CUP-16-34
Conditional Use Permit
Gumby's Pizza & Wings
312 West Hopkins Street

Applicant Information:

Applicant: John Higdon
16238 Hwy 620 Ste F375
Austin, TX 78717

Property Owner: 312 Ventures LLC
16238 Hwy 620 Ste F375
Austin, TX 78717

Applicant Request: Request for a new Conditional Use Permit to allow the sale of mixed alcoholic beverages for on-premise consumption at a restaurant located at 312 West Hopkins Street.

Public Hearing Notice: Public hearing notification was mailed on December 2, 2016.

Response: Staff received 11 emails in opposition and 3 in support of the request which are attached to this report. Also at the December 13, 2016 meeting, 5 people spoke in favor and 14 spoke against the request.

Subject Property:

Location: 312 West Hopkins Street

Legal Description: Original Town of San Marcos, Block 17, Lot 2

Frontage On: Hopkins Street

Intensity Zone: Downtown

Existing Zoning: T5 - Smartcode

Preferred Scenario Designation: High Intensity

Utilities: Adequate

Existing Use of Property: Currently vacant - previously office space

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of property	T5	Laundromat
S of property	T5	Vacant / Laundromat
E of property	T5	Multiple Commercial Tenants
W of property	T5	Sorority House

Code Requirements:

Conditional Use Permits (CUPs) for the sale of alcohol for on-premises consumption are subject to the criteria for review under both Section 4.3.4.2 of the Land Development Code (LDC) specific to alcohol sales and Section 1.5.7.5 of the LDC applicable to all CUP's. A CUP allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

As a threshold requirement under Section 4.3.4.2, a business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

Having determined that the request meets the above distance requirements, staff evaluated the impact of the proposed conditional use and its compatibility with surrounding properties under Section 1.5.7.5 (See Planning Department Analysis below).

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

This property is not within the Central Business District or any Historic District.

Case Summary:

The owner of Gumby's Pizza & Wings is proposing to relocate the restaurant to 312 West Hopkins Street which is near the intersection of Hopkins Street and Comanche Street. The restaurant would be in an existing building which was used for office space. Improvements to the building and site include extending an outdoor patio to the east side of the building, relocating parking toward the rear of the building, and interior renovations.

Proposed hours of operation are 9 a.m. to 3:30 a.m. Sunday thru Saturday. The application indicates approximately 70 indoor and 54 outdoor seats. The floor plan indicates a full bar and a 1,110 square foot kitchen. The restaurant will provide dine-in, carry-out, and delivery service.

The applicant is requesting a TABC late hours permit to serve mixed beverages at an eating establishment which would allow for the sale of alcohol until 2:00 a.m. Fourteen (14) off-street parking spaces will be available with two (2) on-street spaces in front of the property. The parking provided exceeds the eleven (11) spaces required by code.

The Planning & Zoning Commission heard this request on December 13, 2016. After hearing concerns from several speakers during citizen comment and public hearing, the Commission voted to postpone this item until the January 10, 2017 meeting.

It was mentioned during the citizen comment period that the Montessori School, located at 406 Harvey Street, should have been notified of the request since it is within 300 feet of the subject property. The Montessori School, however, does not meet applicable definitions of School under the Texas Alcoholic Beverage Code. It is not a "private school" as defined under such Code because fewer than 100 students are enrolled, and it is also not a "public school." Furthermore, the subject business is approximately 700 feet from the nearest church and 920 feet from the First United Methodist Church, which was also discussed at the December 13 meeting.

Since the previous meeting, the applicant has met with some surrounding property owners to address their concerns. Changes from the original plan include the installation of a privacy fence and the decrease of the

outdoor dining area. The patio is decreased by enclosing the area along Hopkins Street which would be included in the indoor dining area. This change decreases outdoor seats from 80 to 56, and increases indoor seats from 50 to 70.

Comments from Other Departments:

There have been no comments from other departments.

Planning Department Analysis:

Given the operation of the existing business and proposed floor plan - which includes an 1,110 square foot kitchen - staff believes the business will operate as a bona fide restaurant. The existing restaurant on Guadalupe Street previously held a permit for beer and wine and there have been no reported issues at this location through TABC or the City. Additionally, the restaurant currently operates until 3:30 AM.

While there is a sorority house adjacent to this site, staff sees a minimal potential for disruption from the restaurant. The outdoor dining area is separated from the sorority house by the restaurant and there are no entertainment facilities or live music proposed.

Staff has reviewed the request for compliance with the Land Development Code and has found that it is consistent with the policies and the intent of the zoning district and does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic. Activation of this site presents an opportunity to increase pedestrian activity downtown.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is initial approval of the permit 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 permit shall be effective upon the issuance of the Certificate of Occupancy; and**
3. **The CUP shall be posted in the same area and manner as the Certificate of Occupancy.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

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. Upon a determination that the proposed use meets the threshold requirements under Section 4.3.4.2 of the LDC, the Commission shall evaluate the impact of the proposed conditional use on surrounding properties under Section 1.5.7.5 by considering, the extent to which the use:

- is consistent with the policies of the Comprehensive Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes features or 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 and incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to reduce or eliminate development generated traffic on neighborhood streets.

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.

Attachments:

- Site Plan & Floor Plan
- Menu
- Site Photos
- Applications
- Public Comments

Prepared by:

Tory Carpenter	Planner	1/04/17
Name	**Title**	**Date**