

# 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: High Intensity

Designation:

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 Land Development Code [Section 4.3.4.2(b)(3)] allows a variance to the distance requirements permitting alcohol-serving restaurants to seek a CUP, provided certain conditions are met. 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 54<sup>th</sup> 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
<b>Name</b>	<b>Title</b>	<b>Date</b>