

**CUP-16-29
 Conditional Use Permit
 Ivar's River Pub
 701 Cheatham Street**



Applicant Information:

Applicant: Curtis Gunnarson on behalf of Ivar's River Pub.
 P.O. Box 1764
 San Marcos, TX 78666

Property Owner: Gunner Inc.
 P.O. Box 1764
 San Marcos, TX, 78666

Applicant Request: Approval of a new Conditional Use Permit (CUP) to allow on-premise consumption of mixed beverages.

Notification Public hearing notification mailed on February 3, 2017

Response: None as of report date.

Subject Property:

Location: 701 Cheatham Street

Legal Description: River Pub, Lot 1

Frontage On: Cheatham Street

Neighborhood: Rio Vista

Existing Zoning: Community Commercial (CC)

Preferred Scenario Designation: Area of Stability

Utilities: Adequate

Existing Use of Property: Restaurant

Proposed Use of Property: Restaurant

Zoning and Land Use:

	Current Zoning	Existing Land Use
N of Property	SF-6	Single-family Residential
S of Property	P	Park / River
E of Property	SF-6	Single-family Residential
W of Property	P	Park

Code Requirements:

Conditional use permits (CUP's) for the sale of alcohol for on-premises consumption are subject to the criteria for review under both Section 4.3.4.2 of the Land Development Code (LDC), pertaining specifically to alcohol sales, and Section 1.5.7.5 of the LDC, which is applicable to all conditional uses. A CUP allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

As a threshold requirement under Section 4.3.4.2, a business applying for a CUP for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located within a zoning district that limits density to six units per acre or less. This distance is measured along the property lines of street fronts and from front door to front door, and in a direct line across street intersections. This location does meet the distance requirements.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2). This location is outside the Central Business Area (CBA) and is not subject to the additional restrictions with the CBA.

Case Summary

The subject property is located on Cheatham Street and the bank of the San Marcos River near Riverside Drive. Surrounding uses include a City Park and single-family residences. The property is currently occupied by the River Pub and Grill, which opened in 1996 and closed for repairs in 2013. The property previously had a valid Specific Use Permit (SUP) for the sale of mixed beverages on the property. A SUP was the previous term for a CUP prior to the code rewrite of 2004. Due to the closure of the business for a period exceeding 6 months, a new CUP is required.

The current structure is considered nonconforming due to its location within the Water Quality Zone and the San Marcos River Corridor. Furthermore, the finished floor elevation is below the required one foot above the 100-year base flood elevation. The property suffered damages during the Memorial Day and All Saint's Day floods of 2015. In July of 2016, the property owner received a Special Exception from the Zoning Board of Adjustments to *allow the reconstruction of a nonconforming building which has been damaged to the extent of more than 50% of its Replacement Cost (Section 4.5.3.7(b)(2))*. The Special Exception was approved with the condition that the applicant work with the City and stakeholders, including neighboring residents, to mitigate flooding on adjacent property to address landscaping, reduce light pollution, reassess the dumpster location, and perform a Watershed Protection Plan Phase 2 for the proposed drainage improvements.

Proposed improvements to the structure include interior remodeling, raising the structure to be above the base flood elevation and providing ADA access to the building to meet the current code. Other improvements to the site include landscaping along Cheatham Street as well as a privacy fence to provide screening from the adjacent single family properties. Staff has worked with the applicant to ensure that the Building Permit for this property addresses the conditions required by the Zoning Board of Adjustments. Furthermore, the Watershed Protection Plan Phase 2 has been approved.

According to the application, the gross floor area of the building is approximately 6,315 square feet and will have approximately 96 indoor and 93 outdoor fixed seats. Hours of operation are from 11:00 a.m. to 12:00 a.m. Monday – Sunday. The applicant is providing 54 parking spaces on the site which exceeds the minimum parking requirement of 48 spaces (1 space for every four seats or one space for every 100 square feet of gross floor area, whichever is less). The applicant is not proposing any entertainment facilities on the site.

Comments from Other Departments:

The City's Police Department did not have any concerns with the request and suggested that noise issues may be minimized if live music is confined to the stage along Cheatham Street rather than near the neighborhood. The applicant is not proposing any entertainment facilities on the site. There were no other concerns from other City Departments.

In 2006 – 2008, the River Pub pursued amendments to their original CUP in order to allow the Summer Concert Series events to be held on their property. Several conditions were placed on the CUP to mitigate issues with noise and trash from the summer concerts, however, there is no record of points being issued to the business.

Planning Department Analysis:

During the review of the application, staff expressed concern to the applicant regarding the proposal for possible entertainment facilities on the site. The applicant addressed these concerns by eliminating entertainment facilities on the site and is not proposing live music (acoustic or amplified) on the site. Staff further emphasized this concern by adding a condition to the CUP that no live music (acoustic or amplified) be allowed.

Furthermore, the requirements established by the Zoning Board of Adjustments such as increased fencing between the properties as well as additional landscaping along Cheatham Street, will help to buffer the business from the adjacent neighborhood. The applicant is also exceeding the minimum parking requirement on the site.

Section 4.3.4.2 of the LDC outlines the following criteria for approval. A summary of these items is listed below:

- a. Ivar's River Pub meets the location and distance requirements to a school, church or single-family residence;
- b. The property will be required to meet all noise ordinance requirements. The applicant is not proposing outdoor music and staff has recommended a condition be added to further address music;
- c. There is currently a 6 foot privacy fence that surrounds the property. Furthermore, as part of the approved building permit, and the requirements of the Special Exception, the applicant is adding new fencing to close in gaps in the fence and will ensure the existing fence is maintained;
- d. The business is required to meet all building code requirements;
- e. The applicant is providing 54 parking spaces on the site which exceeds the minimum parking requirement of 48 spaces;
- f. As required by the Special Exception, the applicant has reduced light pollution on the site; and
- g. All additional code requirements of section 4.3.4.2 shall be met.

Furthermore, Section 1.5.7.5 of the LDC outlines the following criteria for approval. A summary of these items is listed below:

- a. The property is currently zoned Community Commercial which allows a restaurant use;
- b. The Code discusses compliance with the existing Character Study for the area, however, there is currently no character study to review for this area;
- c. The proposed use is consistent with the general intent of the zoning district. Community Commercial zoning allows a restaurant use by right. The property previously operated as a restaurant since 1996, closing for repairs in 2013;
- d. Improvements have been added to the site to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods. Improvements include the installation of fencing, street screening

along Cheatham Street, mitigation of light pollution on the site, and an approved Watershed Protection Plan which included water quality and drainage improvements;

- e. The business is located on Cheatham Street which is utilized for access to commercial, residential, and public park uses and is designed to carry vehicular, bike, and pedestrian traffic;
- f. The use incorporates features such as the fence and landscape screening to minimize adverse effects on adjacent properties; and
- g. The existing site is legal, non-conforming, and improvements have been made to bring the site into greater conformance with the requirements of the zoning district.

Staff has reviewed the request for compliance with the Land Development Code and found that the request is consistent with the policies and the general intent of the zoning district and does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's recommendation is that they be approved initially for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years
- Final approval for the life of the State TABC license, provided standards are met.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. No live music (acoustic or amplified) shall be allowed on the site;**
- 3. The permit shall be effective upon issuance of the Certificate of Occupancy; and**
- 4. The permit shall be posted in the same area and manner as the Certificate of Occupancy.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. Upon a determination that the proposed use meets the threshold requirements under Section 4.3.4.2 of the LDC, the Commission shall evaluate the impact of the proposed conditional use on surrounding properties under section 1.5.7.5 of the LDC by considering the extent to which the use:

- is consistent with the policies of the Comprehensive Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and

- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Andrea Villalobos, CNU-A

Planner

January 30, 2017

Name

Title

Date