

|                               |                            |
|-------------------------------|----------------------------|
| <b>Alternative Compliance</b> | <b>205 W Hopkins St</b>    |
| <b>AC-23-02</b>               | <b>Local Joe's Kitchen</b> |



### Summary

|                                       |   |                            |   |
|---------------------------------------|---|----------------------------|---|
| <b>Request:</b>                       | Alternative compliance to vary from the two-story minimum standards     |                            |   |
| <b>Applicant:</b>                     | Joseph Perricone<br>205 W. Hopkins St.<br>San Marcos, TX 78666          | <b>Property Owner:</b>     | Catherine Nair<br>4211 Long Champ Dr.<br>Austin, TX 78746 |
| <b>Interior Floor Area:</b>           | 3,536 sq ft   | <b>Outdoor Floor Area:</b> | 1,200 sq ft   |
| <b>Parking Required:</b>              | 15 vehicular spaces<br>4 bike spaces                                    | <b>Parking Provided:</b>   | 22 spaces<br>4 bike spaces                                |
| <b>Days &amp; Hours of Operation:</b> | Monday-Friday: 10:30am-9pm    Saturday: 11am-9pm    Sunday: 10:30am-2pm |                            |   |

### Notification

|                  |                                    |                  |                |
|------------------|------------------------------------|------------------|----------------|
| <b>Posted:</b>   | N/A                                | <b>Personal:</b> | March 10, 2023 |
| <b>Response:</b> | None as of the date of this report |                  |                |

### Property Description

|                              |  |   |                          |
|------------------------------|--|---|--------------------------|
| <b>Legal Description:</b>    | Original Town of San Marcos, Block 15, Lot 7-8         |   |                          |
| <b>Location:</b>             | Southwest corner of W Hopkins St & N Fredericksburg St |   |                          |
| <b>Acreage:</b>              | 0.48 acres   | <b>PDD/DA/Other:</b>                      | N/A                      |
| <b>Existing Zoning:</b>      | CD-5D  | <b>Proposed Zoning:</b>                   | Same                     |
| <b>Existing Use:</b>         | Vacant Restaurant                                      | <b>Proposed Use:</b>                      | Restaurant               |
| <b>Preferred Scenario:</b>   | Medium Intensity Zone                                  | <b>Proposed Designation:</b>              | Same                     |
| <b>CONA Neighborhood:</b>    | Downtown   | <b>Sector:</b>                            | 8                        |
| <b>Utility Capacity:</b>     | Adequate   | <b>Floodplain:</b>                        | No                       |
| <b>Historic Designation:</b> | N/A  | <b>My Historic SMTX Resources Survey:</b> | Yes – Low (Not Historic) |

### Surrounding Area

|                           | <b>Zoning</b> | <b>Existing Land Use</b> | <b>Preferred Scenario</b>       |
|---------------------------|---------------|--------------------------|---------------------------------|
| <b>North of Property:</b> | CD-5D         | H.E.B.                   | Mixed Use Medium Intensity Zone |
| <b>South of Property:</b> | CD-5D         | Gym & Barber Shop        | Mixed Use Medium Intensity Zone |
| <b>East of Property:</b>  | CD-5D         | Apartments               | Mixed Use Medium Intensity Zone |
| <b>West of Property:</b>  | CD-5D         | Tantra / Coffee Shop     | Mixed Use Medium Intensity Zone |

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**Staff Recommendation**

|  |                       |                                     |                          |                          |                             |
|--|-----------------------|-------------------------------------|--------------------------|--------------------------|-----------------------------|
| <input type="checkbox"/>   | Approval as Submitted | <input checked="" type="checkbox"/> | Approval with Conditions | <input type="checkbox"/> | Denial                      |
| <ol style="list-style-type: none"> <li>1. A minimum of 1 shade tree shall be planted in front of the building within the public right-of-way along W Hopkins Street in accordance with the City's Development Code Section 3.8.1.6;</li> <li>2. Within the first 90 days after the business opens, a pergola-type shade structure shall be provided over the entire private outdoor seating area along W Hopkins Street;</li> <li>3. The existing fence adjacent to all three rights-of-way shall be revised to be 50% open and shall meet all other fence requirements in the Development Code;</li> <li>4. The gate entrance along Hopkins Street shall remain open for public access during business hours;</li> <li>5. All other code requirements shall be met;</li> <li>6. This permit shall expire upon an expansion of the building or site improvements of greater than 25%.</li> </ol> |                       |                                     |                          |                          |                             |
| <b>Staff:</b> Kaitlyn Buck   |                       |                                     | <b>Title:</b> Planner    |                          | <b>Date:</b> March 22, 2023 |



### History

In 2015, the City Council granted a Warrant to Schlotzky's Restaurant to allow a deviation from the building height requirement within the "T5 SmartCode" zoning designation on the property. The Warrant allowed the construction of a building less than two stories in height. This warrant has since expired as the building ceases to be used and occupied as a Schlotzky's Restaurant (See Section 3.c.ii of the attached Warrant).

When Schlotzky's developed the site in 2015, they constructed a "Gallery" along Hopkins Street. As defined by the Smartcode, a Gallery, sometimes referred to as an awning or canopy, is an attached lightweight colonnade that overlaps the Sidewalk.



Subject Property with Gallery in 2020

The Gallery was constructed to meet the *Private Frontage* requirements as required per the prior T5 zoning and replaced the need for planting shade trees in the sidewalk due to the existence of the Gallery for providing shade.

The Gallery was also constructed to bring the building more in conformance with the *Minimum Frontage Build Out Requirements* of the SmartCode which require buildings or structures to be developed closer to the public street. This is similar to the "Build-to" requirements of CD-5D zoning.

More recently, the Gallery was removed, bringing the property more out of conformance with the current CD-5D zoning. Staff is recommending conditions to address shade and building location as well as to meet the criteria for approval in the Development Code.

The current applicant also constructed a fence around the front of the property along West Hopkins Street without a permit. The constructed fence does not meet the fence standards provided by the Development Code. Staff has provided a condition to bring the fence into compliance.

|                               |                            |
|-------------------------------|----------------------------|
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### Additional Analysis

Section 4.3.4.4, *Minimum Two-Story Requirements*, states that structures within CD-5D zoning shall be a minimum of two-stories in height. The intent of this requirement is to “ensure that the building scale is compatible with other structures and the relationship of the building to the public space. A minimum building height also serves to promote a mixture of uses.”

The applicant is requesting this Alternative Compliance from the two-story building height requirement to use the existing one-story building and continue the restaurant use. Staff has provided analysis on the request based on the criteria in the Development Code.

In addition to this Alternative Compliance Request, the applicant is requesting a Conditional Use Permit to allow the sale of beer & wine (see CUP-23-07).

### Comments from Other Departments

|                        |            |
|------------------------|------------|
| <b>Police</b>          | No Comment |
| <b>Fire</b>            | No Comment |
| <b>Public Services</b> | No Comment |
| <b>Engineering</b>     | No Comment |

| Evaluation |              |          | Criteria for Approval (Sec. 4.3.4.4)  |
|------------|--------------|----------|---|
| Consistent | Inconsistent | Neutral  |   |
| <u>X</u>   |              |          | The approved alternate meets the intent of the minimum two-story requirements;<br><b><i>If approved with staff recommended conditions, the alternate meets the intent of the minimum two-story requirements.</i></b>  |
|            |              | <u>X</u> | The approved alternate conforms with the Comprehensive Plan and other adopted City Plans;   |
| <u>X</u>   |              |          | In CD-5D and the five downtown Design Contexts, the approved alternate conforms to the Downtown Design Guidelines.<br><b><i>Section A.1.4.8, Design Options for Pedestrian-Friendly Ground Floor: The existing building provides windows that engage the street and sidewalk to provide a high degree of visibility</i></b><br><br><b><i>Section A.1.4.10, Improving an Existing Front Setback: The proposed outdoor dining activates the street edge on Hopkins Street in-lieu of the existing set-back building. There is also a direct pedestrian entrance from Hopkins Street to the building through the outdoor dining.</i></b> |
|            |              | <u>X</u> | Is the applicant proposing a one-story portion to a new building or a new building that is just one-story?<br><b><i>The applicant is proposing to use the existing one-story building.</i></b>  |

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| Evaluation |              |          | Criteria for Approval (Sec. 4.3.4.4)   |
|------------|--------------|----------|--|
| Consistent | Inconsistent | Neutral  |  |
| <u>X</u>   |              |          | <p>If the proposal includes a one-story portion, is this portion being used to transition to a neighborhood context?<br/> <b><i>The property to the rear of the subject parcel is at a lower elevation and is a one-story building. Granting the alternative compliance would help the transition between the two parcels.</i></b></p> <p>Does the one-story portion have a specific use that is best served by a one-story in height building?<br/> <b>Most other restaurant uses in the Downtown Area are located within the ground floor either in a one-story or a multi-story building. The proposed one-story restaurant is more consistent with surrounding restaurant uses in the western portion of downtown such as Gumby's, North Street, or Palmers.</b></p> |
|            | <u>X</u>     |          | <p>Does the one-story portion of the building also include a rooftop amenity space that resembles a second story?<br/> <b>No.</b></p>  |
|            |              | <u>X</u> | <p>Is the location appropriate for just one story? A one-story building proposal may be more appropriate with the Approach design context than the University Edge context (See Design Guidelines).<br/> <b>The subject property is located within the "Downtown Core Design Context" (see map in packet). However, it is abutting the "Residential Transition Edge" design context to the west which is characterized by smaller buildings with lower heights.</b></p>  |
| <u>X</u>   |              |          | <p>What is the use and how is the rest of the site being developed? For instance, is the proposed building a restaurant and an outdoor dining area will be incorporated? Is the building a community center but a large community garden will be created on site?<br/> <b>The applicant is proposing to continue the previous use (restaurant with an outdoor dining area) in the existing building footprint.</b></p>   |

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|------------------------------------|---|
| Alternative Compliance<br>AC-23-02 | 205 W Hopkins St<br>Local Joe's Kitchen |
|------------------------------------|---|



| Evaluation |              |         | Criteria for Approval (Sec. 2.8.4.4)   |
|------------|--------------|---------|--|
| Consistent | Inconsistent | Neutral |  |
| <u>X</u>   |              |         | The request is consistent with the policies embodied in the adopted Comprehensive Plan.<br><b><i>The downtown land use section of the adopted Comprehensive Plan states that the future vision is to provide “public spaces or social interactions”. The proposed outdoor dining area is located on private property and is adjacent to a heavy trafficked public sidewalk.</i></b>  |
| <u>X</u>   |              |         | The request is consistent with the general purpose, intent and character of the development regulations applicable to the property.<br><b><i>See Criteria for approval in Section 4.3.4.4 above.</i></b>   |
|            | <u>X</u>     |         | There are special circumstances or conditions arising from the physical surroundings, shape, topography or other features affecting the subject property.<br><b><i>None noted.</i></b>   |
| <u>X</u>   |              |         | The request is not detrimental to the public health, safety or welfare, or injurious to other property within the area.<br><b><i>Staff does not find the request for one-story structures to be detrimental to the public health, safety or welfare, or injurious to other property within the area.</i></b>   |
| <u>X</u>   |              |         | The request either:<br>a. Does not have an adverse impact upon adjacent property or neighborhoods, including but not limited to, parking, traffic, noise, odors, visual nuisances, and drainage; or<br><b><i>Staff does not find the request to have an adverse impact upon adjacent property or neighborhoods. All other Development Code regulations will apply to the property.</i></b><br>b. Includes Improvements either on-site or within the public rights-of-way to mitigate any such adverse impacts<br><b><i>Staff has added a condition for the applicant to provide additional shade trees to be planted along the public right of way to promote pedestrian activity and to create an active streetscape in accordance with the City's street design standards as the previous Gallery was removed and no shade exists.</i></b> |
| <u>X</u>   |              |         | The request shall not have the effect of preventing the orderly use and enjoyment of other property within the area in accordance with the provisions of this Development Code, or adversely affect the rights of owners or residents of adjacent property or neighborhoods;<br><b><i>This request does not prevent the orderly use and enjoyment of the subject property, the adjacent properties, o the neighborhood.</i></b>  |

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| Evaluation |              |         | Criteria for Approval (Sec. 2.8.4.4)   |
|------------|--------------|---------|--|
| Consistent | Inconsistent | Neutral |  |
| <u>X</u>   |              |         | <p>The request shall not result in any incompatibility of the development to which it relates with, or the character and integrity of, adjacent property or neighborhoods;</p> <p><b><i>None noted.</i></b></p>  |
| <u>X</u>   |              |         | <p>The request meets the standards for the applicable zoning district, or to the extent deviations from such standards have been requested, that such deviations are necessary to render the subject development or improvement compatible with adjacent development or the neighborhood.</p> <p><b><i>Staff finds the request to allow for one-story structure will result in a more compatible building design to the adjacent existing one-story buildings.</i></b></p> |