

**CUP-18-03**  
**Conditional Use Permit**  
**Olive Garden**  
**1305 South IH 35**



**Applicant Information:**

Applicant: Olive Garden Holdings, LLC  
PO Box 695016  
Orlando, FL 32869-5016

Property Owner: Errek OGT LLC  
3 West 35<sup>th</sup> St, 9<sup>th</sup> Floor  
New York, NY 10001

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

Notification: Public hearing notification mailed on February 16, 2018.

Response: Staff has received 3 letters regarding this request between the January 23, 2018 postponement and the time of this staff report. These letters are attached.

**Subject Property:**

Expiration Date: March 28, 2018

Location: 1305 South 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: Olive Garden Restaurant

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 Conditional Use Permit (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.

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. Section 4.3.2(b)(3) states the following:

“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.”

This location **does** meet the distance requirements.

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).

### **Comments from Other Departments:**

The Engineering Department has stated that a solid wall or fence between residents on Parker Drive and Olive Garden would obstruct the flow of water from the neighborhood to the storm drain located along the Olive Garden property line, potentially resulting in flood damage to the neighborhood.

### **Case Summary**

The applicant owns an Olive Garden restaurant which occupies an approximately 7,757 square foot building. The restaurant offers a full menu and has 249 seats. There are 195 off street parking spaces.

The hours of operation are from 11 a.m. to 10 p.m. Sunday-Thursday and 11 a.m. to 11 p.m. Friday -Saturday.

Olive Garden submitted a Conditional Use Permit application for this location which was originally approved on December 08, 2015 by the Planning and Zoning Commission 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 no closer than 40 feet to the nearest residential property;
3. The CUP shall be posted in the same manner and location as the Certificate of Occupancy.

An appeal was filed with City Council by a concerned neighbor. On January 19, 2016 City Council approved the Conditional Use Permit with modified conditions. The conditions were modified as follows:

1. The CUP shall be valid for one (1) year, as long as the TABC regulations are met;
2. The building shall be no closer than 40 feet to the property line of the nearest residential property;
3. The CUP shall be posted in the same area and manner as the Certificate of Occupancy;
4. No outdoor dining space is allowed;
5. No outdoor amplified music shall be audible across property lines;
6. Trucks longer than 30 feet must ingress and egress on the IH-35 service road (not Hays Street)
7. Olive Garden will place a sign near the access to 118 Hays Street that discourages traffic through the neighborhood

### **Planning Department Analysis:**

Staff has reviewed the application and confirmed that Olive Garden has complied with the conditions established by City Council.

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 three (3) years, as long as the TABC regulations are met;**
- 2. The building shall be no closer than 40 feet to the property line of the nearest residential property;**
- 3. The CUP shall be posted in the same area and manner as the Certificate of Occupancy;**
- 4. No outdoor dining space is allowed;**
- 5. No outdoor amplified music shall be audible across property lines;**
- 6. Trucks longer than 30 feet must ingress and egress on the IH-35 service road (not Hays Street)**
- 7. Olive Garden must keep a sign near the access to 118 Hays Street that discourages traffic through the neighborhood;**
- 8. Olive Garden must require employees to park on the side of the parking lot furthest from the residential properties on Parker Drive.**

### **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. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan;
- The proposed use is consistent with any adopted Neighborhood Character Study that has been completed for the area;
- The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
- The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods
- The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;
- The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets;
- The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties;
- The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and 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	Planner	February 23, 2018
<b>Name</b>	<b>Title</b>	<b>Date</b>