

Variance	1701 S IH 35
VR-25-01	Bird Dog



Summary

Request:	Variance to Section 5.1.5.5 of the San Marcos Development Code, regarding the Sale and On-Premise Consumption of Alcohol within 300 feet of a public school.		
Applicant:	Michael Delacruz 1701 S IH 35 San Marcos, TX 78666	Property Owner:	Justin Pearson 510 Lazy Lane San Marcos, TX 78666

Notification

Personal:	12/20/24		
Response:	None as of the date of this report		

Property Description

Legal Description:	Lot 1 in the Goodnight Business Center Subdivision (2004)		
Location:	Southeast corner of Del Sol Dr and IH 35 Frontage		
Acreage:	1.052 acres	Acreage:	1.052 acres
Existing Zoning:	General Commercial (GC)	Existing Zoning:	General Commercial (GC)
Existing Use:	Restaurant		
Preferred Scenario:	Mixed Use Low		
CONA Neighborhood:	Sunset Acres		
Utility Capacity:	Adequate	Utility Capacity:	Adequate
Historic Designation:	N/A	Historic Designation:	N/A

Surrounding Area

	Zoning	Existing Land Use	Preferred Scenario
North of Property:	Single-Family-6 (SF-6)	Single-Family Homes (Sunset Acres Subdivision)	Neighborhood Low Intensity Zone
South of Property:	General Commercial (GC)	Service (RiverCity Screen printing)	Mixed Use Low Intensity Zone
East of Property:	Public and Institutional (P)	Public School (Mendez Elementary)	Neighborhood Medium Intensity Zone
West of Property:	Heavy Commercial (HC)	Auto Repair (Dealer Alternative Auto Care)	Commercial/Employment Medium Intensity Zone



Variance	1701 S IH 35
VR-25-01	Bird Dog

Staff Recommendation

Approval as Submitted	<input checked="" type="checkbox"/> Approval with Conditions	Denial
<ol style="list-style-type: none"> 1. The Variance shall be valid for one (1) year (concurrent with the associated Conditional Use Permit), provided standards are met; and 2. The following statement shall be included on all restaurant menus: “Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages”; and 3. The restaurant shall operate such that gross revenue from alcohol sales will be less than 25% of total gross revenue for the business, with the restaurant submitting annual reports indicating this condition has been met. 		
Staff: Kaitlyn Buck	Title: Planner	Date: 1/8/2025

History

This is a new request.

Additional Analysis

This Variance application accompanies a Conditional Use Permit (CUP-24-65) for on-premise consumption of beer and wine. Please note, this is the first distance variance requested at this location.

Section 5.1.5.5 of the Land Development Code requires that the sale and on-premise consumption of alcohol at a business shall be more than 300 feet of a public school “measured in a direct line from the property line of the place of business, and in a direct line across intersections”. The subject business is approximately 185 feet from Mendez Elementary School measuring from the property line to the property line. This section of the code provides relief in the form of a variance under Section 2.8.3.7.

Section 2.8.3.7.C of the Land Development code requires there to be a distance of “at least two hundred (200) feet from the primary entrance of the applicant business to the primary entrance of the school measuring using a straight line”. The primary entrance of Mendez Elementary School is approximately 900 feet from the primary entrance of the subject business.

Section 2.8.3.7.D of the Land Development Code requires the governing officer of the school board provide a letter of no-objection to the distance variance request. See attached letter of no objection. In the letter the School District requests the following language be printed on the menu, “Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages.” This request has been added to the proposed conditions of approval.

Additionally, Section 2.8.3.7 of the Land Development Code restricts the sale of alcohol to less than twenty-five (25) percent of the total gross revenue. The code requires the business to file an annual report to ensure this requirement is adhered to. For this reason, staff has included this as a proposed condition of approval.

Comments from Other Departments

Police	No Calls Reported
Fire	No Comment
Public Services	No Comment
Engineering	No Comment

Variance	1701 S IH 35
VR-25-01	Bird Dog



Evaluation			Criteria for Approval (Sec. 2.8.3.7)
Consistent	Inconsistent	Neutral	
<u>X</u>			Bars and package stores are not eligible for this variance. <i>The applicant is not a bar or package store.</i>
<u>X</u>			The business seeking the variance is a restaurant that agrees to limit its operation characteristics such that the restaurant shall maintain its business in a manner to insure that its gross revenue from the sale of alcohol shall be less than twenty-five (25) percent of the total gross revenue of the business.
<u>X</u>			There is a distance of at least two hundred (200) feet from the primary entrance of the applicant business to the primary entrance of the school measured using a straight line. There is a distance of approximately 900' between primary entrances.
<u>X</u>			The business seeking the variance shall comply with all aspects of the conditional use permit process.
<u>X</u>			All conditional use permits for the on-site alcoholic beverage consumption that include a distance variance shall be, for the life of the permit, subject to annual renewal. Variances are non-transferable and separate from the conditional use permit. Any hearing concerning a renewal shall be conducted by the commission who shall have authority to grant or deny the renewal.
<u>X</u>			For each neighboring church or school that is within the distances of the proposed restaurant, as described in and measured in accordance with Section 5.1.5.5, the proposed restaurant shall present a letter describing the operation characteristics of the restaurant and shall obtain a statement signed by the governing officer of the board of any such church or school stating that the church or school does not oppose the granting of the distance variance based on the operation characteristics stated in the letter. A letter from the Superintendent of the San Marcos Consolidated Independent School District is included in the application packet. The letter does not object to the granting of the CUP/ Variance subject to the inclusion of language on the menu.
<u>X</u>			The business must agree, in writing, to restrict its operation characteristics as set forth in the request to the church or school, as may have been set forth in the request to the church or school. These operating characteristics shall be included in the conditional use permit.
<u>X</u>			The business shall agree to file an annual report, due forty-five (45) days before the hearing on the annual conditional use permit renewal, setting forth the gross sales of the business and the gross sales derived from the sale of alcoholic beverages. This has been recommended as a condition on the proposed variance and Conditional Use Permit (CUP-24-65).