



WARRANT ALLOWING DEVIATION FROM BUILDING HEIGHT REQUIREMENTS

Effective Date: March 24, 2015

Case No.: SCW-15-01

Project: 205 West Hopkins Redevelopment

Project Address: 205 West Hopkins Street, San Marcos, Hays County, Texas 78666

Property: Lots 7-8, Block 15, Original Town of San Marcos, according to the map or plat thereof recorded in Volume 46, Page 448, Plat Records of Hays County, Texas.

Owner(s): SM Hopkins Ltd.

Owner's Address: 504 Lavaca Street, Suite 1160, Austin, Travis County, Texas 78701

City: City of San Marcos, Texas, a home rule municipal corporation

City's Address: 630 East Hopkins, San Marcos, Hays County, Texas 78666

1. Definitions: For purposes of this Warrant, "Schlotzky's Restaurant" means a restaurant:

- a. of the type commonly referred to as a "fast casual" restaurant;
- b. specializing in sandwiches;
- c. operating under authorization from Schlotzky's Franchise, L.L.C., its successors or assigns, whether as a franchisee, licensee or otherwise; and
- d. advertising, marketing and holding itself out to the public under a brand name having as its primary emphasis the word "Schlotzky's."

2. Warrant Requested: The Property is located in the City's Downtown SmartCode Zoning District. Table 1.2 of the San Marcos SmartCode, Subpart C of the San Marcos Code of Ordinances (the "SmartCode"), requires that any building on the Property be at least two stories in height, unless a Warrant allowing a lesser height is approved by the City. Pursuant to Section

1.5.2 of the SmartCode, the Owner requested a Warrant from the City allowing construction of a building less than two stories in height.

3. Warrant Approved: On March 24, 2015, following a public hearing regarding the Owner's request, the City's Planning and Zoning Commission approved the Owner's request and authorized the issuance of this Warrant to construct a building less than two stories in height, subject to the following:

a. Authorized Height. This Warrant will allow the expansion of the existing building on the Property to be less than two stories in height or 25 feet from finished floor to finished ceiling. This Warrant shall not apply or extend to any other building on the Property.

b. Limited to Specific Site Plan. This Warrant shall apply only if the expansion of the existing building on the Property is constructed in accordance with the site plan in Exhibit "A," attached hereto and made a part hereof for all purposes.

c. Term; Expiration. This warrant will be valid until and shall automatically expire on the date that is the later of:

i. 15 years from the date of issuance by the City of a certificate of occupancy for said building for exclusive use and occupancy as a Schlotzky's Restaurant; or

ii. any date after the certificate of occupancy has been issued and the building ceases to be used and occupied exclusively as a Schlotzky's Restaurant.

Upon its expiration, this Warrant shall be void and of no further force and effect.

d. Successors and Assign. This Warrant is a covenant running with the land and shall be binding on the Owner and its successors, assigns or lessees.

e. Waiver; Estoppel. Any permits or approvals issued by any employee or official of the City in error or in contravention of the terms of this Warrant are not binding on the City, and the Owner is not entitled to rely on such permits or approvals. No term or condition of this Warrant shall be deemed to have been waived as a result of the issuance of such permits or approvals, nor shall there be any estoppel against the City to enforce any provision of this Warrant, or to revoke any such permits or approvals. Failure of the City to enforce this Warrant in one or more instances shall not be deemed a waiver to subsequently enforce the provisions of this Warrant.

f. Enforcement. Any violation of the terms and conditions of this Warrant are deemed to be violations of the City's zoning ordinances. The City may issue misdemeanor citations and pursue any remedies at law or in equity for violations of the terms and conditions of this Warrant as are available for enforcement of the City's zoning ordinances.

CITY OF SAN MARCOS:

By: [Signature]
Name: Shannon Mattingly
Title: Director of Planning

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF HAYS)

This instrument was acknowledged before me on ^{May}~~April~~ 17, 2015 by Shannon Mattingly
Director of Planning of the City of San Marcos, Texas, a municipal corporation, in such capacity,
on behalf of said entity.

[Signature]
Notary Public, State of Texas

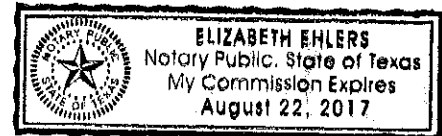


EXHIBIT A
Site Plan
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SCALE 1" = 20'



19 574 SF

156

100%

20

3. Will

80%

551

ERCO

1. THIS SITE PLAN DOES NOT COMPLY WITH THE SMARTCODE FRONTAGE BUILDOUT REQUIREMENT DUE TO THE SIZE AND LOCATION OF THE EXISTING BUILDING. IN ADDITION, THIS SITE DOES NOT COMPLY WITH SMARTCODE SECTION 5.6.6 WITH REGARD TO THE LOCATION OF PARKING WITHIN THE FIRST LAYER. IT IS OUR UNDERSTANDING THAT THE CITY OF SAN MARCOS HAS BEEN WILLING TO ACCEPT SITE PLANS THAT SUBSTANTIALLY MODIFY EXISTING BUILDINGS, AND IMPROVE COMPLIANCE WITH THE SMARTCODE. THIS SITE PLAN PROPOSES NEW SIDEWALKS THAT COMPLY WITH THE SMARTCODE. IT ALSO PROPOSES A SCREEN ALONG ALL PARKING AREAS IN THE FIRST LAYER PER SMARTCODE GUIDELINES. IN ADDITION, WE WOULD ENCOURAGE ARCHITECTURAL DESIGN TO ENHANCE THE PEDESTRIAN ENVIRONMENT ALONG WEST HOPKINS STREET IN THE SPIRIT OF THE SMARTCODE.

2. AREAS WITH DOT HATCH PATTERN ARE PROPOSED AREAS OF IMPROVED LANDSCAPE. PER CURRENT ZONING, 100% COVERAGE IS ALLOWED ON THIS SITE LANDSCAPED AREAS ON THIS PLAN ARE SUGGESTED, BUT NOT CODE REQUIRED.

3. LOCATION OF ADDITIONS TO EXISTING BUILDING ARE SUGGESTED BASED UPON PROTOTYPE PLAN PROVIDED, HOWEVER, ADDITIONS COULD ALSO BE PROVIDED ON THE FRONT OF THE EXISTING BUILDING IF DESIRED.

4. BUILDING HEIGHT RESTRICTIONS APPLY ALONG THE EAST PROPERTY LINE DUE TO PROXIMITY OF OVERHEAD UTILITIES. UTILITY LOCATION IS NOT ANTICIPATED TO BE PROBLEMATIC FOR A SINGLE STORY BUILDING.

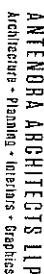
3 SPACES / 1000 GSF

3,500 SF

4.360

1451

09.04.2014



Filed and Recorded: 5/17/2017 3:01 PM

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LIZ Q. Gonzalez, Hays County Clerk, Texas

Rec \$42.00 Deputy Clerk: PFLORES