

May 26, 2015

Zoning

Commission

CUP-15-09

Vote

APPEAL

City Clerk

JUN 09 2015

City of San Marcos



Honorable City Council, the permit request for the CUP-15-09 (Hooters) at 1305 IH35 is a mistake and does not represent the values or the wants of the affected residential area of Sunset Acres. It also violates City of San Marcos Land Development Code.

My first statement to this Honorable Council is The City of San Marcos wants to put a Bar/restaurant next to our homes. Please let that resonate with you as you read/hear this. This quiet peaceful neighborhood is going to be ruined by NOISE and Traffic. The 4-3 vote by the Zoning Commission is erroneous for the following reasons.

Read this cover page for the CUP-15-06 staff report, "Zoning and Land Use Pattern: South of Property (1305 IH 35) SINGLE FAMILY HOMES, West of Property SINGLE FAMILY HOMES." This erroneous vote doesn't take into consideration to the outdoor activities this business does with the customer base too numerous to list properly. In the current City Ordinance it states "If you can hear noise while standing on your property line – IT IS TOO LOUD. (Nuisance SEC 34.088)", a proposed 6 foot wall WILL NOT stop the noise from being heard from our properties. If that was the case then we wouldn't hear Engine 4 on Broadway Street when they leave on a call.

The operating times for the current business next to our homes is 7:30am – 6:00pm M-F & 7:30 – 3:00pm on Saturday with no operating hours on Sunday. This incoming business' operating times which is equates to max noise & traffic from doing basic business is 11:00 am to MIDNIGHT; Sunday – Thursday and 11:00 am to 1:00 am Friday & Saturday. The operating times directly conflict with a residential neighborhood, and our family values. With 159 proposed parking spaces the egress from one half full event will inundate and overwhelm our neighborhood with traffic. A full event will make our neighborhood streets a parking lot.

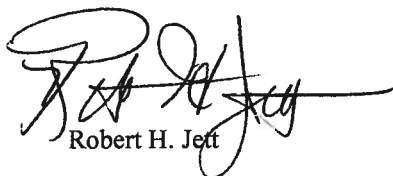
I and others bought our properties & raised our families in this neighborhood knowing that during the day we would have the noise of a business doing business during the day. We had our quiet time and quality of life in the evenings. This will all go away if the City of San Marcos allows this business to be built and operate alongside our homes. Along with the loss of our quality of life we will suffer loss in property value.

We do not want it next to our homes; please see the signatures on this petition submitted to this Council that show this.

Stated in Subpart B – Land Development Code 4.3.4.2.b.2.a.1 – "1. The place of business covered by the permit shall not be located within 300 feet of a residence located within a zoning district that limits density to six units per acre or less."

Subpart B - Section 4.3.4.5.a "Limited Number of Unrelated Individuals. All dwelling units located in SF-R, SF-11, SF-6, SF-4.5, DR, TH, PH-ZL zoning districts shall be restricted to occupancy by a family, and up to one other person who is not related to any of the family members by blood, legal adoption, marriage, or conservatorship." This Ordinance prevents our SF-6 residential zone properties to be more than 1 unit per property which equates to less than 6 units per acre.

This permit is in direct violation of the City of San Marcos Land Development. The vote by the Zoning Commission should be nullified, and the CUP-15-09 permit request should be denied for this address.



Robert H. Jeff

We the Citizens of Sunset Acres are against the Planning and Development
Services approving and issuance of Permit for CUP-15-09 (Hooters)
at 1305 S IH 35.

Address	Printed Name	Signature
200 Patricia Drive	Rudy Valles	Rudy Valles
201 Patricia Drive	Plemento Bancechi	
202 Patricia Drive	JOHN A WEBER	John A. Weber
203 Patricia Drive	VACANT	VACANT
202 Parker Drive	John Hamilton	John Hamilton
203 Parker Drive	Elizabeth Mendez	Elizabeth Mendez
204 Parker Drive		
205 Parker Drive		
206 Parker Drive	Rosie L. Jara	Rosie Jara
207 Parker Drive	Mr. & Mrs. Robert Duntun	
208 Parker Drive	José Calderon	José Carr
209 Parker Drive	Yolanda Lopez	
211 Parker Drive	Benita Capetillo	
212 Parker Drive		
213 Parker Drive		
214 Parker Drive	Martellena R	
215 Parker Drive		
217 Parker Drive	Joel Tristan	Joel Tristan
219 Parker Drive	ROBERT JETT	Robert Jett

218 PARKER DR. JOSE TOLEDES JOSE Toleides

216 PARKER DR. MIGUEL OROZIO MIGUEL OROZIO

220 PARKER DR. Mr + Mrs Franco & Lupe Lopez

206 PATRIKA Mr. Domingo Johns

120. HAYS ST. Donato Ruelas

Section 4.3.4.2 - Conditional Use Permits for On-Site Alcoholic Beverage Consumption

- (a) Conditional Use Permits granted for on-premises consumption of alcoholic beverages, unless otherwise specified by the Planning and Zoning Commission, shall remain in effect for the duration of the State TABC (Texas Alcoholic Beverage Commission) license or permit until the license or permit is cancelled, revoked, or allowed to expire, or until one of the following conditions occurs, after which the dispensing of alcoholic beverages for on-premises consumption requires issuance of a new Conditional Use Permit:
- (1) The State TABC license or permit is reissued under a different [license or] permit holder's name.
 - (2) The Conditional Use Permit is forfeited, suspended, or revoked in accordance with Section 1.5.7.6.
 - (3) There is a significant change in the name of the establishment, or any physical or operational change in the business that increases off-site impacts to surrounding properties.
- (b) *Establishments Dispensing Alcoholic Beverages for On-premises Consumption.* Specific use conditions for establishments dispensing alcoholic beverages for on-premises consumption are as follows:
- (1) *Procedures.*
 - a. The applicant shall complete and submit an application form to be provided by the City.
 - b. The Director shall review the application form and Site Plan in accordance with Chapter 1 for completeness. Except as provided in subsection (b)(7) of this Section ("Limit in the CBA district") for the issuance of certain Conditional Use Permits through an administrative process, the Director shall place the application on the Planning and Zoning Commission calendar for its consideration and notify all landowners within 200 feet of the site.
 - c. The Planning and Zoning Commission shall hold a public hearing when considering an application for a Conditional Use Permit and when considering a request for a variance from the distance requirements set forth in 4.3.4.2 (b)(2). The Commission shall hold a public hearing to consider the request for renewal of any CUP subject to a variance granted under this section.
 - d. The Commission shall act on a completed application within 30 days of the submission of the application to the Director, unless an application is placed on a waiting list for consideration of permits in the CBA district when the limit of 12 unrestricted Conditional Use Permits or 15 restaurant Conditional Use Permits has been reached, or unless an application is delayed at the request of the applicant. When a permit is authorized by the commission, it shall be issued by the Director only after a TABC license or permit is issued to the applicant by the state, and a copy of the license or permit is submitted to the Director.
 - (2) *Standards.* For the Conditional Use Permit to be initially issued or an existing permit to be renewed or allowed to continue, the following standards will be met (figures in parentheses at the end of each subsection are weighted values to be used in the review or revocation process in subsection (b) (5) and (6) of this Section):
 - a. Location relative to existing land uses.
 1. The place of business covered by the permit shall not be located within 300 feet of a residence located within a zoning district that limits density to six units per acre or less.
 2. It is unlawful for a person to sell or engage in the business of selling any alcoholic beverages for on-premises consumption where the place of business is located:
 - (a) Within 300 feet of a church, public or private school, or public hospital.
 - (b) Within 1,000 feet of a public school, if the Planning and Zoning Commission receives

- a request from the board of trustees of the applicable school district (refer to Section 38.007 of the Texas Education Code;
- (c) Within 1,000 feet of a private school if the Planning and Zoning Commission receives a request form the governing body of the private school.
3. The measurement of the distances regulated in this Section 4.3.4.2 shall be as follows:
- (a) Between a place of business where alcoholic beverages are sold and the church, public hospital, or residence shall be along the property lines of street fronts and from front door to front door, and in a direct line across street intersections.
 - (b) Between a place of business where alcoholic beverages are sold and the public or private school shall be:
 - i. In a direct line from the property line of the place of business, and in a direct line across intersections.
 - ii. If the permit or license holder is located on or above the fifth story of a multi-story building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.
4. If a residence, church, public or private school, or public hospital locates within 300 feet of an establishment with a Conditional Use Permit after the permit is issued, the permitted establishment shall not be considered to be out of compliance with this Chapter.
- b. The activities of the establishment selling alcoholic beverages for on-premises consumption shall not produce noise levels in excess of those described in Chapter 6, Article 4 so as to not interfere with the reasonable use and enjoyment of adjacent property or public areas. (2)
 - c. The premises shall be effectively screened from any adjoining property which is zoned for or utilized for residential purposes by a privacy fence designed to be compatible with surrounding buildings and approved by the Planning and Zoning Commission. The wall or fence shall be six feet in height and shall be maintained in good condition. (7)
 - d. The place of business shall be designed, constructed and maintained at all times in compliance with all fire, health, electrical, plumbing, and building code standards and regulations in effect within the City. Particular attention shall be given to the location of exits and seating arrangements in accordance with the fire prevention code. The maximum occupancy limit for each structure shall be established as provided in the building code. Review and revocation procedures (see subsection (b) (6) and (7) of this Section):
 - 1. Violation of maximum occupancy. (2)
 - 2. Violation of other fire, health, electrical, plumbing, and building codes which is not corrected within 30 days of notification of the code violation by an authorized City code enforcement official. (7)
 - e. The place of business and premises shall provide for off-street parking as follows:
 - 1. In accordance with Chapter 6.
 - 2. All parking areas or parking spaces shall be set back a minimum of five feet from any public right-of-way. (7)
 - 3. All off-street parking areas shall be separated from the street right-of-way by a barrier, curb or tire stop approved by the Director of Public Works. (7)

4. Collective utilization of off-street parking by two or more buildings or uses on property of common ownership shall be permitted; provided, however, that the total of off-street parking spaces shall not be less than the sum of the requirements for the particular individual uses computed separately in accordance with applicable regulation for off-street parking spaces. (4)
5. Establishments located in a C-2 commercial district on November 20, 1978, as indicated upon the Zoning Map of the City on that date and which were dispensing liquor, wine, or beer for on-premises consumption under permit by the state on that date are exempt from the requirements of this subsection (b)(2)e.
- f. All appropriate areas of the premises outside of the place of business shall be well lighted for the safety and protection of patrons. Lighting shall be arranged, however, so as to not interfere with the reasonable use and enjoyment of adjacent property. Parking areas and parking spaces shall be screened from adjacent property to protect them from the direct glare of automobile headlights. Any lighting used to illuminate the premises shall be so designed and constructed as to reflect light away from any adjoining property or public street. (1)
- g. Advertising at permitted establishments shall not exceed one wall or pole sign and one window sign. A wall sign shall be permanently attached to the structure of the permitted establishment and shall extend no more than six inches from the face of the wall. Window signs shall cover no more than 30 square feet. Signs shall contain no obscenity. The same sign violation may be cited no more frequently than once every ten days. (1)
- h. Conspicuous littering of the permitted premises, inside or outside, whether by patrons or by management, is prohibited for reasons of public health, neighborhood preservation and community appearance. The applicant must have in force a garbage pickup agreement requiring regular and timely pickup from a centralized collection point. The holder of a Conditional Use Permit shall be responsible for maintaining the sidewalk, gutters, parking lot and all areas within 100 feet of any exit and all areas of the permitted property in a clean and sanitary condition, free from litter and refuse at all times. (2)
- i. No open beverage containers of any kind shall be issued for off-premises consumption by permitted establishments. (2)
- j. The management shall not knowingly or willingly permit the possession, display, or use of any weapons upon the permitted premises, including firearms, knives over six inches in length (except in the normal course of business for the preparation of food), or bludgeons of any type, except as authorized by state law. (7)
- k. Establishments are prohibited from knowingly serving alcoholic beverages to clients who are intoxicated. "Intoxicated" has the same meaning as in V.T.C.A. Penal Code Chapter 49. (2)
- l. The management shall not knowingly or willingly allow riotous or disorderly public behavior. The management of any permitted establishment has the burden and responsibility for the security and safety of patrons and shall eject or refuse service to any person deemed to be acting in violation of V.T.C.A., Penal Code ch. 42, the conditions of the establishment's Conditional Use Permit or TABC license or permit, or other health or safety codes. However, a patron having been refused service or ejected, and acting outside the premises shall not be the responsibility of the permitted establishment. (2)
- m. Signs, as provided by the City, warning against public drunkenness, clearly indicating the number of drinks per body weight per hour constituting legal intoxication according to the

regulations of the State Alcoholic Beverage Commission or the State Department of Public Safety, and the danger of driving while intoxicated shall be located in each permitted establishment as follows:

1. One sign shall be located in a conspicuous place in each restroom. (1)
 2. One sign shall be located in a prominent place in the main bar area. (1)
 3. One sign shall be located in a lighted place near the front door of the permitted establishment. (1)
- n. Permitted establishments which also have a TABC license for sales of alcoholic beverages for off-premises consumption, where drive-up or drive-through facilities are the only means provided to serve customers, shall comply with the following additional requirements:
1. The opening or consumption of alcoholic beverages by customers is prohibited on the premises except in the designated customer seating area. There shall be a designated customer seating area for not more than one person. (2)
 2. A sign prohibiting the opening or consumption of alcoholic beverages by customers on the premises, except in the designated customer seating area, shall be prominently displayed at the point of sale. (1)
 3. There shall be no additional facilities, other than restrooms and running water, provided through building or site alterations beyond what is necessary for the intended sale of beverages for on-premises consumption. (2)
- (3) *Variance.*
- (a) *Eligibility:* Certain businesses applying for a conditional use permit for on-site alcoholic beverage consumption may seek a variance from the distance requirements set forth in 4.3.4.2 (b)(2), above, if the business meets all of the following:
1. Bars and package stores are not eligible for this variance.
 2. The business seeking the variance is a restaurant that agrees to limit its operation characteristics such that the restaurant will maintain its business in a manner to insure that its gross revenue from the sale of alcohol will be less than 25 percent of the total gross revenue of the business.
 3. There is a distance of at least 200 feet from the primary entrance of the applicant business to the primary entrance of the church or school measured using a straight line.
 4. The business seeking the variance shall comply with all aspects of the conditional use permit process.
 5. 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 will be conducted by the commission who shall have authority to grant or deny the renewal.
- (b) *Procedure:*
1. For each neighboring church or school that is within the distances of the proposed restaurant, as described in subsection (b)(2)(a) and as measured in accordance with subsection (b)(3)(a) and (b), 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 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.

2. 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.
3. The business will agree to file an annual report, due 45 days before the hearing on the annual CUP renewal, setting forth the gross sales of the business and the gross sales derived from the sale of alcoholic beverages.

(c) *Hearing.*

1. The planning and zoning commission shall hold a hearing to consider the applicant's variance.
 2. All property owners within 200 feet shall be notified and, in addition, all public and private schools and churches within 300 feet shall be notified.
 3. At the conclusion of the hearing on the initial application for a variance the commission shall make a recommendation to the city council. If the commission recommends denial of the applicant's request for a variance they shall include findings of fact to show that the location or the restaurant:
 - a. Is not in the best interest of the public;
 - b. Would constitute waste or inefficient use of land or other resources;
 - c. Creates an undue hardship on the applicant;
 - d. Does not serve its intended purpose;
 - e. Is not effective or necessary; or,
 - f. Any other reason the commission finds after consideration of the health, safety, and welfare of the public and the equities of the situation.
 4. The city council shall, upon conclusion of a public hearing on the matter, have final authority to approve or disapprove of the commissions' recommendation. Procedures for council action shall be the same as set forth in Section 1.5.7.7 of the Land Development Code.
- (4) Issuance to holder of state permit. The Conditional Use Permit shall be issued only to and for the benefit of the holder of an alcoholic beverage license or permit issued by the state for the place of business and premises for which the Conditional Use Permit is requested.
- (5) Suspension. In accordance with the authority granted to municipalities by the state, the City shall have the right to immediately suspend the Conditional Use Permit for any property where the premises are determined to be an immediate hazard to the health and safety of any person or an immediate danger to any adjacent property. The suspension shall be for a period not to exceed 24 hours or until the danger or hazard is removed.
- (6) Revocation.
- a. The Director shall cause a revocation hearing to be scheduled before the Commission in accordance with the same procedures as for initial consideration of a Conditional Use Permit when either of the following situations occur. These provisions supersede any conflicting provisions in Chapter 1, Article 5.
 1. An establishment having a valid Conditional Use Permit violates any provision of this Chapter, or any provision of the permit, including conditions established by the

Commission in approving the permit which may not otherwise be addressed in the mandatory standards enumerated in subsection (b)(2) of this section.

2. An establishment having a valid Conditional Use Permit accumulates at any time during an 18 month consecutive period any combination of confirmed violations of the standards which totals six or more of the weighted violation values shown in parentheses at the end of each enumerated standard in subsection (b)(2) of this Section. Violations of the standards shall be investigated, documented, confirmed, and filed by the Director or a City officer. The Director shall notify the permit holder by certified mail, return receipt requested, of each assessment of violation values. If the permit holder disagrees with the assessment, the permit holder may file a written appeal with the Director within 15 calendar days of receipt of the notice. Upon consideration of the evidence contained in the appeal, and any response by the City staff, the Director may affirm, rescind, or modify the assessment of violation values.
 - b. At least ten days prior to a revocation hearing, the Director shall notify the permit holder by certified mail, return receipt requested. Any complainant whose report of a violation resulted in the assessment of violation values shall also be notified at that time. The notice shall state the purpose of the hearing and the alleged grounds for revocation of the permit. The City shall provide to the permit holder, upon request, a copy of all written information of the City pertinent to the grounds for revocation.
 - c. At the revocation hearing, the City shall have the burden of producing evidence to show that the permit holder has not been in compliance with this Chapter, and that sufficient grounds exist to justify revocation of the permit. The permit holder may produce evidence of compliance. The Commission shall make its decision based upon the preponderance of the credible evidence before it.
 - d. If the permit is revoked, the dispensing of alcoholic beverages for on-premises consumption at the establishment shall cease the next day after the revocation and the Director shall report the Commission's actions to State TABC officials. Subsequent dispensing of alcoholic beverages for on-premises consumption at the establishment requires approval of a new Conditional Use Permit.
 - e. If the permit is not revoked, the dispensing of alcoholic beverages may continue at the establishment in accordance with the original permit, or the Commission may impose additional conditions on the permit which are reasonably related to the circumstances giving rise to the revocation hearing. The permit is again subject to revocation if one or more additional violation values are assessed during any probationary period established by the Commission in its decision.
- (7) Administrative approval of certain permits. Conditional Use Permits may be approved administratively by the Director at the time a new State TABC license or permit is required for a currently licensed or permitted establishment due to a change in the name of the permit holder, the name of the business, or the ownership of the business, or due to remodeling which does not involve the expansion of the existing business except to improve compliance with the standards contained in subsection (b)(2) of this Section.
- (8) *Limitations in the CBA district.*
 - a. A business in the central business area zoning district that wishes to dispense alcoholic beverages for on-premises consumption, and does not operate a bona fide restaurant on the premises, must apply for, obtain and maintain an unrestricted Conditional Use Permit, to

be known as an "unrestricted permit". A business in the central business area zoning district that wishes to dispense alcoholic beverages for on-premises consumption, and does operate a bona fide restaurant on the premises, must apply for, obtain and maintain either an unrestricted permit, or a restricted Conditional Use Permit, to be known as a "restaurant permit". Except as noted in subdivisions b and c below, both unrestricted permits and restaurant permits are subject to all provisions of this chapter that apply to Conditional Use Permits, including those pertaining to revocation of permits.

b. The following provisions apply to unrestricted permits:

1. The number of active unrestricted permits in the central business area zoning district shall not exceed 14.
2. If there are 14 active unrestricted permits, any further applications for unrestricted permits in the district shall be placed on a waiting list and individually referred to the Commission for consideration within 45 days, in the same order as submitted, when the number of unrestricted permits is less than 14.
3. If the Commission authorizes a new unrestricted permit to be issued in the district, and a waiting list exists for further applications, the applicant whose permit was authorized must obtain the permit within 180 days of the Commission decision to authorize the permit, or the authorization is void and the next application on the waiting list will be referred to the Commission for consideration within 45 days.
4. The following revisions to unrestricted permits in the district may be considered and made without regard for any waiting list that may exist for new unrestricted permits in the district:
 - a) Administratively approved revisions under subsection (b)(6)d above.
 - b) Revisions to a current valid permit from a beer and wine permit to a mixed beverage permit, or vice-versa.
 - c) Revisions due to the remodeling of a business that is not subject to administrative approval under subsection (b)(6)d above.
5. An unrestricted permit shall be issued for on-premises consumption at a particular building. The unrestricted permit for a particular building shall be deemed revoked if the building remains vacant for more than six months or if no TABC permit for on-premises consumption is in effect at that building location for more than a six-month period. In such event, a new unrestricted permit for that building is required and may be issued by the Commission only if there are less than 14 unrestricted permits currently in effect in the Central Business Area.

c. The following provisions apply to restaurant permits:

1. Restaurant permits are valid for three years from date of issuance. Each business holding a restaurant permit must apply for and obtain a renewal permit every three years, no later than the expiration date of the current permit. A renewal permit for a current permit holder may be administratively issued if the applicant has complied with all of the provisions of this Chapter, all provisions of the permit, and any other applicable statutes during the previous permit period, and has not been assessed any violation values under this section. Otherwise, the application for the renewal permit shall be considered by the Commission after a public hearing.
2. A business holding a restaurant permit must become operational and open to the public

within one year of issuance, or the permit shall expire. Upon request of the permit holder for good cause, the Director may permit one six-month extension. A restaurant permit shall be issued to an applicant for on-premises consumption at a particular building. The restaurant permit for a particular building shall be deemed revoked if the building remains vacant for more than six months or if no TABC permit for on-premises consumption is in effect at that building location for more than a six-month period. In such event, a new restaurant permit for that building is required and may be issued by the Commission only if there are less than 15 restaurant permits currently in effect in the Central Business Area District. Effective upon adoption of this ordinance, a restaurant permit for on-premises consumption of beer and wine may be issued only after the restaurant has been in operation for at least six months; a restaurant permit for on-premises consumption of mixed beverages may be issued only after the restaurant has been in operation for at least 12 months. These waiting periods shall not apply to the issuance of a restaurant permit for on-premises consumption at the following addresses: 100 W. Hopkins Street; 321 N. LBJ Drive; 202 N. LBJ Drive, Suite A; 202 N. LBJ Drive, Suite 101; 202 E. San Antonio Street; 215 N. LBJ Drive; and 328 N. LBJ Drive.

These waiting periods shall not be applicable to a restaurant located in a hotel, motel, or bed and breakfast where alcoholic beverages would be served primarily to patrons and guests. These waiting periods shall not be applicable to an individual or entity that holds an existing restaurant permit and makes an application to operate the restaurant at a different location within the Central Business Area District.

3. A business holding a restaurant permit must comply at all times with all of the following standards for "bona fide restaurants":
 - a) The business must have a kitchen and food storage facilities of sufficient size to enable food preparation. The kitchen must be equipped with, and must utilize, a commercial grill, griddle, fryer, oven, or similar heavy food preparation equipment.
 - b) The business must apply for, obtain and maintain a food establishment permit in accordance with chapter 18 of the City Code.
 - c) The business must serve meals to customers during at least two meal periods each day the business is open. A meal must consist of at least one entree, such as a meat serving, a pasta dish, pizza, a sandwich or similar food in a serving that serves as a main course for a meal. At least three entrees must be available during each meal period. A meal period means a period of at least four hours.
 - d) The business must be used, maintained, advertised and held out to the public as a place where meals are prepared and served.
4. An application for a restaurant permit must be accompanied by all of the following:
 - a) A diagram of the floor layout of the business, clearly indicating areas where food is stored, where food is prepared, and where food is served to customers.
 - b) A statement of the total seating capacity of the business, and a statement of the seating capacity of the areas of the business where food is served.
 - c) A menu indicating all food and drink items served at the business.
5. The holder of a restaurant permit must submit to the Director:
 - a) A complete written update of all information required under the section above each

year within 30 days of the annual renewal date of the state TABC license or permit for the holder's business;

6. The holder of a restaurant permit agrees, as a condition of the permit, to allow the Director or an authorized representative to enter and inspect the business premises at any time during normal business hours to verify compliance with the requirements for restaurant permits under this section.
7. The number of active restaurant permits in the central business area zoning district shall not exceed 15. If there are 15 active restaurant permits, any further applications for restaurant permits in the district shall be placed on a waiting list and individually referred to the commission for consideration within 45 days, in the same order as submitted, when the number of restaurant permits is less than 15.

(Ord. No. 2005-19, §§ 1—7, 3-1-05; Ord. No. 2007-49, §§ 1, 2, 9-4-07; Ord. No. 2011-10, § 1, 4-19-11; Ord. No. 2013-35, § 1(Exh. A), 8-6-13)



Legislation Text

File #: CUP-15-09, **Version:** 1

AGENDA CAPTION:

CUP-15-09 (Hooters) Hold a public hearing and consider a request by TW Restaurant Holder LLC, on behalf of San Marcos 123 and 35 Partners, LLC, for a Conditional Use Permit to allow for the sale of mixed alcoholic beverages for on-premises consumption at 1305 S IH 35.

Meeting date: May 26, 2015

Department: Planning and Development Services

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

CITY COUNCIL GOAL: Strengthen the Middle Class

BACKGROUND:

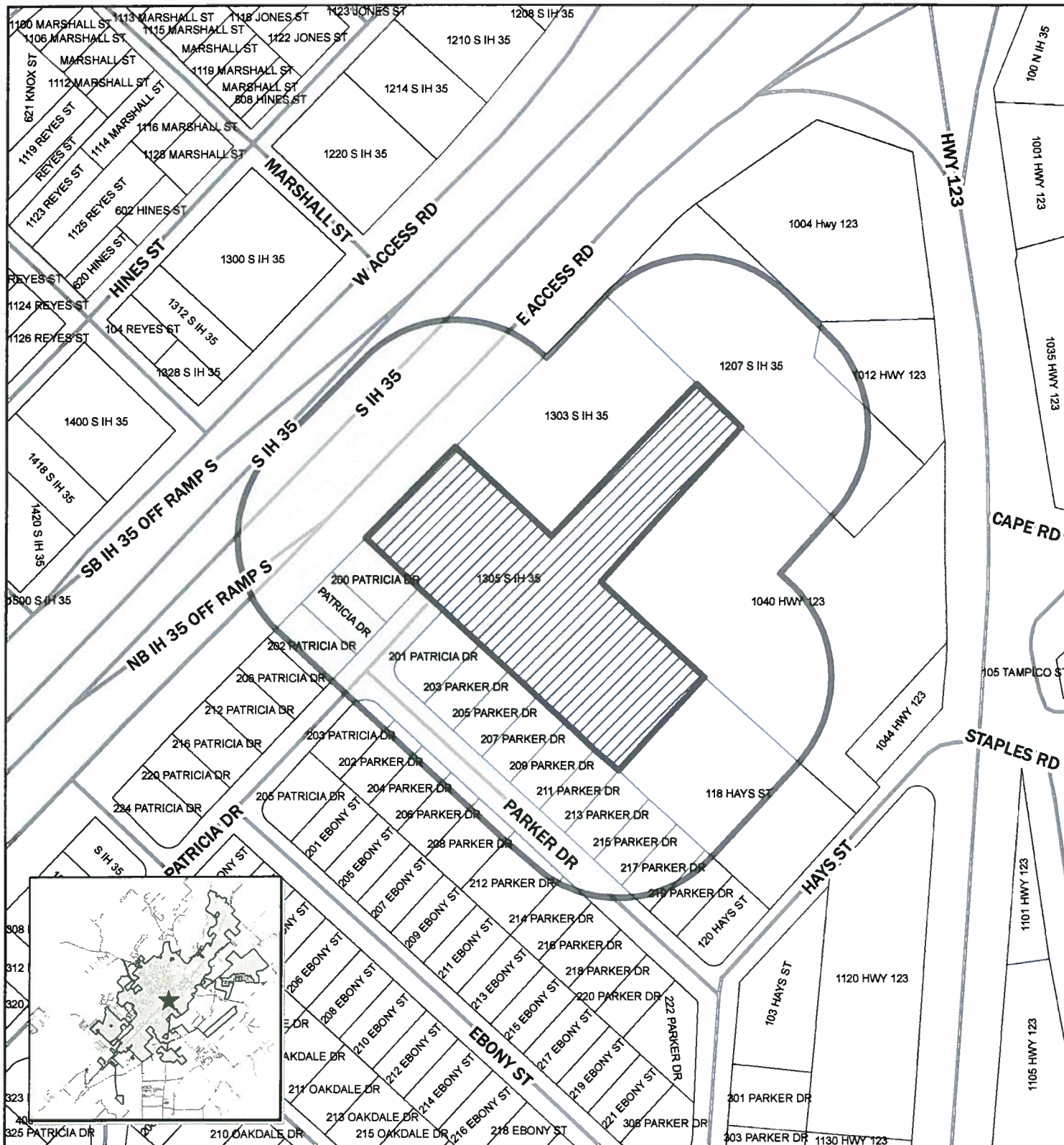
The proposed restaurant project consists of an approximately 6,600 square foot building including an attached patio.

The proposed structure meets the 300 foot distance requirement from the nearest single family neighborhood as detailed in the Land Development Code. The proposed structure does include an outdoor patio on West side of the structure, and the manner in which the building is proposed to be built will create a sound barrier between the patio and the nearest single family dwellings. In addition, the building is proposed to be set back 40 feet from the property line shared with residential uses.

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

Therefore, staff recommends approval with the following conditions:

1. The CUP shall be valid for one (1) year, provided standards are met, subject to the point system;
2. The building is constructed in a manner consistent with the provided site plan, where the building acts as a sound barrier between the patio and the nearest neighborhood;
3. The building is constructed no closer than 40 feet to the nearest residential property;
4. The CUP shall be posted in the same manner and location as the Certificate of Occupancy.



CUP-15-09
Hooters
1305 S IH 35
Map Date: 5/13/2015



0 100 200 400 Feet



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



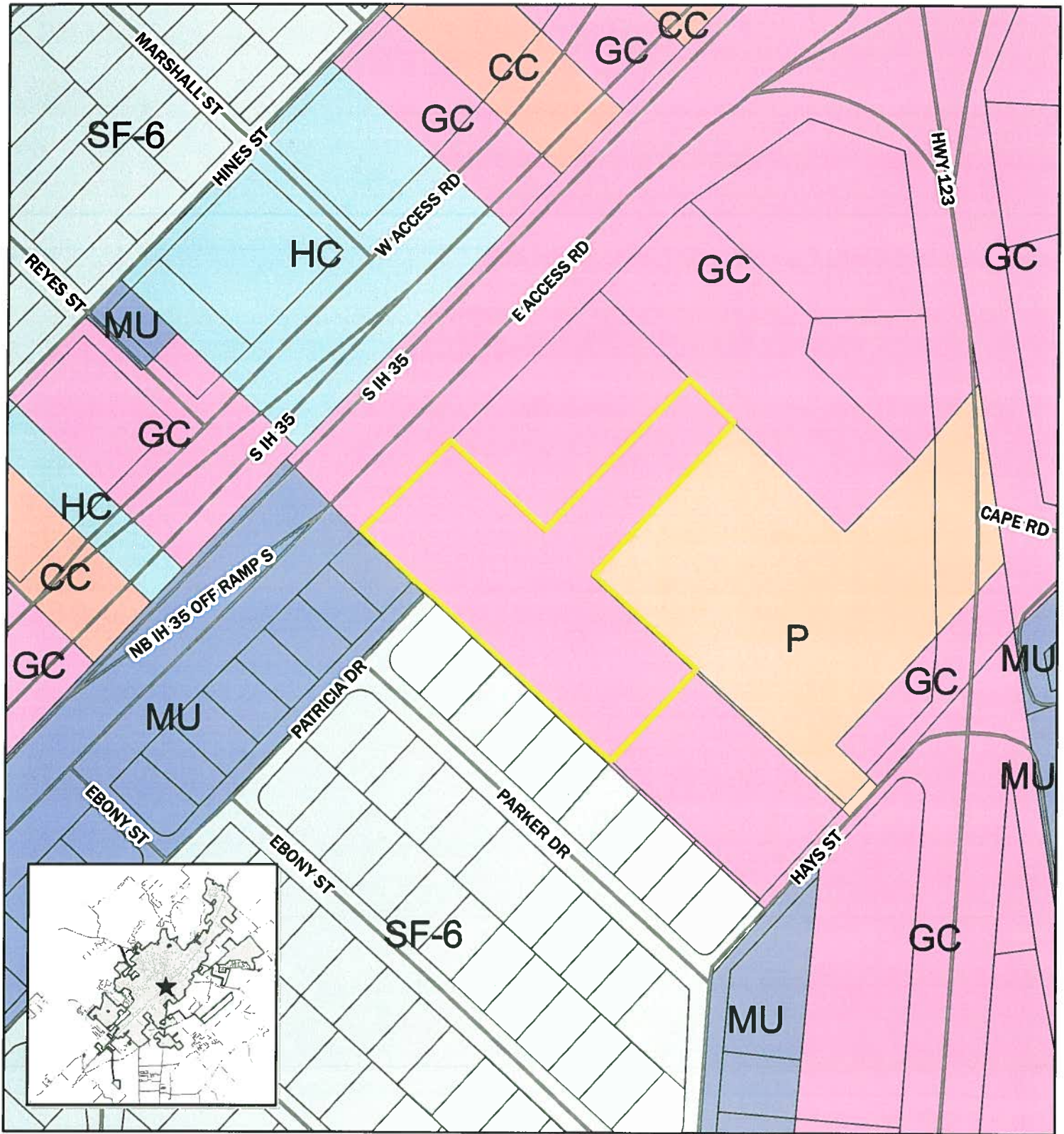
CUP-15-09
Hooters
1305 S IH 35
Map Date: 5/13/2015

 Site Location

0 100 200 400
 Feet



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CUP-15-09
Hooters
1305 S IH 35
Map Date: 5/19/2015

 Site Location

0 100 200 400 Feet



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CUP-15-09

Conditional Use Permit

Hooters

1305 S IH 35



Applicant Information:

Applicant: TW Restaurant Holder LLC
1815 The Exchange SE
Atlanta GA, 30339-2027

Property Owner: San Marcos 123 and 35 Partners, LLC
750 East Mulberry Ave. Ste. 305
San Antonio TX 78212

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

Notification: Public hearing notification mailed on May 15, 2015

Response: None to date

Subject Property:

Expiration Date: NA

Location: 1305 S IH-35

Legal Description: Simon Addition Lot 1

Frontage On: IH-35

Neighborhood: None

Existing Zoning: General Commercial

Preferred Scenario Designation: High Intensity

Existing Utilities: Adequate

Existing Use of Property: Car Dealership

Proposed Use of Property: Restaurant/Bar

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	GC	Restaurant / IH 35
S of Property	SF-6/MU	Single Family Homes
E of Property	P	San Marcos Electric Utility
W of Property	SF-6/MU	Single Family Homes

Code Requirements:

A business applying for on-premise consumption of alcohol must not be within 300 feet (measured along the property lines of street fronts, from front door to front door) of a church, school, hospital, or a residence located within a zoning district that limits density to six units per acre or less. The location **does** meet these distance requirements. The CUP will be subject to the standards for on-premise consumption of alcoholic beverages, and the penalty point system for violations (Section 4.3.4.2).

The business is not within the CBA.

Section 6.1.2.1 of the Land Development Code (LDC) requires that any new construction non-residential use that is contiguous to any residential property (other than multifamily) be separated by no less than double the required setback, and requires a minimum 6 foot tall opaque screening fence between the uses. In addition Section 6.1.2.4 of the LDC requires that any fence used for screening purposes incorporate landscaping elements along the majority of the fence.

Comments from Other Departments:

Building, Police, Engineering, Fire, Environmental Health, and Code Enforcement have reported no major concerns regarding the subject property.

Case Summary

The applicant is proposing to build a new approximately 6,600 square foot building, including a proposed outdoor patio. The proposed restaurant will offer a full menu and have 227 seats, 36 of which will be located on the patio. The patio will face the neighboring commercial property, upon which is slated to be built as a 54th Street Restaurant and Draft House. The applicant has stated that there will be 159 off street parking spaces.

The proposed hours of operation will be from 11 a.m. to 12:00 p.m. Sunday-Thursday and 11 a.m. to 1:00 a.m. Friday-Saturday.

Planning Department Analysis:

While this location does meet the distance requirement to be further than 300 feet from the front door of the business to the front door of the nearest residential house (measured along the property lines of street fronts), this property abuts the rear or side yards of 7 homes within the Sunset Acres Neighborhood along Parker Drive and Patricia Drive. In order to help mitigate against potential nuisances, the applicant is proposing to place the building no closer than 40 feet from the property line that separates them from the residential neighborhood. Typically, GC zoned properties have a 5 foot side setback, so a 40 foot side setback is substantially larger than the Land Development Code (LDC) requirement in Section 6.1.2.1 Nonresidential Screening of doubling the 5 foot setback. In addition, Section 6.1.2.1 requires an opaque screening fence that is at least 6 feet tall, and is required to have landscaping incorporated along the majority of the fence under Section 6.1.2.4(a)(3).

The applicant was willing to work with staff and revised their original building orientation to face the patio away from the neighborhood, so that the restaurant itself acts as a barrier to sound emanating from the patio. The applicant was also willing to move their trash containers which are located at the rear of the building, further away from the neighborhood.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard 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 CUP shall be valid for one (1) year, provided standards are met, subject to the point system;
2. The building is constructed in a manner consistent with the provided site plan, where the building acts as a sound barrier between the patio and the nearest neighborhood;
3. The building is constructed no closer than 40 feet to the nearest residential property;
4. The CUP shall be posted in the same manner and location as the Certificate of Occupancy.

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. Provided the request meets the minimum requirements of section 4.3.4.2 of the LDC, the Commission shall also 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 Master 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:

Will Parrish	Planning Technician	May 13, 2015
Name	Title	Date

