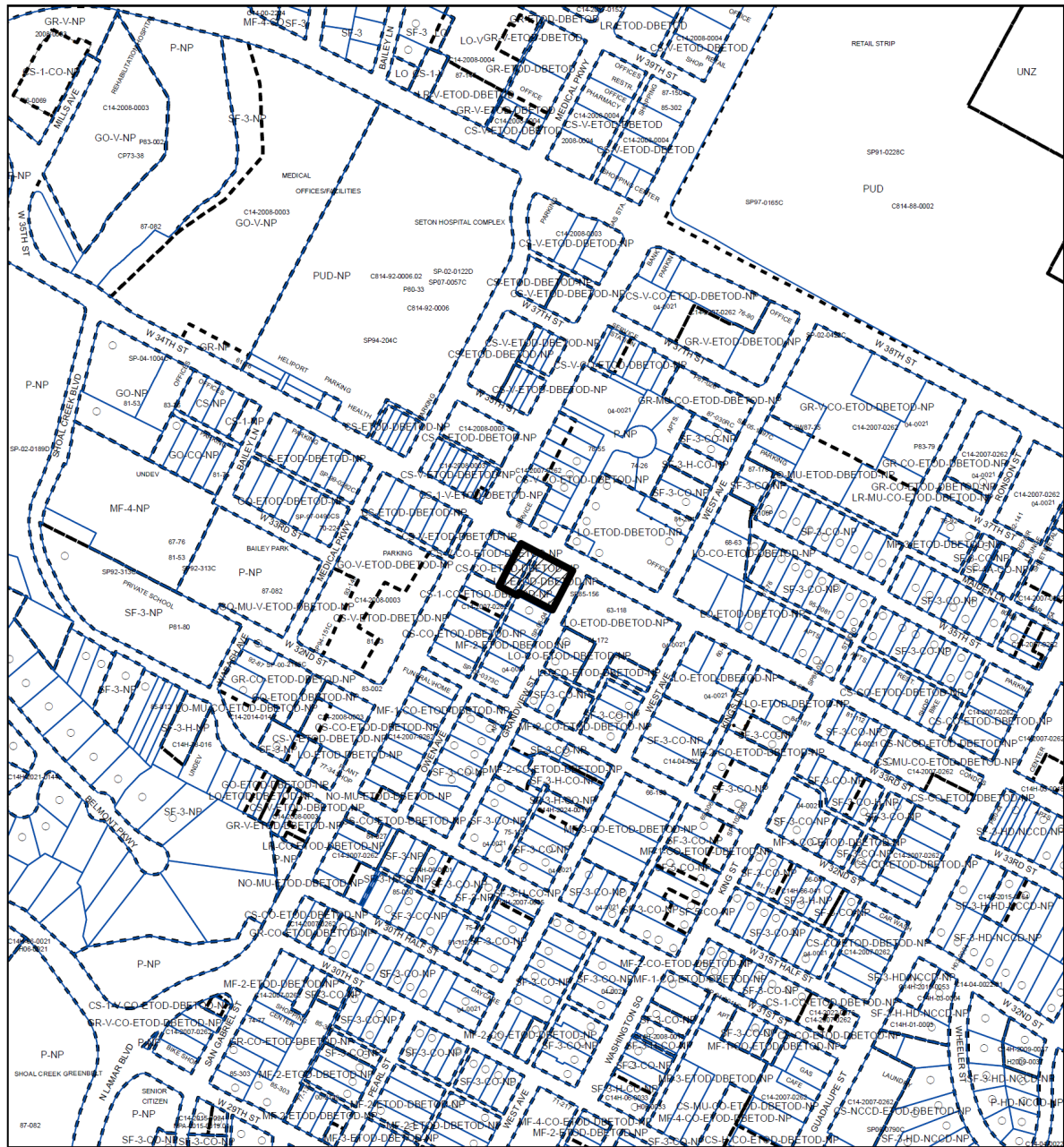
City of Austin  
Planning Department  
Created on 2/4/2025, by: meekss

### Future Land Use

500 ft. notif. boundary	Mixed Use/Office
Subject Tract	Multifamily Residential
Civic	Office
Commercial	Recreation & Open Space
Higher-Density Single-Family	Single-Family
Mixed Use	Transportation







**ZONING**  
ZONING CASE#: C14-2025-0007

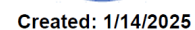
1" = 400'

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.

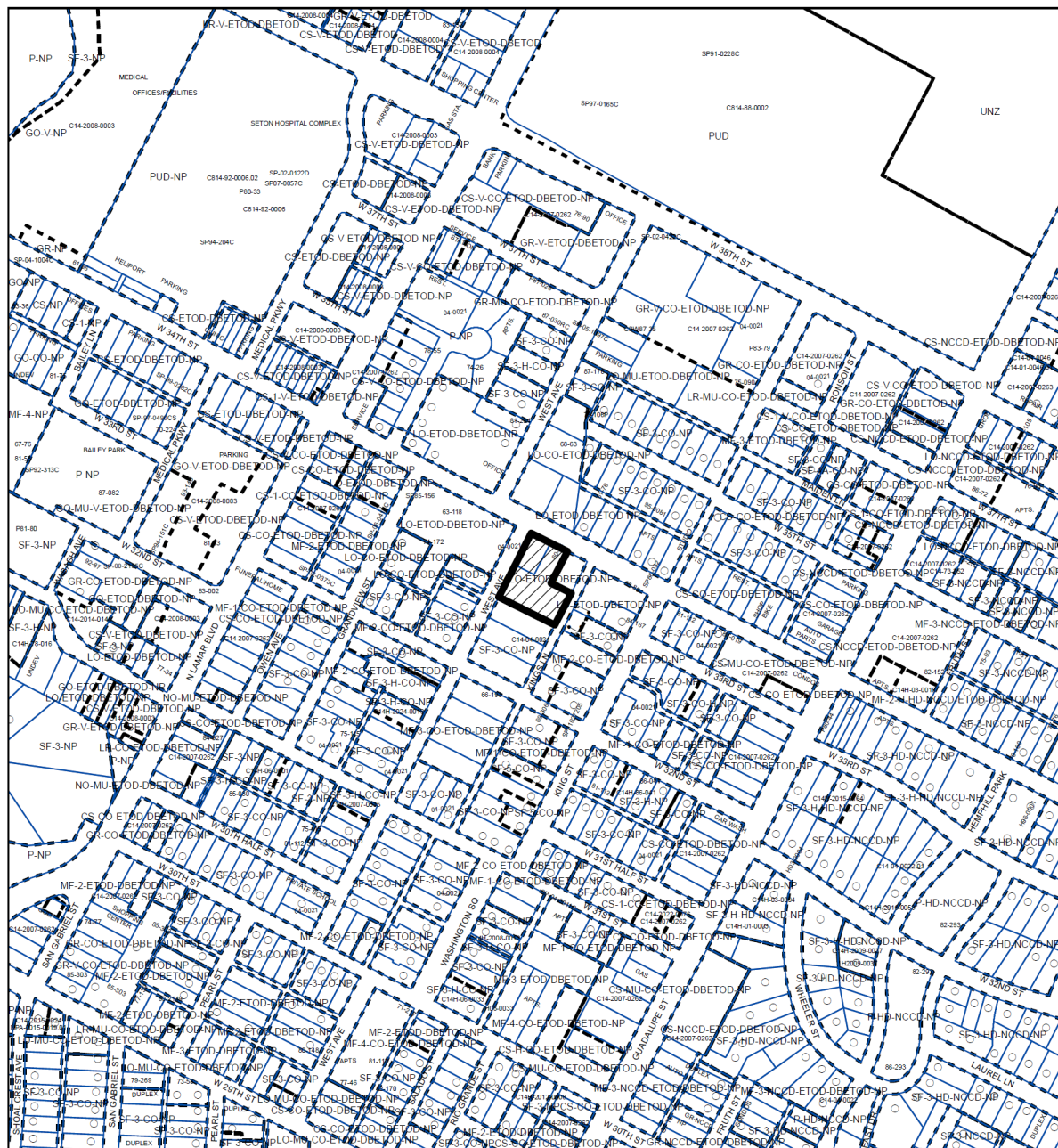
This product has been produced by the Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.






Created: 1/14/2025







 SUBJECT TRACT  
 PENDING CASE  
 ZONING BOUNDARY

ZONING CASE#: C14-2025-0009

$$1'' = 400'$$

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.

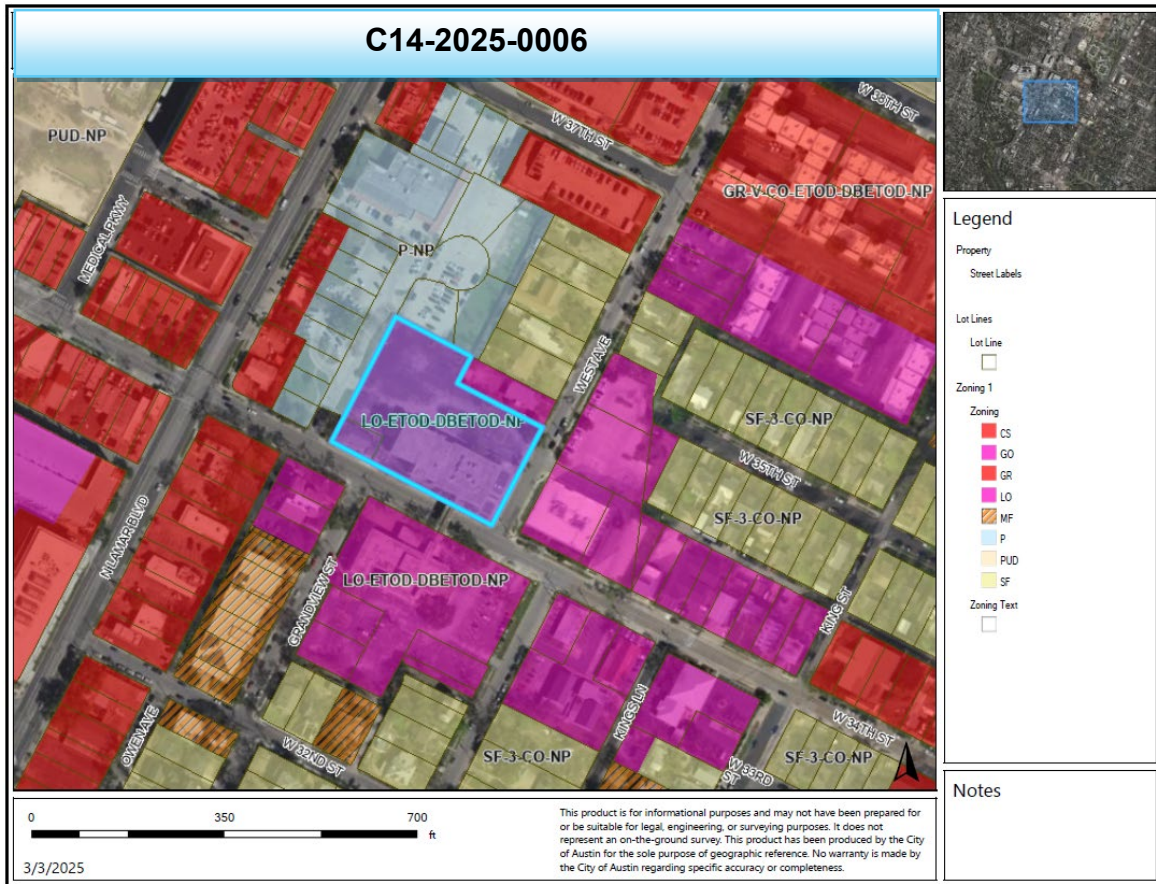
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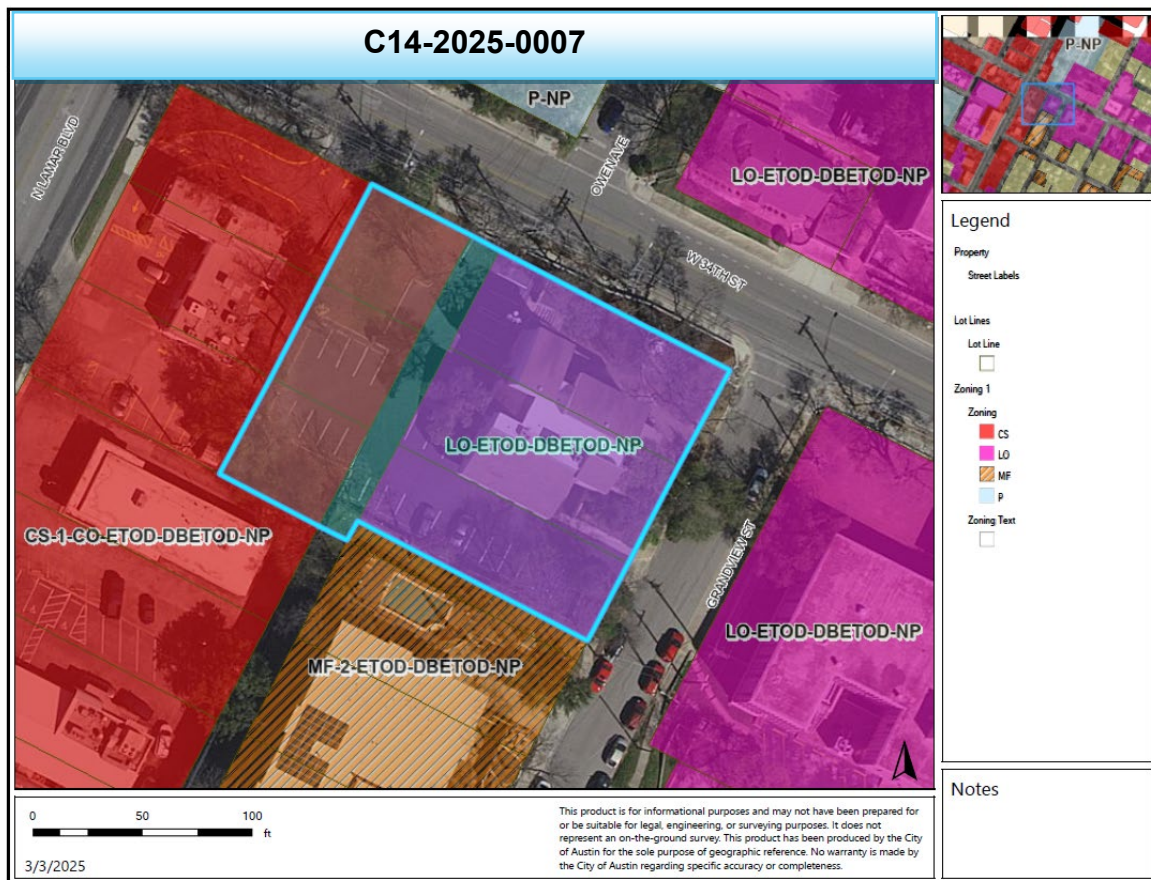


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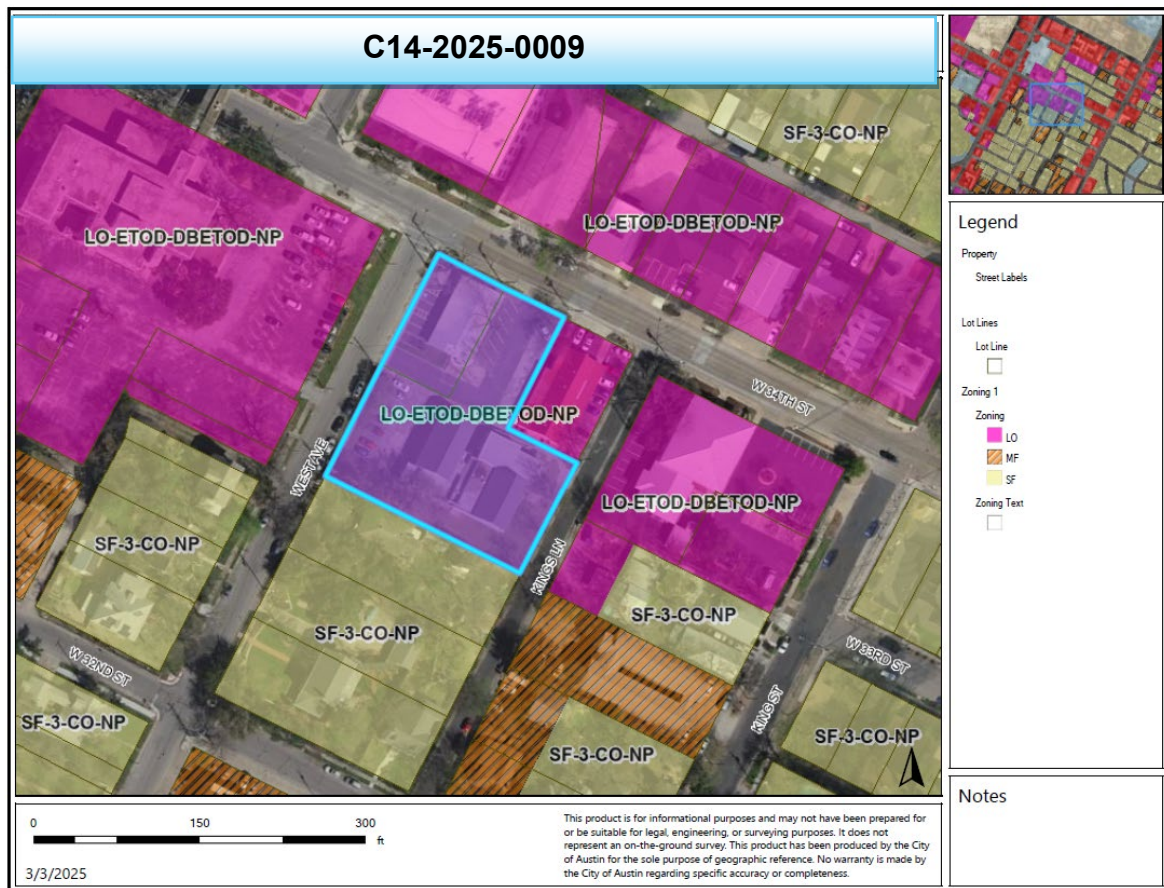












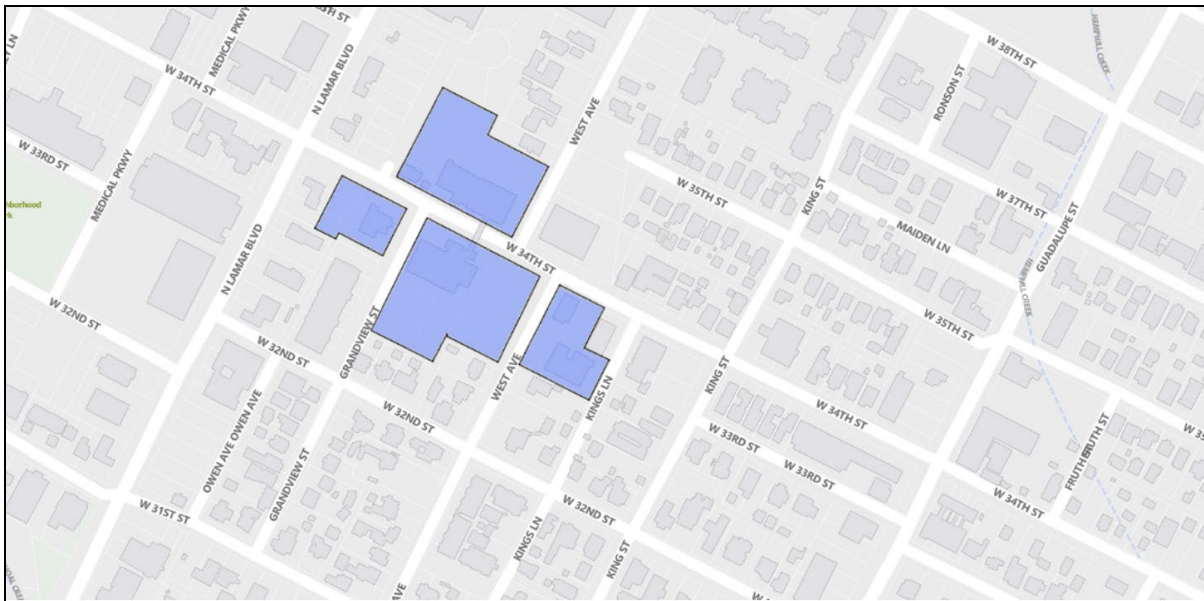
## Michael Whellan's Presentation at the Virtual Community Meeting

# 34th and West

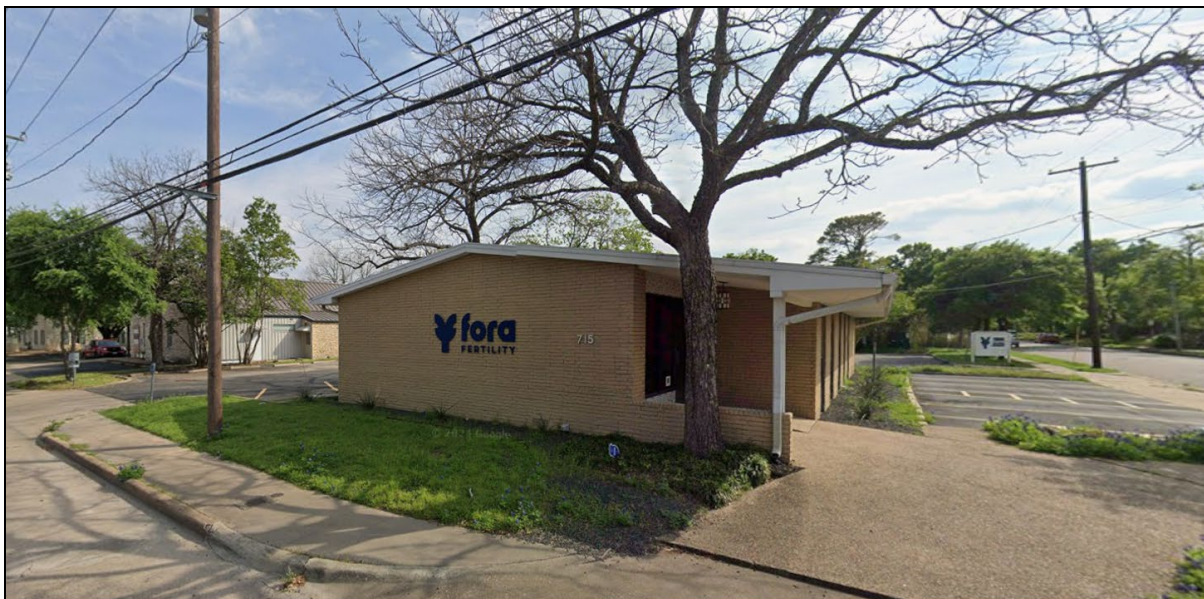
## Neighborhood Plan Amendment and Rezoning

Case	Involves...	Reviewed By...	Status
<b>Plan Amendment</b>	Sets High-Level Policy	City Staff Planning Commission City Council	This Case
<b>Rezoning</b>	Sets Site Regulations	City Staff Planning Commission City Council	Related to this Case
<b>Site Plan</b>	Technical Project Review	City Staff	Future Process

Site development generally involves three main review processes.



These cases involve four different tracts around the intersection of 34th and West.

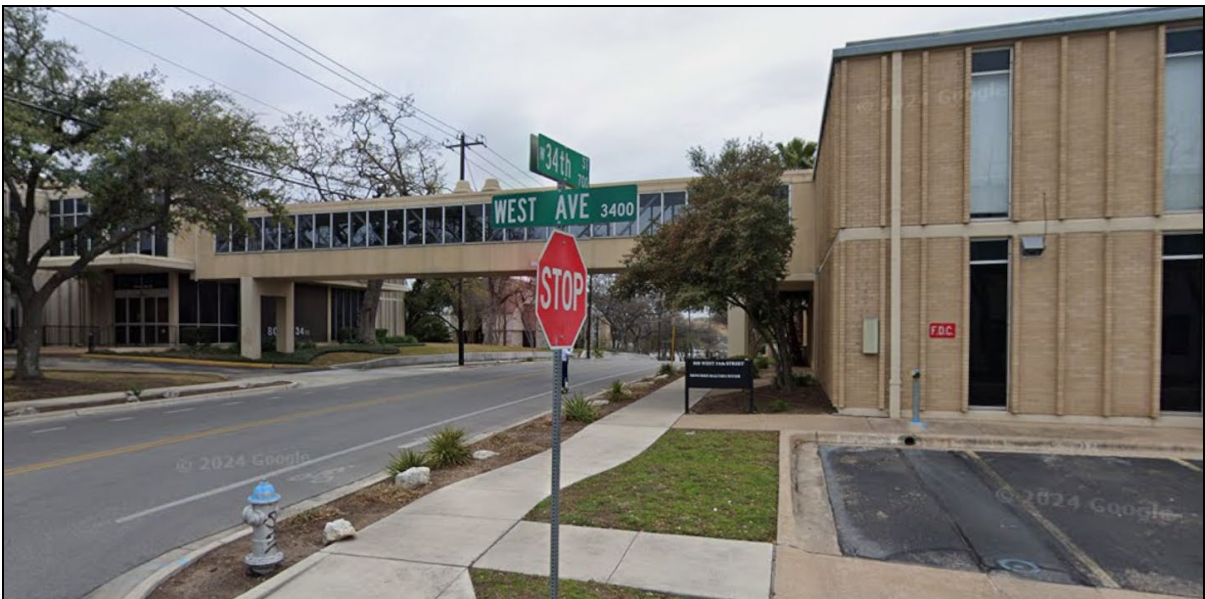


These cases involve four different tracts around the intersection of 34th and West.





These cases involve four different tracts around the intersection of 34th and West.



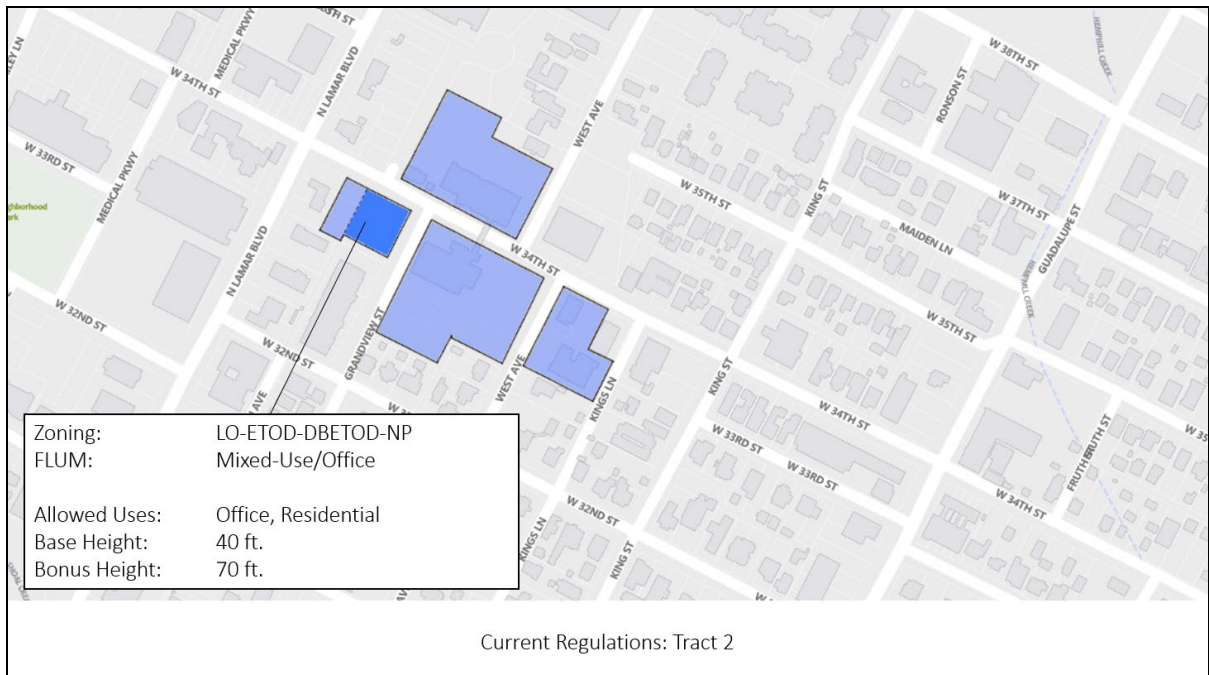
These cases involve four different tracts around the intersection of 34th and West.

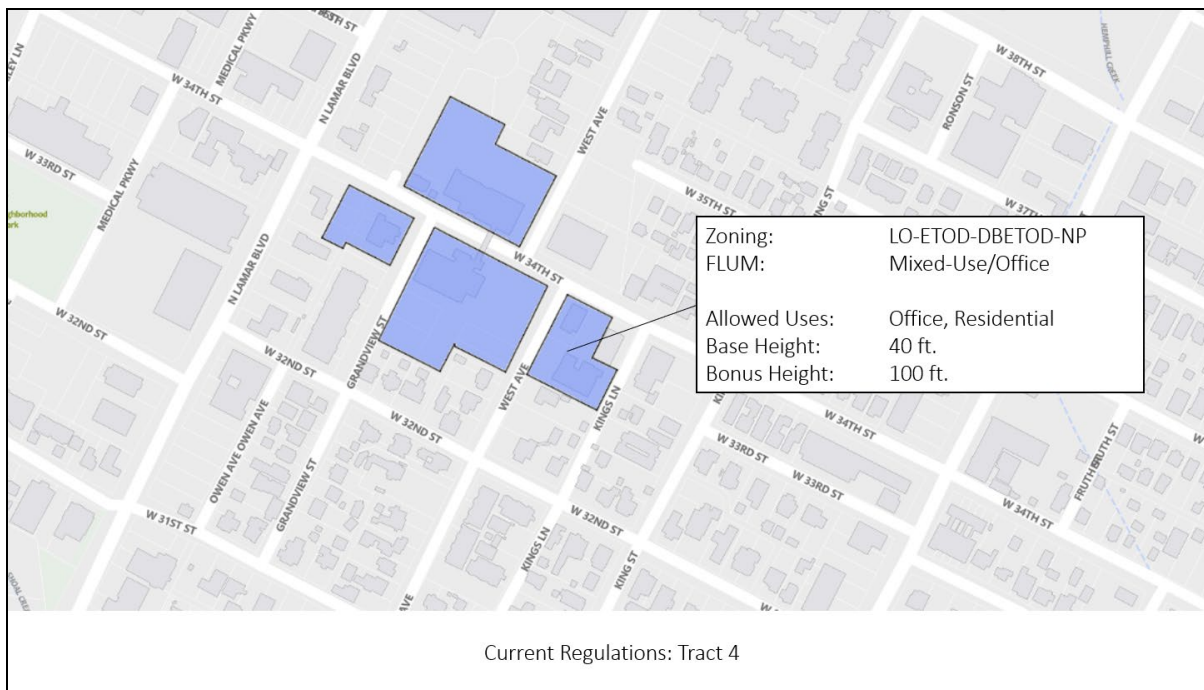
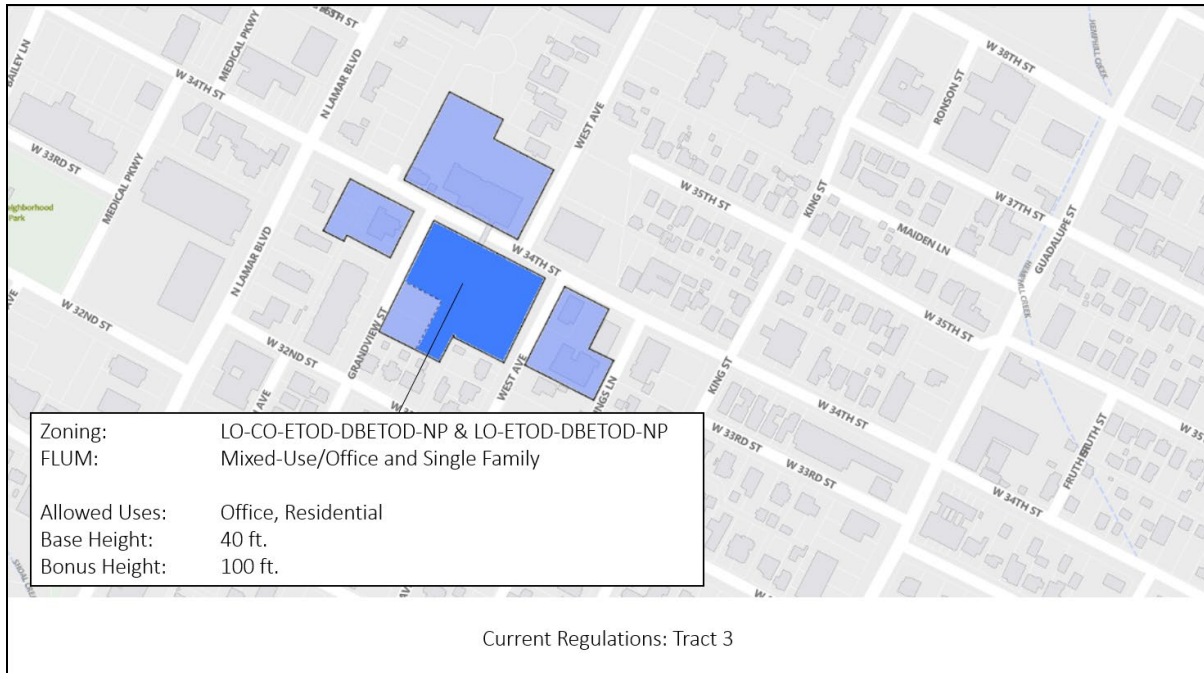






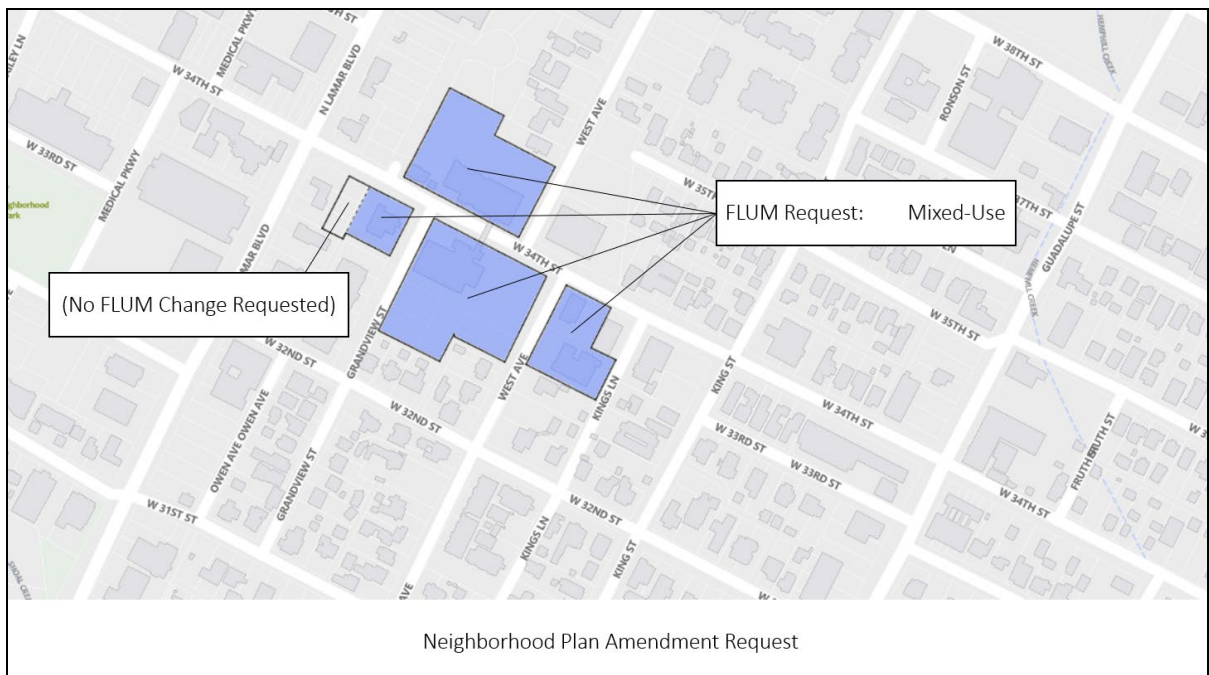






Case	Involves...	Reviewed By...	Status
<b>Plan Amendment</b>	Sets High-Level Policy	City Staff Planning Commission City Council	This Case
<b>Rezoning</b>	Sets Site Regulations	City Staff Planning Commission City Council	Related to this Case
<b>Site Plan</b>	Technical Project Review	City Staff	Future Process

This meeting is primarily intended for the neighborhood plan amendment case.



Case	Involves...	Reviewed By...	Status
Plan Amendment	Sets High-Level Policy	City Staff Planning Commission City Council	This Case
Rezoning	Sets Site Regulations	City Staff Planning Commission City Council	Related to this Case
Site Plan	Technical Project Review	City Staff	Future Process

Additionally, there is a related rezoning case that is proceeding in parallel to the plan amendment.

- **Support the city's housing and transit goals** by better aligning property's zoning for city's desired outcomes.
- **Encourage active ground-floor commercial** by allowing a range of commercial uses.
- **Provide more cohesive regulations** by unifying the tracts under one designation.
- **Maximize affordability options** by allowing the property to participate in a range of programs.

Applicant Goals





Residential

---

Professional Office

---

Administrative Office

---

Medical Office

The current rezoning primarily allows **office and residential uses**.

Residential	Food Sales
Professional Office	Restaurant
Administrative Office	General Retail Sales
Medical Office	Personal Improvement Services
The applicant's rezoning request allows various <b>active commercial uses</b> .	

	Vertical Mixed-Use	Density Bonus 90	Density Bonus ETOD
<b>Maximum Height</b>	60 ft.	90 ft.	90 ft. to 120 ft.
<b>Affordability Set-Aside</b>	10% of Total Units	12% of Total Units	10%, 12%, or 15% of Total Units
<b>Ground-Floor Commercial</b>	Design and Use Requirement (Limited)	Design Requirement	Design and Use Requirement (Stricter)
Affordability Program Optionality			



Case	Involves...	Reviewed By...	Status
Plan Amendment	Sets High-Level Policy	City Staff Planning Commission City Council	This Case
Rezoning	Sets Site Regulations	City Staff Planning Commission City Council	Related to this Case
Site Plan	Technical Project Review	City Staff	Future Process

Site development generally involves three main review processes.



➤ City will review any future redevelopment plans through site plan process, to confirm compliance with all regulations, including:

- Zoning
- Utilities
- Environmental
- Transportation

➤ Site plans cannot cross right-of-way.

➤ Applicant voluntarily agreed to conduct transportation analysis at rezoning stage.

The applicant does not currently have plans for redevelopment.

The property is already designated for Equitable Transit-Oriented Development (ETOD).

---

However, it primarily features office zoning today, lacking many active commercial uses.

---

This request will provide cohesive zoning with active commercial uses and a range of affordability programs.

**Correspondence Received**

Hi, Matthew:

Your questions should be addressed to the applicant's agents Michael Whellan [MWhellan@abaustin.com](mailto:MWhellan@abaustin.com) and Michael Gaudini [MGaudini@abaustin.com](mailto:MGaudini@abaustin.com).

Your question about property values being affect should be addressed to the Travis County Appraisal District <https://traviscad.org/>.

Maureen

**From:** Matthew DeLeon <

**Sent:** Tuesday, February 25, 2025 4:30 PM

**To:** Meredith, Maureen <[Maureen.Meredith@austintexas.gov](mailto:Maureen.Meredith@austintexas.gov)>

**Subject:** NPA-2024-0019.02 Details

To whom it may concern,

My name is Matthew DeLeon; I live on 34th street near the locations affected by the proposed amendment (NPA-2024-0019.02) and I have a few questions regarding it.

If this goes through, can we anticipate any construction? Will there be any meaningful changes to the noise level or road access in the area? If so, when? Do you suppose it affect property values in the area?

Thank you for your time,  
Matthew DeLeon

### PUBLIC HEARING COMMENT FORM

If you use this form to comment, it may be submitted to:

Maureen Meredith  
City of Austin - PDC  
Planning Department  
P. O. Box 1088  
Austin, TX 78767-8810

*Rec'd 7/21/25*

If you do not use this form to submit your comments, you must include the name of the body conducting the public hearing, its scheduled date, the Case Number and the contact person listed on the notice in your submission.

Case Number: NPA-2024-0019.02

Contact: Maureen Meredith, 512-974-2695 or

Maureen.Meredith@austintexas.gov

Public Hearing: JUL 08, 2025 - Planning Commission

☐ I am in favor  
☒ I object

*Ty Davidson*

Your Name (please print)

*209 B West 34th*

Your address(es) affected by this application

*[Signature]*

Signature

*7/2/25*

Date

Comments:

*The noise & disruption of the  
area surrounding my property  
will make it difficult for  
my tenants to treat patients  
and clients in a comfortable  
setting and possibly loss of  
Revenue*

**From:** Thea Bryant  
**Sent:** Friday, August 22, 2025 11:23 AM  
**To:** Meredith, Maureen <Maureen.Meredith@austintexas.gov>  
**Subject:** Re: Preparation for Sept. 11th CC Hrng: NPA-2024-0019.02\_34th & West

Hello Maureen,  
Thanks for breaking the procedure down for me regarding our participation in the development planning for our street, especially concerning the ongoing flooding from the commercial neighbor at 3301 West Ave.  
I'm attaching the certified Demand Letter that we sent them on April 2, 2024.

I'm also copying you here with some of the email correspondence that we've had with their attorney which has only resulted with them assuming responsibility a number of times, even as far as hiring an engineer to correct the problem, but later reneging on their promises. To date the problem exists and still causes substantial damages to Rob Harrell's property at 3205 West Ave . Upon talking with neighbors it seems as though another neighbor has experienced fooding that is compounded from 3301 West also.

---

**Date:** Thursday, October 24, 2024 at 10:13 AM  
**To:** Jeff Hobbs [REDACTED]  
**Subject:** Re: 3205 West Avenue

Good morning, Jeff,

First, thank you for your patience during this extended interlude in our communications. I have had to deal with some extended health issues and am slowly getting back up to speed.

Second, with respect to your client's offer: Mr. Harrell appreciates Mr. Overstreet's attempt to get this matter settled but would like to emphasize that he is not trying to shake down his neighbor. Mr. Harrell is not looking for money, he is looking for relief, and so the offer is respectfully declined—although the settlement with respect to the tree may be of interest if a different disposition may be agreed to.

With respect to the argument about the statute of limitations barring these kinds of claims, please note that the legal basis for the damages is an action in trespass. Each separate occurrence of trespass is actionable within its own legal limitation. Additionally, it could be argued that your client took meaningful steps towards accord and satisfaction by hiring its civil engineer/hydrologist to design improvements to mitigate the stormwater flooding, that my client materially relied on those actions, and that therefore the proverbial clock was reset to a point in time where those efforts were abandoned for as-of-yet unknown reasons.

I have enclosed two of several videos in my possession that were taken just this last August. I am glad to share the others. I am sending you this to show how egregious the runoff is. All the stormwater from your client's site is collected and then funneled directly into a stream that floods my client's property. The videos show the immense volume of water coming off your client's site as it flows directly under my client's house and into his yard.

I know that you are a seasoned gladiator, and Adrian probably needs someone like you in his court. But this is not a case that lends itself to getting solved in the gladiator ring. We need a common-sense engineered solution, and so I am again requesting that your client reengage his engineers to design a solution that can then be implemented. I remain perplexed about why this effort was abandoned, and why finishing what was started is now apparently objectionable. If your client under no circumstances wants to tend to this, please let me know, and Mr. Harrell will hire his own engineering team, which will probably wind up duplicating a lot of the engineering groundwork that has already been performed. And in that case, the solution will be unilaterally imposed, which could result in additional friction between our clients if the resulting change in stormwater collection and flow results in additional issues for your client's property.

If the issue is that Adrian is annoyed about having to deal with my client or his property manager, I am glad to liaison any effort so that future work towards resolution is communicated through us instead.

I am not averse to Mr. Overstreet. About 10 years ago, he made a meaningful difference in the application of my client by supporting the concept of Hill Country Indoor before the council of the City of Bee Cave, for which they were extremely grateful. Had I known that Adrian owned this particular property, I probably would not have engaged. Not because of any conflict, but more as a courtesy.

In any event, please let me know your thoughts after you have had a chance to review the videos and your client has had a chance to reflect on this message. My client is bracing for the end of this unusual drought when the rains return.

Best,

E

Eric Visser, J.D., CCIM  
Eric J.W. Visser, P.C.  
Attorney and Counselor at Law  
2802 Flintrock Trace, Suite 280  
Austin, Texas 78738  
T: (512) 795-0600

Thanks Maureen,  
*Thea Bryant*  
*Natural Neighborhood Development Coalition*  
*512-576-3483*

**Eric J.W. Visser, P.C.**

Attorney and Counselor at Law

A PROFESSIONAL CORPORATION



2802 Flintrock Trace  
Suite 280  
Austin, TX 78738

t. (512) 795-0600  
f. (512) 233-5894  
eric@visserlaw.com

April 2, 2024

**VIA CERTIFIED US MAIL, RRR**

West 34<sup>th</sup> Street Neighborhood Improvement Company, LLC  
c/o ABP Trust, Member  
c/o Jennifer Clark, EVP and General Counsel and Secretary,  
The RMR Group  
Two Newton Place  
255 Washington Street, Suite 300  
Newton, MA 02458-1632

Re: ***Trespass and Nuisance Claim, 3205 West Avenue, Austin, Travis County, Texas***

Dear Ms. Clark,

I represent Rob Harrell, who owns property adjoining your property on West 34<sup>th</sup> Street in Austin, Texas. Mr. Harrell, through his local manager Thea Bryant, had been working with your local property manager, Jeanne Wolf and her team of engineers known as 360 Professional Services to resolve the pervasive stormwater runoff and flooding from your commercial property that continues to damage my client's site and improvements.

Ms. Wolf has been completely non-responsive to my client since December 2022. Perhaps your company has lost interest in pursuing a constructive resolution of the flooding issue that it undertook until recently. Perhaps there are unknown extenuating circumstances that prevent the conclusion of this mitigation plan, but complete silence is unacceptable in any event.

A brief extract of the history of interactions between my client, Ms. Bryant, and Ms. Wolf, is summarized as follows:



Jennifer Clark, Esq.  
April 2, 2024  
Page 2 of 3

<input type="checkbox"/>	☆	Thea Bryant	Gutter repair- waiting for a response - Hello Jeanne, We haven't heard from you about the gutter repair. I've reached out a number of	9/6/23
<input type="checkbox"/>	☆	Draft	Remind her	9/15/23
<input type="checkbox"/>	☆	Thea Bryant	Gutter repair on West Ave - Hello Jeanne, Let's regroup about the gutter repair between the radiological building and the	9/13/23
<input type="checkbox"/>	☆	Thea, Robcfp 2	Inbox: New gutter at West Ave - jwolf@ [REDACTED]; Robcfp <robcbfp@aol.com> Sent: Tue, Mar 7, 2023 11:46 am Subject: New gutter at We...	3/7/23
<input type="checkbox"/>	☆	Jeanne, Thea 4	Inbox: RE: Share with Scott and Adrian - West Ave Drainage Update [EXTERNAL] - jwolf@ [REDACTED] Date: Mon, Dec 12, 2022 at 9:52 A... W 34th St Maint...	12/19/22
<input type="checkbox"/>	☆	Wolf, Jeanne	Inbox: Engineer Contact Info - Good afternoon Thea, Just a reminder to shoot me your engineers contact info. I will forward to Scott	12/16/22
<input type="checkbox"/>	☆	Thea Bryant	Share with Scott and Adrian - West Ave Drainage Update - Hello Jeanne, Can you please remind your team (Scott and Adrian) about the Rain... WaterWiseRain... raingarden_fact...	10/18/22
<input type="checkbox"/>	☆	Thea Bryant	Gutter repair on West Ave - Hello Jeanne, Let's regroup about the gutter repair between the radiological building and the	9/13/23
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<input type="checkbox"/>	☆	Thea, Robcfp 3	Inbox: West Ave French Drain - OK thanks for the updates I want to see the contract before he starts work on it also Sent from the	9/24/22
<input type="checkbox"/>	☆	Wolf, Jeanne	Inbox: Meeting Time for Next Steps - Good morning Thea, When is a good time for you to meet to look at the next steps? I'm bringing	9/19/22
<input type="checkbox"/>	☆	Thea Bryant	Share with Scott and Adrian - West Ave Drainage Update - Hello Jeanne, Can you please remind your team (Scott and Adrian) about the Rain G... WaterWiseRain... raingarden_fact...	10/18/22
<input type="checkbox"/>	☆	Thea, Robcfp 3	Inbox: West Ave French Drain - OK thanks for the updates I want to see the contract before he starts work on it also Sent from the	9/24/22
<input type="checkbox"/>	☆	Wolf, Jeanne	Inbox: Meeting Time for Next Steps - Good morning Thea, When is a good time for you to meet to look at the next steps? I'm bringing	9/19/22
<input type="checkbox"/>	☆	Jeanne, Robcfp 5	Inbox: RE: Flooding at West Ave - french drain repair [EXTERNAL] - jwolf@ [REDACTED] To: Robcfp <robcbfp@aol.com> Sent: Fri, Sep 16, 20... To: Robcfp <robcbfp@aol.com> Sent: Fri, Sep 16, 20...	9/16/22
<input type="checkbox"/>	☆	Thea, Robcfp 2	Inbox: Flooding at West Ave - french drain repair - OK keep me informed of what's happening. I have to go to the doctor today about my heart...	9/7/22
<input type="checkbox"/>	☆	Thea Bryant	Follow up about repairing water runoff at West Avenue - Hello Jeanne, I'm including Rob Harell again with this email. This is a follow up on your	5/14/22
<input type="checkbox"/>	☆	Draft	Follow up - Thanks Jeanne for calling me back today about a strategy meeting with your crew. If it needs to	4/27/22
<input type="checkbox"/>	☆	me, Thea 2	Flooding at West Ave - Hi Jeanne, Just checking in. We are ready with some print strain thoughts and gutter leveling running	4/27/22

I have also enclosed a reduced copy of the last set of plans drawn up by your engineers.

Demand is hereby made for the immediate conclusion of the stormwater runoff abatement plan, the completion of the permit application with the City of Austin for that plan, and the construction of corresponding improvements to prevent further stormwater damage to my client's property. If you have any interest in addressing this matter outside of the pending litigation, kindly respond to me by April 30, 2024.

Absent hearing from you or someone from your company with the authority and ability to pursue this matter to a successful conclusion, my client intends to exercise remedies.

These include filing suit for trespass and common law nuisance, and injunctive relief against your special purpose entities that hold title to the offending properties. My client may also implement self-help remedies to protect his property, which may result in

Jennifer Clark, Esq.  
April 2, 2024  
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stormwater being redirected to the source and causing problems for your properties or your tenants.

This constitutes a demand letter under Tex. Civ. Prac. & Rem. Code §38.001 et seq. Should litigation become necessary, my client intends to recover its costs of court and reasonably incurred attorney's fees as part of the final judgment.

I am available to discuss this with you or your colleagues at your convenience, prior to the stated deadline. My client remains hopeful that an amicable, mutually acceptable resolution remains possible as it should between neighbors.

Sincerely,

Eric J.W. Visser, J.D., CCIM

**Encl:** Abatement Plan, 3301 West Avenue, Austin, Texas (non-permit set)

V:/24-001 RMR Demand 4-2-24.