



March 2, 2022

City Council  
City of Austin

Via E-mail at <https://www.austintexas.gov/email/all-council-members>

CC: Maureen Meredith

RE: NPA-2021-0002.01 - 1400 E 4th Street  
C14-2021-0138 - 400 E 4th Street

Dear Mayor, Mayor ProTem, and City Council,

My name is Kristen Heaney and I'm the Chair of the Land Development Committee of the East Cesar Chavez Neighborhood Plan Contact Team (ECC-NPCT).

At our general meeting Wednesday, February 16, 2021, the ECC-NPCT voted to OPPOSE the zoning change and neighborhood plan amendment requests proposed by the applicant at 1400 E 4th Street.

**On behalf of the ECC-NPCT, I am writing to strongly encourage you to OPPOSE this project.**

Here's why.

The property at 1400 E. 4th is precedent setting and must be opposed. The applicant requests to change the base maximum building height on an individual property, singling out a small tract of land, for rezoning which serves no substantial public purpose.

**RE: NPA-2021-0002.01**

The applicant requests the Base Maximum Building Height be amended **from a maximum 40 feet to a maximum 85'**.

**That is a request for a 213% height increase. Why would we allow this?**

Figure 4-1 of the Saltillo TOD Regulating Plan clearly illustrates that the project is in a zone designed to step down in height as it approaches the adjacent single family neighbors to the south.

Section 4.3.3 states that a density and height bonus shall be granted to a development that meets the affordability standards in Subsection C which states that habitable space equal to a minimum of twenty-five percent of the entire square footage of the development shall be reserved as affordable. In order for a property owner/developer to pay a fee in-lieu of meeting the requirements in Subsection C they **must demonstrate a compelling reason to not provide housing on-site**, and **subject to the approval of the City Council**, may pay into the Housing Assistance Fund a fee-in-lieu payment.

**RE: C14-2021-0138**

The applicant states that “ The purpose of the rezoning request is to increase the allowable height for the property. Currently, the property is permitted up to 60 feet in height; the applicant proposes increasing the permitted height up to 85’ ....”

The statement above and on the application is misleading.

The property is permitted up to 40’ in height. Per section 4.3.3 of the Saltillo TOD regulating plan a density and height bonus shall be granted to a development that meets the affordability standards in Subsection C which states that habitable space equal to a minimum of twenty-five percent of the entire square footage of the development shall be reserved as affordable. In order for a property owner/developer to pay a fee in-lieu of meeting the requirements in Subsection C they **must demonstrate a compelling reason to not provide housing on-site**, and **subject to the approval of the City Council**, may pay into the Housing Assistance Fund a fee-in-lieu payment.

We ask City Council to consider, where is the compelling reason?

If a compelling reason is “we’re building an office” then we ask, what value should be put on the additional 25’ above the granted 60’? How do we calculate it? How do we direct it to affordable housing in our neighborhood as the Saltillo TOD regulating plan intended?

And, if the solution here is to change the base building maximum height to 85’ does Section 4.3.3 even apply anymore? Subsection 4.3.3 states that “Properties, or portions of properties, in the TOD Mixed Use Subdistrict are eligible for a height bonus (if base height is less than 60 feet)”. How do we solve for that?

A height increase to 85’ might be considered reasonable and negotiable in the area from E 5th street and north to E 7th Street. 85’ is simply inappropriate south out 5th street as the regulating plan indicates. We must step down height here. We must honor our plan and respect our single family neighbors.

Sincerely,

***Kristen E. Heaney***

Kristen Heaney

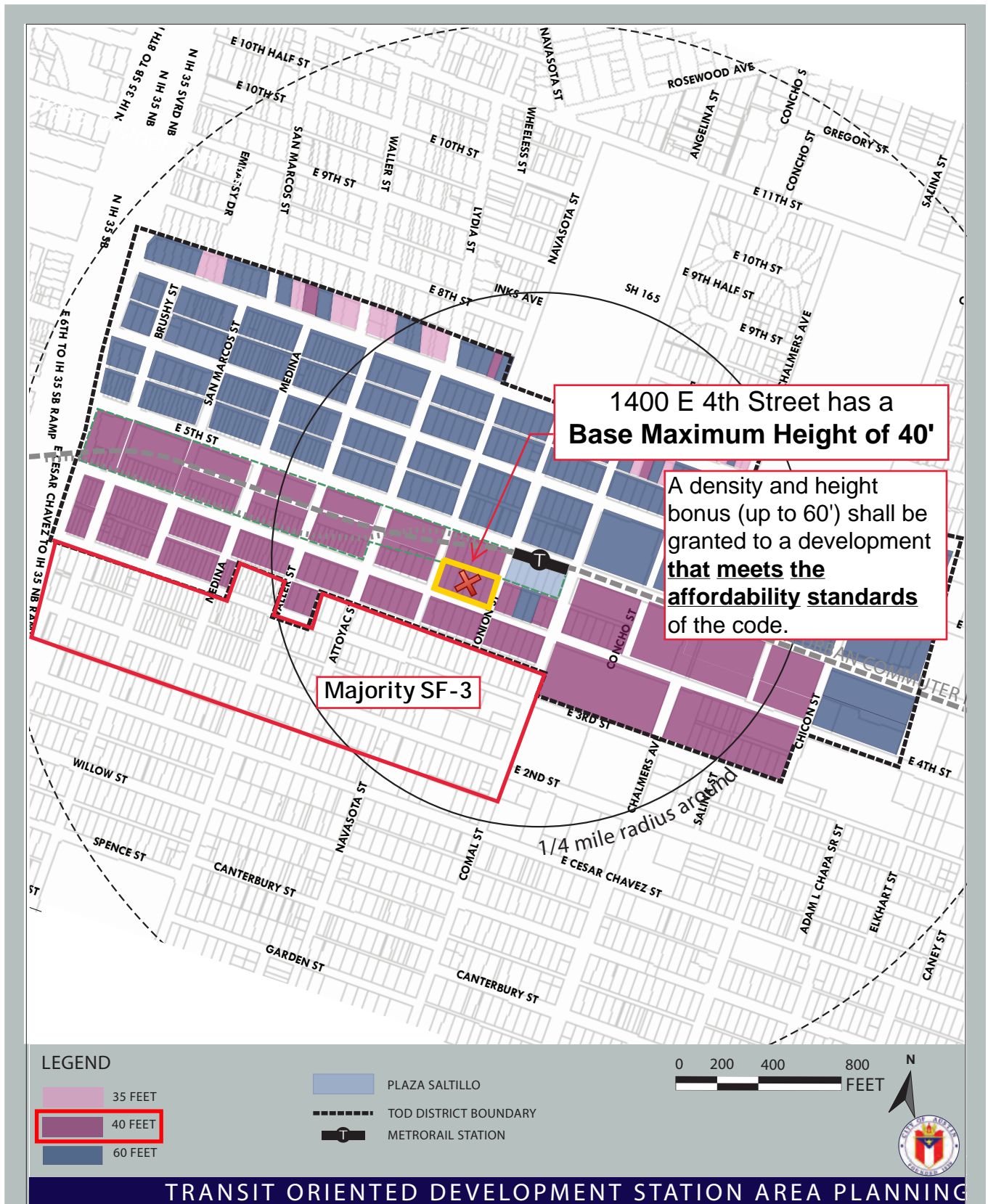
Chair, ECC-NPCTLand Development Committee

kristen.e.heaney@gmail.com

(512) 694-0363

CC: Hon. Mayor and Council of the City of Austin *via e-mail*  
ECCNPT *via e-mail*

**Figure 4-1: Base Maximum Building Height (with no development bonus)**

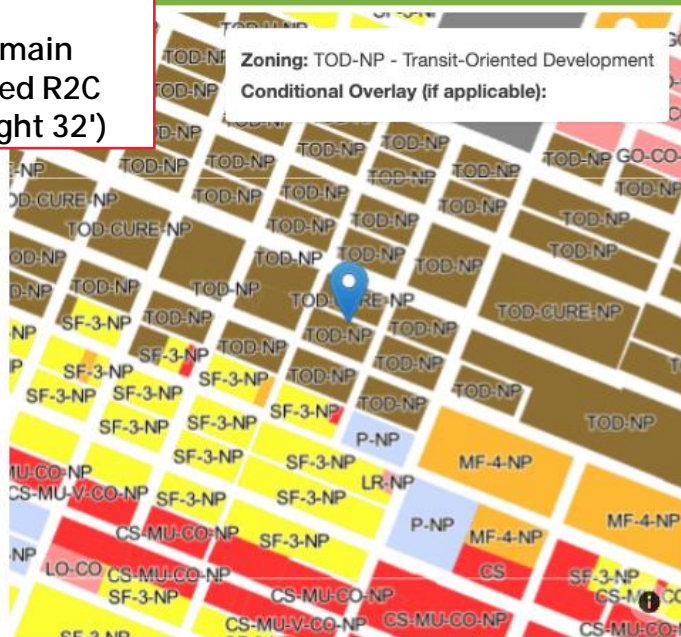




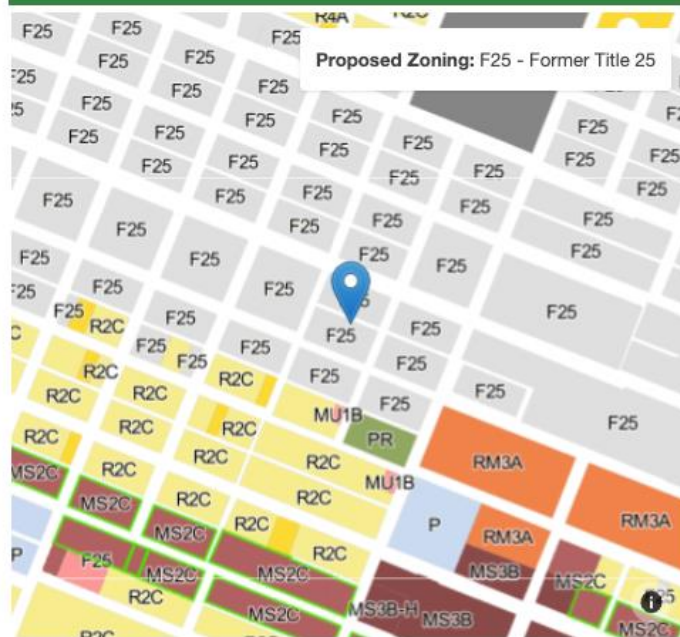
CODENEXT does not change the zoning designation at 1400 E 4th street and SF-3 zones remain residential, zoned R2C (overall max height 32')

1400 E 4th St, Austin, TX 78702, USA

### Existing Zoning



### Proposed Zoning



### Existing Zoning Legend

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>Rural Residence (RR)</li> <li>Single Family Residence (SF-1, SF-2, SF-3, SF-4A, SF-4B)</li> <li>Lake Austin Residence (LA)</li> <li>Urban Family Residence (SF-5)</li> <li>Townhouse &amp; Condo Residence (SF-6)</li> <li>Multifamily Residence (MF-1, MF-2, MF-3, MF-4, MF-5, MF-6)</li> <li>Mobile Home Residence (MR)</li> <li>Commercial Recreation (CR)</li> <li>Neighborhood Office (NO) Limited Office (LO)</li> <li>Neighborhood Commercial (NR)</li> <li>General Office (GO)</li> <li>Community Commercial (GR)</li> <li>Commercial Services (CS)</li> <li>Commercial Liquor Sales (CS-1)</li> <li>Commercial Highway (CH)</li> <li>Lake Commercial (L)</li> </ul> | <ul style="list-style-type: none"> <li>Central Business District (CBD)</li> <li>Downtown Mixed Use (DMU)</li> <li>Limited Industrial Services (LI)</li> <li>Industrial Park (IP)</li> <li>Warehouse Limited Office (W/LO)</li> <li>Major Industrial (MI)</li> <li>Research and Development (R&amp;D)</li> <li>Public (P)</li> <li>Aviation Services (AV)</li> <li>Agricultural (AG)</li> <li>Development Reserve (DR)</li> <li>Planned Unit Development (PUD)</li> <li>Planned Development Area (PDA)</li> <li>Transit Oriented Development (TOD)</li> <li>East Riverside Corridor (ERC)</li> <li>North Burnet/Gateway District (NBG)</li> <li>Traditional Neighborhood District (TND)</li> <li>Unzoned (UNZ)</li> </ul> |
|---|--|

(click to expand)

### Proposed Zoning Legend

- |  |   |  |
|--|---|--|
| <ul style="list-style-type: none"> <li>Rural Residential (RR)</li> <li>Lake Austin (LA)</li> <li>Residential 1 (R1A, R1B, R1C)</li> <li>Residential 2 (R2A, R2B, R2C, R2D, R2E)</li> <li>Residential 3 (R3A, R3B, R3C, R3D)</li> <li>Residential 4 (R4A, R4B, R4C)</li> <li>Manufactured Home (MH)</li> <li>Residential Multi-Unit 1 (RM1A, RM1B)</li> <li>Residential Multi-Unit 2 (RM2A, RM2B)</li> <li>Residential Multi-Unit 3 (RM3A)</li> <li>Residential Multi-Unit 4 (RM4A)</li> <li>Residential Multi-Unit 5 (RM5A)</li> </ul> | <ul style="list-style-type: none"> <li>Mixed-Use 1 (MU1A, MU1B, MU1C, MU1D)</li> <li>Mixed-Use 2 (MU2A, MU2B)</li> <li>Mixed-Use 3 (MU3A, MU3B)</li> <li>Mixed-Use 4 (MU4A, MU4B)</li> <li>Mixed-Use 5 (MU5A)</li> <li>Main Street 1 (MS1A, MS1B)</li> <li>Main Street 2 (MS2A, MS2B, MS2C)</li> <li>Main Street 3 (MS3A, MS3B)</li> <li>Commercial Center (CC)</li> <li>Urban Center (UC)</li> <li>Downtown Core (DC)</li> </ul> | <ul style="list-style-type: none"> <li>Commercial Recreation (CR)</li> <li>Commercial Warehouse (CW)</li> <li>Industrial Park (IP)</li> <li>Industrial General (IG)</li> <li>Industrial Heavy (IH)</li> <li>Research and Development (R&amp;D)</li> <li>Public (P)</li> <li>Aviation Services (AV)</li> <li>Agricultural (AG)</li> <li>Parks (PR)</li> <li>Conservation Lands (CL)</li> <li>Unzoned (UNZ)</li> <li>Former Chapter 25 (F25)</li> <li>(F25 properties retain existing zoning)</li> </ul> |
|--|---|--|

(click to expand)



- b. Renter-occupied units are reserved as affordable for a period of not less than 40 years for a family whose gross income does not exceed 60% of the median family income for the Annual Median Family Income.

### 4.3.3. Density and Height Bonus

#### A. Applicability

Article 3 Site Development Standards	
	Application:
Subsection 4.3.3 Height Bonus	Properties, or portions of properties, in the TOD Mixed Use Subdistrict are eligible for a height bonus (if base height is less than 60 feet)

#### B. Waiver of Site Development Standards and Building Height Allowance

A density and height bonus shall be granted to a development that meets the affordability standards in Subsection C below, which exempts the development from the following site development standards:

1. Maximum density requirement in Section 2.3;
2. Maximum Floor-to-Area Ratio (FAR) in Subsection 4.2.8; and
3. Chapter 25-2 Subchapter C, Article 10 of the LDC (Compatibility Standards) shall be waived with the following exceptions:

##### a. Height Limitations

In the TOD District within 100 feet of the TOD boundary, compatibility standards height limitations triggered by property outside of the TOD District shall be waived if owners of at least 66% of triggering properties within 25 feet of the site requesting the waiver agree. If there are no triggering properties within 25 feet, the height restriction shall be waived.

##### b. Setbacks

In the TOD District within 100 feet of the TOD boundary, compatibility standards setbacks triggered by property outside of the TOD District shall not be waived.measured by the LDC.

### Building Height Allowance

Any building on the site receiving the bonus may reach a total of 60 feet in height as measured by the LDC.

### **C. Affordability Standards**

To be eligible for the development exemptions and height allowance in Subsection B above, habitable space equal to a minimum of twenty-five percent of the entire square footage of the development shall be reserved as affordable according to the following:

1. The applicant/property owner shall be responsible for providing habitable space equal to 15% percent of the entire square footage of the development, with the option to provide additional affordable square footage.
2. Subject to funding availability, the City of Austin shall fund the provision of the remaining affordable square footage in order to achieve twenty-five percent affordability of the entire square footage of the development.
3. If the City of Austin is unable to fund the remaining affordable square footage in order to achieve twenty-five percent affordability, a density and height bonus may still be utilized provided that the applicant/property owner provides the required amount of affordable square footage as prescribed in 1. above.
4. The twenty-five percent requirement may be met by providing affordable owner-occupied units, rental units, or a combination of both. The following requirements assign the specific level of affordability for each unit type, which shall run with the land:

#### **a. Affordability Requirements for Owner-Occupied Units**

- i. Habitable space equal to twenty-five percent of the bonus area square footage of the development shall be reserved as affordable through a City approved affordable housing land trust or other shared equity model approved by the Director of NHCD, for not less than 99 years from the date a certificate of occupancy is issued, for ownership

and occupancy by households earning no more than 60 percent of the Annual Median Family Income for the City of Austin Metropolitan Statistical Area as determined by the Director of the NHCD; or

- ii. The applicant/property owner shall be responsible for providing habitable space equal to 15% of the entire square footage of the development at the affordability levels established in i. above. As described in Subsection C.2 above, the City of Austin shall fund, subject to funding availability, the provision of the remaining affordable square footage in order to achieve 25% affordability over the entire development. The City may elect to subsidize residential units in the building(s) for ownership purposes in any amount and at any level of affordability pursuant to criteria and procedures established by the Director of NHCD.

#### **b. Affordability Requirements for Rental Units**

- i. Habitable space equal to twenty-five percent of the bonus area square footage of the development shall be reserved as affordable, for a minimum of 40 years following the issuance of the certificate of occupancy, for rental by households earning no more than 50 percent of the Annual Median Family Income
- ii. The applicant/property owner shall be responsible for providing habitable space equal to 15% of the entire square footage of the development at the affordability levels established in i. above. As described in Subsection C.2 above, the City of Austin shall fund, subject to funding availability, the provision of the remaining affordable square footage in order to achieve 25% affordability over the entire development. The City may elect to subsidize residential units in the building(s) for rental purposes in any amount and at any level of affordability pursuant to criteria and procedures established by the Director of NHCD.

#### **D. Fee-in-lieu**

1. In order for a property owner/developer to pay a fee in-lieu of meeting the requirements in Subsection C

Where is the compelling reason not to provide affordable housing? Why would we allow even more height and density over 60' (in an area zoned for 40') without the affordable housing benefit that the Saltillo TOD is designed to encourage?

above, he/she must demonstrate a compelling reason to not provide housing on-site, and subject to the approval of the City Council, may pay into the Housing Assistance Fund a fee-in-lieu payment.

- a. The increase in gross building area above that established by the maximum Floor-to-Area (FAR) ratio as described in Subsection 4.2.8 and the maximum building height as described in Subsection 4.2.9
  - b. The number of additional dwelling units above that established in Section 2.3 multiplied by the average unit square footage of the entire development seeking the development bonus
  - c. The amount of gross building area constructed within a space previously restricted by compatibility standards.
3. The fee amount is adjusted annually in accordance with the Consumer Price Index All Urban Consumers, US City Average, All Items (1982-84 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor. The City Manager shall annually determine the new fee amounts for each fiscal year, beginning October 1, 2008, and report the new fee amounts to the City Council.
4. The Director of the NHCD may allocate money from the Housing Assistance Fund collected for the financing or production of affordable units, limited to those developments located within the TOD area or in an area within ½ mile of the TOD area, and that meets the following criteria:
  - a. Owner-occupied units are reserved as affordable for a period of not less than 99 years for a family whose gross income does not exceed 80% of the median family income for the Annual Median Family Income; or
  - b. Renter-occupied units are reserved as affordable for a period of not less than 40 years for a family



for a period of not less than 40 years for a family whose gross income does not exceed 60% of the median family income for the Annual Median Family Income.

#### 4.3.4. Super Density Bonus

##### A. Applicability

Article 3 Site Development Standards	Application:
Subsection 4.3.4 Super Affordability	Properties, or portions of properties, in the TOD Urban Mixed Use Subdistrict are eligible for a bonus

##### B. Waiver of Site Development Standards and Building Height Allowance

A density and height bonus shall be granted to a development that meets the affordability standards in Subsection C below, which exempts the development from the following site development standards:

1. Maximum density requirement in Section 2.3;
2. Maximum Floor-to-Area Ratio (FAR) in Subsection 4.2.8; and
3. Chapter 25-2 Subchapter C, Article 10 of the LDC (Compatibility Standards) shall be waived with the following exceptions:

###### a. Height Limitations

In the TOD District within 100 feet of the TOD boundary, compatibility standards height limitations triggered by property outside of the TOD District shall be waived if owners of at least 66% of triggering properties within 25 feet of the site requesting the waiver agree. If there are no triggering properties within 25 feet, the height restriction shall be waived.

###### Building Height Allowance

Any building on the site receiving the bonus may reach a total of 85 feet in height as measured by the LDC.

##### 4. Active Edge Requirements

The active edge requirements in Subsection 5.7.2 are waived with the following exceptions: