

<b>Conditional Use Permit – Purpose-Built Student Housing</b>	<b>North &amp; Lindsey Street</b>
<b>CUP-23-22</b>	<b>Student Housing</b>

### Summary

<b>Request:</b>	New Conditional Use Permit for purpose-built student housing		
<b>Applicant:</b>	Shannon Mattingly, Drenner Group 2705 Bee Cave Rd, Ste 100 Austin, TX 78746	<b>Property Owner:</b>	Daryl Burtshell, 409 North St, San Marcos, 78666 Peggy Taylor, 415 North St, San Marcos TX 78666 Matthew Kenyon, 420 North St LLC and 435 N Comanche Street LLC, 420 North St/435 N Comanche St, San Marcos, TX, 78666
<b>CUP Expiration:</b>	N/A	<b>Type of CUP:</b>	Purpose Built Student Housing
<b>Parking Required:</b>	788 spaces (750 beds at 1.05 spaces per bed)	<b>Parking Provided:</b>	563 proposed (750 beds at 0.75 per bed.) Does not include public parking spaces associated with AC-23-09.

### Notification

<b>Posted:</b>	February 9, 2024	<b>Personal:</b>	February 9, 2024
<b>Response:</b>	See attached comments in packet.		

### Property Description

<b>Legal Description:</b>	2.6 acres, more or less, out of the J.M Veramendi Survey, Abstract 17		
<b>Location:</b>	On the south side of Lindsey Street between N. Comanche St and North St, and southwest of the intersection between Lindsey St and North St.		
<b>Acreage:</b>	2.6 acres	<b>PDD/DA/Other:</b>	N/A
<b>Existing Zoning:</b>	CD-5D / MF-12/MF-18/MF-24	<b>Proposed Zoning:</b>	CD-5D
<b>Existing Use:</b>	Multifamily/ Residential	<b>Proposed Use:</b>	Purpose Built Student Housing
<b>Preferred Scenario:</b>	High Intensity Zone and Existing Neighborhood	<b>Proposed Designation:</b>	High Intensity Zone
<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 – High/ Medium

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<u>Surrounding Area</u>	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	Public and Institutional/ Multifamily-24	Texas State University Campus	Low Intensity
<b>South of Property:</b>	CD-5D (Character District-5 Downtown)	Sorority House/ Multifamily	Existing Neighborhood/ High Intensity- Downtown
<b>East of Property:</b>	CD-5D	Multifamily	High Intensity Zone
<b>West of Property:</b>	Multifamily-24	Multifamily/ single story residential	Existing Neighborhood

### Commission Recommendation

Approval as Submitted	<input checked="" type="checkbox"/> <b>Approval with Conditions / Alternate</b>	<input type="checkbox"/> <b>Denial</b>
<p><b>Speakers in favor or opposed</b>  Dave Anderson (in favor)  Matthew Kenyon (in favor)  Ed Theriot (in favor)  Edward Johnson (in favor)  Jared Chumsae (opposed)  Darla Munoz (opposed)  Vanessa Galvan (opposed)  Tyler Opiela (opposed)  Lisa Marie Coppoletta (opposed)  Isla Ruiz (opposed)  Adam Arndt (opposed)  Mikayla Rodi (opposed)</p> <p><b>Recommendation from the Planning and Zoning Commission Meeting held February 27, 2024.</b></p> <p>A motion was made by Commissioner Kelsey, second by Commissioner Spell to recommend <b>denial</b> of the request.  The motion failed with a 5-4 vote.  <b>For: 4</b> (Garber, Kelsey Meeks, Spell)  <b>Against: 5</b> (Agnew, Burleson, Case, Costilla, Dunn)  <b>Absent: 0</b></p> <p>A motion was made by Commissioner Agnew, second by Commissioner Burleson to recommend <b>approval</b> of the request with staff conditions.  <i>A motion was made by Chair Garber, seconded by Commissioner Spell, to amend condition #6 from 0.85 to 1.05 spaces per bedroom. The proposed amendment failed 3-6.</i>  The vote on the main motion to recommend conditional approval carried 7-2.  <b>For: 7</b> (Agnew, Burleson, Case, Costilla, Dunn, Kelsey, Spell)  <b>Against: 2</b> (Garber, Meeks)  <b>Absent: 0</b></p>		

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#### **Discussion Topics**

**Parking** – Chair Garber commented that his reading of the submitted parking study was that the parking for existing student housing complexes was full. He referenced a couple who resided at the Parlor apartments but who were unable to obtain parking.

**Neighborhood Commission Resolution** - Chair Garber noted that the Neighborhood Commission were going to be submitting a Recommendation Resolution to the City Council opposing purpose built student housing and rent by the bedroom apartments.

**Rent by the Bedroom/ Need for Student Housing** – Chair Garber questioned the need for additional rent by the bedroom housing. He questioned why the University had not weighed in on this project, even though it would be housing their students, and that the University expected the City to solve its housing problems. Commissioner Spell noted the University had recently purchased two existing apartments to turn into dorms and that those properties had been taken off the tax roll, raising overall taxes for everyone, and that the University should do a better job consulting with the City. Commissioner Dunn stated that when she was a student, she intentionally chose to live off campus and that there was a stigma of student housing which created fear in the community. She asked the developer whether or not they would be willing to reconceptualize the project as conventional housing- the developer (Matthew Kenyon) responded that he was willing to talk about it but that students would live there regardless. Commissioner Agnew noted that this was not a discussion about rent by the bedroom because that was already allowed.

**Downtown Area Plan** – Commissioner Spell mentioned that this was the first case which was subject to an Area Plan and that it would set a bad precedent to disregard it. Commissioner Case said that the language regarding student housing in the Downtown Area Plan appears to have been an oversight.

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### Staff Recommendation

Approval as Submitted	<b>X</b>	<b>Neutral/Approval with Conditions</b>	Denial
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Due to varying factors including the conflict with the recently adopted Downtown Area Plan, staff is providing a **neutral** recommendation and leaves a decision of approval, denial, or approval with conditions up to the Planning and Zoning Commission.

Should the Commission choose to recommend approval of CUP-23-22, staff propose the following conditions (please note that these have been amended from the conditions previously presented to the Planning and Zoning Commission):

1. The development shall register with the City of San Marcos Long Term Rental Registration program per Chapter 34, Article 7, Division 3 of the City's Code.
2. The developer agrees to an extended Demolition Delay period. Section 2.7.4.3. B of the Development Code is modified to allow the Historic Preservation Commission the ability to extend the delay an additional 270 days (9 months), but in no event shall the total extension be for more than 360 days (1-year).
3. The lease shall be made publicly available on the property's website and shall contain the following text:  
*"In the event the Leased Premises are unavailable for occupancy on or before the commencement date of this Lease, Landlord shall offer Tenant the choice of: 1) accepting temporary safe, decent, and sanitary housing, provided by Landlord, at an alternate location within the City of San Marcos, or within a seven mile radius of the Leased Premises, with Tenant remaining bound by the terms of the Lease; or 2) terminating the Lease with no financial penalty and with full reimbursement to Tenant of all deposits and pre-paid items within 10 days."*
4. The development shall offer both rent-by-the-bedroom and conventional leases where units may be rented in their entirety.
5. The development shall comply with the following parking calculations: 1 space per unit west of North street and 0.85 spaces per bedroom east of North Street. The development shall not provide less than 0.78 parking spaces per bedroom for the entire project. The developer shall pay fee-in-lieu for the parking spaces not provided east of North Street. This CUP shall expire within 3 years unless an application for a permit is submitted to the City.
6. The development shall offer both "rent by the bedroom" leases and conventional leases where the apartments may be rented in their entirety.
7. The development shall be a minimum of a silver in the LEED green building program. Evidence of certification shall be required prior to the issuance of a Certificate of Occupancy. Current tenants of the existing residential structures shall be given a minimum of six (6) months' notice to find other accommodations.
8. The property west of North St shall not exceed 4 stories in height and shall be limited to no more than 3 bedrooms per unit. The development shall offer both "rent by the bedroom" leases and conventional leases where the apartments may be rented in their entirety.

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9. The impervious cover for the land west of North St. shall not exceed 80%.
10. The developer shall not sell the property to a non-taxpaying entity for 7 years from the effective date of the Conditional Use Permit.
11. This CUP shall expire within 3 years unless an application for a permit is submitted to the City.
12. The development shall comply with all other development code regulations. Packet materials are provided for informational purposes only.
13. The property west of North St. shall comply with the conditions above but shall not meet the definition of student housing.

<b>Staff:</b> Julia Cleary, AICP	<b>Title :</b> Senior Planner	<b>Date:</b> February 21, 2024
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### History

In 2017, a SMART Code warrant for student housing at 410 North St was approved by City Council (Res 2017-128R).

In 2021, a subsequent zoning change and Student Housing Conditional Use Permit for part of the site located east of North St was denied by the Planning and Zoning Commission and withdrawn by the applicant (ZC-21-09/ CUP-21-15).

### Additional Analysis

A Student Housing CUP would allow the project to be marketed specifically to students and would allow more than 3 bedrooms per unit. Note: “rent by the bedroom” leases are not regulated by the City.

Per Chapter 7, Article 1 of the Development Code, 1.05 parking spaces are required per bedroom for Purpose Built Student Housing which would result in a parking requirement of 788 spaces based on the applicant’s current plan for 5 & 7 story buildings. The applicant has indicated they will request fee in lieu to allow a parking ratio of 0.75 per bedroom and has provided a summary of the provided parking in other student developments within the City (included in the packet). Parking fee in lieu is processed during the site permit stage and is permitted in the Development Code. Staff are proposing a condition that would require a parking ratio of at least 0.85 spaces per bedroom which is consistent with the 2017 student housing approval conditions. The applicant must pay a fee for the remaining spaces.

In addition to this conditional use permit request the following applications have also been submitted by the applicant for this site:

- Preferred Scenario Amendment for the land west of North St from Existing Neighborhood to High Intensity (Downtown) - PSA-23-02
- Zoning Change request from MF-24/MF18 and MF-12 to CD-5D (ZC-23-19)
- Alternative Compliance request to allow for an increase from 5 to 7 stories (AC-23-09)

The Downtown Area Plan was adopted by Council on November 6, 2023 after the application was submitted, and any new purpose Built Student Housing would not meet the intent of the adopted Area Plan. The request is not considered to be in compliance with the “Recommended Housing Types” on page 58 of the Downtown Area Plan which states “*Multi-family and mixed-use housing types are the primary products recommended in and near Downtown and should be marketed to all demographics (not just or primarily to students).*” Staff are proposing a “neutral” recommendation in lieu of a “denial” because aside from the recommendations in the Downtown Area Plan, the site’s location next to the University is generally considered to be an appropriate location for Student Housing, and the Conditional Use Permit offers a tool to impose conditions on the development which would otherwise be unavailable should the applicant develop under a multifamily use which is already allowed by right on the site.

### Comments from Other Departments

<b>Police</b>	No Comment
<b>Fire</b>	No Comment
<b>Public Services</b>	No Comment
<b>Engineering</b>	Existing drainage structure and entrance from Lindsey St should be considered as part of the site permit.

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Evaluation			Criteria for Approval (Sec. 2.8.3.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			<p><b>The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive plan.</b>  <i>The development is currently located within 2 separate designations in the Comprehensive Plan and a Preferred Scenario Amendment for the eastern part of the site is being considered concurrently.</i></p> <p><i>Vision San Marcos envisions a vibrant Downtown in which density is encouraged and supported “while also (prioritizing) maintaining the unique character of downtown, especially historic structures and local businesses” (p70). There are several historic structures on the part of the site to the west of North Street and the applicant is proposing to include a condition which would require them to be either integrated into the development or relocated.</i></p> <p><i>The Comprehensive Plan also encourages Student Housing in appropriate locations (Housing Goal 2) and location next to the University Campus makes it ideal for student housing.</i></p>
	<u>X</u>		<p><b>The proposed use is consistent with any adopted neighborhood character study for the area.</b>  <i>This site is partially located within the draft Downtown Plan. Purpose Built Student Housing is not in compliance with the “Recommended Housing Types” on page 58 of the Downtown Area Plan Multi-family and mixed-use housing types are the primary products recommended in and near Downtown and should be marketed to all demographics (not just or primarily to students).”</i></p>

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Evaluation			Criteria for Approval (Sec. 2.8.3.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			<p><b>The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.</b></p> <p><i>There are several purpose-built student housing and multifamily developments in the immediate area. The proposed use is compatible with the surrounding multifamily development and Texas State Campus to the North. The proposed student housing use is similar to and compatible with the student housing uses to south and east of the site – the Sanctuary Lofts to the south and the Vistas apartments to the east of the development were recently purchased by Texas State. The Pointe apartments is also marketed as “Student Housing”. The nearest single-family zoning is located 600 feet away.</i></p> <p><i>The property is required to meet all development requirement including Chapter 6 Environmental Standards and the requirement for a Watershed Protection Plan per Chapter 2, Article 6 of the Land Development Code.</i></p>
<u>X</u>			<p><b>The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood.</b></p> <p><i>While this development would likely increase pedestrian and vehicular traffic in the immediate area, the ultimate vision for downtown is to provide a walkable environment. The proposed student housing use is similar to the Multi-family use permitted by right under the existing zoning districts. The developer will be required to construct significant streetscape improvements, including sidewalks, at the time of development. Furthermore, student housing adjacent to Texas State University will likely reduce the number of students driving to campus which can reduce commuter vehicular traffic.</i></p>



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Evaluation			Criteria for Approval (Sec. 2.8.3.4)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<p>The proposed use incorporates roadway adjustments, traffic control devices or mechanisms and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets.</p> <p><i>No specific adjustments have been proposed by the applicant at this time however a Traffic Impact Analysis will be required at the time of development to determine any required mitigation. No additional curb cuts are currently proposed.</i></p>
<u>X</u>			<p>The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.</p> <p><i>The developer would be required to follow all City codes, including the new downtown design architectural requirements related to massing and articulation for the land zoned CD-5D.</i></p>
<u>X</u>			<p>The proposed use meets the standards for the applicable district, or to the extent variations from such standards have been requested that such variations are necessary to render the use compatible with adjoining development and the neighborhood.</p> <p><i>The development must meet Code requirements including the CD-5D district standards (for the part of the site zoned CD-5D) for parking, articulation and varied massing requirements for buildings over 3 stories high. Please note that these are not necessarily reflected in the images submitted by the applicant which are provided for reference only. An Alternative Compliance request has been submitted to increase the height to 7 stories (AC-23-09) – this will be considered separately; and staff are recommending partial approval only.</i></p>

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Evaluation			Criteria for Approval (Sec. 5.1.4.9)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<b>The ability for the development to transition in the future to accommodating a more diverse population</b> <i>The development will be constructed as apartments which could be transitioned to conventional units in the future. It should be noted that CD-5D allows no more than 3 bedrooms per unit for traditional multifamily.</i>
<u>X</u>			<b>The durability, energy efficiency, and longevity of the building;</b> <i>The developer is proposing to construct the building to LEED standards (silver). A condition requiring certification prior to a Certificate of Occupancy is attached to this CUP.</i>
<u>X</u>			<b>The location of the development in relation to alternative transportation networks to and from the university including sidewalks, bike lanes, and transit networks;</b> <i>The site is located across the street from the University and so is accessible on foot.</i>
		<u>X</u>	<b>Mitigation of any adverse effects on adjacent property or neighborhoods;</b> <i>See previous responses regarding Approval Criteria 2.8.3.4. No significant adverse impacts are anticipated on adjacent properties when compared to the multifamily use allowed by right, and the development is similar to the existing surrounding student housing.</i>
	<u>X</u>		<b>Compliance with the Comprehensive Plan, Downtown Master Plan, and any other adopted city plans or policies.</b> <i>See response to criteria for approval Section 2.8.3.4 – Purpose Built Student Housing is not considered to be in compliance with the “Recommended Housing Types” on page 58 of the Downtown Area Plan Multi-family and mixed-use housing types are the primary products recommended in and near Downtown, and should be marketed to all demographics (not just or primarily to students).”</i>