

# Conditional Use Permit CUP-20-13

# 1617 Aquarena Springs Drive Longhorn Daiquiris



## Summary

<b>Request:</b>	A Conditional Use Permit to allow the sale of beer and wine for on premise consumption at 1617 Aquarena Springs Drive.		
<b>Applicant:</b>	Andrea Vellescaz Longhorn Daiquiris LLC 1525 Amberwood Loop Kyle, TX	<b>Property Owner:</b>	Dale Grayson G&S Development LLP 6621 Olympia Drive Pasadena, TX 77505
<b>Square Feet:</b>	4,800 sq. ft. interior 1,280 sq. ft. covered patio	<b>Type of CUP:</b>	New, Beer and Wine
<b>Interior seating:</b>	150	<b>Outdoor seating:</b>	60
<b>Parking Required:</b>	53 spaces	<b>Parking Provided:</b>	74 spaces
<b>Days &amp; Hours of Operation:</b>	Sunday - Wednesday: 12 p.m. – 10 p.m.      Thursday: 12 p.m. – 11 p.m. Friday - Saturday: 12 p.m. – 1 a.m.		

## Notification

<b>Posted:</b>	September 4, 2020	<b>Personal:</b>	September 4, 2020
<b>Response:</b>	None as of the date of this report		

## Property Description

<b>Legal Description:</b>	Westfield Subdivision, Lot 5A		
<b>Location:</b>	Intersection of Aquarena Springs Drive and West Avenue		
<b>Acreage:</b>	0.976 acres +/-	<b>Central Business Area:</b>	No
<b>Existing Zoning:</b>	General Commercial (GC)	<b>Preferred Scenario:</b>	Midtown High Intensity Zone
<b>Existing Use:</b>	Restaurant	<b>Proposed Use:</b>	Restaurant/Bar
<b>CONA Neighborhood:</b>	Millview East	<b>Sector:</b>	7
<b>Utility Capacity:</b>	Adequate		

## Surrounding Area

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	Multifamily-24 (MF-24)	Westfield Apartments	Existing Neighborhood
<b>South of Property:</b>	General Commercial (GC)/ Community Commercial (CC)	Popeye's Restaurant/Fast Break Convenience Store	Midtown
<b>East of Property:</b>	Multifamily-24 (MF-24) /Multifamily-18 (MF-18)	Spring West & The Colony of San Marcos Apartments	Existing Neighborhood/Midtown
<b>West of Property:</b>	Multifamily-24 (MF-24)	The Junction at San Marcos Apartments	Existing Neighborhood/Midtown

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### History

The applicant is applying for a Wine & Beer Retailers Permit and Late Hours with the Texas Alcohol Beverage Commission. The specific type of wine & beer permit they are applying for requires a subordinate Food and Beverage Permit which requires the permit holder to limit alcoholic beverage sales to 60% or below of the total gross sales and requires the establishment to maintain food service facilities for the preparation and service of multiple entrees.

The applicant has stated that they intend to have Karaoke every Thursday night and a live DJ every Friday. The applicant agreed to restrict this entertainment to inside the building only and will not allow any live music or Karaoke on the outside patio space. Current entertainment facilities existing on site include a 46" screen television mounted on the wall of the lobby and an 8'x10' stage also located in the lobby.

The following is a timeline of events that have occurred at Longhorn Daiquiris:

May 14, 2020 Received a Mobile Food Unit permit for a food truck to prepare food for pick up or for dining on site.

May 29, 2020: Received Certificate of Occupancy to use the existing restaurant space as a seating area. It was noted by the Environmental Health Department at that time that the kitchen would need to be permanently sealed off and prohibited from use and that a three-compartment sink would be required in the bar area.

July 14, 2020: Submitted application for Conditional Use Permit (CUP).

August 2, 2020: Police Department receives call regarding a fight in the parking lot. Code Compliance also receives complaint. The department reviewed the establishment's social media pages and saw an advertisement for an August 4<sup>th</sup> event offering free drinks with the purchase of a general admission ticket, wrist band, or cup.

August 6, 2020: Code Compliance staff visited the site during another event and witnessed several signs advertising alcoholic beverages with purchase. However, Code Compliance did not witness a transaction and it was unclear if these signs were from a previous event.

August 11, 2020: Police Department visits the site and finds them in compliance with spacing and masks.

August 12, 2020: Environmental Health shuts down food truck for not leaving the site and not having water.

August 20, 2020: Environmental Health issued a Food Establishment permit to allow solely for the preparation of beverages in the bar area as the kitchen in the building was still not functioning and was still required to be sealed off and not utilized.

August 23, 2020: Code Compliance purchased an alcoholic beverage.

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### Additional Analysis

The City of San Marcos Code Compliance department confirmed two separate instances of the applicant selling alcohol without a permit. Officer Ruiz with TABC confirmed that businesses are allowed to give out free samples without an approved TABC license. However, the actions of Longhorn Daiquiri, to provide the sample associated with a purchase, is considered the illegal sale of alcoholic beverages. Officer Ruiz further confirmed that he had spoken with the business and clarified that their actions were considered an illegal sale of alcohol without a permit.

Longhorn Daiquiris does not currently have a functioning kitchen in the main building and is serving all entrees from the mobile food unit on site. Since the TABC license being pursued requires the establishment to maintain food service facilities and a minimum number of entrees to be served, the Commission may consider a condition to require a functioning kitchen be required prior to issuing the conditional use permit for on premise consumption of alcohol.

### Comments from Other Departments

#### **Public Safety & Police**

On 06/20/2020 a complaint of loud noise was received from a resident at the Colony Apartments at approximately 8:00 pm. The investigating officer did not believe the music was from the DJ who was playing music inside Longhorn Daiquiris but from the cars playing loud music in the parking lot.

On 07/25/2020 a complaint was made at approximately 8:00 pm of car club people playing loud music in the parking lot.

On 07/31/2020 at 11:05 pm officers discovered loud music coming from the establishment. Officers made contact and learned that they were allowed to operate because they had food trailers and that food could be served inside. No action was taken.

On 08/02/2020 at 1:35 am officers received a report of a physical fight occurring at this location. The caller described 100 people rioting. Thirteen City units plus Hays County deputies were sent to the location. They found several people had been pepper sprayed by security because they were not following orders to leave. The security guard was then pepper sprayed by someone in attendance and also punched. No charges were filed because the security guard did not know who did it to him. A subject with a gun in plain sight was located in the parking lot and detained. The subject was eligible for arrest but was not due to the volatility of the crowd PD was attempting to disperse. A citizen complaint on this event was sent to the City's police department the next day on August 3<sup>rd</sup>. The complaint included Facebook links to videos the citizen claimed were taken the evening of August 2<sup>nd</sup> at Longhorn Daiquiris. The citizen complaint stated their concern was the continued spread of Covid-19 due to a lack of social distancing, mask wearing, and in general, the large size of the event.

Stills of the submitted videos and complaint and the recorded calls for service are attached to this report for the Commission's review.

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	<p>The Police Department anticipates that if this business operates more as a bar than a restaurant there will have issues with noise from all of the apartments that surround it. The Police Department recommends that no live or amplified music that would disturb the residences all around this establishment be allowed.</p>
<b>Fire</b>	<p>Upon viewing the videos that were submitted as part of a citizen complaint to the Police Department and other City staff, the Fire Marshal and Fire Prevention Division are concerned with the continued Covid-19 spread that potential future events like these presents.</p>
<b>Public Services</b>	<p>No Concerns</p>
<b>Engineering</b>	<p>No Concerns</p>
<b>Environmental Health/Code Compliance</b>	<p>The Environmental Health and Code Compliance departments offer the Commission history and input on two topics related to this permit request: the fixed establishment permit and the mobile food unit permit.</p> <p><u>Fixed Food Establishment Permit:</u> Department staff witnessed evidence of the kitchen being used several times despite the applicant being notified that the kitchen needed to be completely sealed off and not utilized until it was brought up to Code. Code Enforcement staff witnessed food storage (fridges and freezers containing multiple and unlabeled food items) and dirty dishes in the sinks indicating the kitchen was in use. Code Enforcement staff also determined that there was no water going to the mobile food truck. Upon questioning the cook working at the time how they were able to wash their hands or utensils they were informed that all food preparation was being done out of the kitchen. The applicant was also informed several times that an approved Food Establishment permit would be required to prepare and serve daiquiris in the bar area. Code Enforcement witnessed the establishment preparing daiquiris for customers in the bar area prior to receiving an approved Fixed Establishment permit. The Fixed Establishment permit was issued on August 20, 2020.</p> <p><u>Mobile Food Unit Permit:</u> Code Enforcement staff shut down the mobile food unit on August 12, 2020. The food unit is required to have access to an associated commercial kitchen/commissary where the grease trap and grey water can be disposed of. Staff determined that there was no water going to the food truck and that the truck was not moving off site to dispose of their grease and grey water. Code Enforcement staff also witnessed the applicant cleaning the grease trap into the storm drain. The Mobile Food Unit permit was reinstated on August 20, 2020.</p> <p>If the Commission chooses to approve this permit, Environmental Health highly recommends approval be contingent upon completion of a functioning kitchen that meets all Code and Environmental Health requirements.</p>

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### Staff Recommendation

<input type="checkbox"/> Approval as Submitted	<input type="checkbox"/> Approval with Conditions / Alternate	<input checked="" type="checkbox"/> <u><b>Denial</b></u>
<p>For the reasons stated in this report staff recommends <u><b>denial</b></u> of the Conditional Use Permit to allow the sale of beer and wine for on premise consumption.</p> <p>Alternatively, should the Commission choose to approve this request, staff recommends the inclusion of following conditions:</p> <ol style="list-style-type: none"> <li>1. The permit shall be valid for six (6) months, provided standards are met,</li> <li>2. The permit shall be effective upon completion of a functioning kitchen that meets all Environmental Health requirements to allow for food preparation,</li> <li>3. The establishment shall meet all COVID orders and guidelines, including requirement for face coverings where 6 feet of social distancing is not feasible and limiting the establishment to 50% capacity,</li> <li>4. No alcoholic beverages may be consumed on premises after the posted hours of operation,</li> <li>5. Alcohol sales shall constitute 50% or less of total gross receipts and shall be confirmed by posting of a TABC required blue weapons warning sign,</li> <li>6. No outdoor live or amplified music shall be allowed, and</li> <li>7. The permit shall be posted in the same area and manner as the Certificate of Occupancy.</li> </ol>		
<b>Staff:</b> Shavon Caldwell	<b>Title:</b> Planner	<b>Date:</b> September 15, 2020

### Commission Recommendation

<input type="checkbox"/> Approval as Submitted	<input type="checkbox"/> Approval with Conditions / Alternate	<input checked="" type="checkbox"/> <u><b>Denial</b></u>
<p><b>Speakers in favor or opposed</b> The applicant spoke in favor of the request</p> <p><b>At the Planning and Zoning Commission meeting held September 22, 2020 the Commission voted to deny the request. The motion to deny was approved with a 9 to 0 voice vote.</b></p>		

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Evaluation			Criteria for Approval (Sec. 2.8.3.4 & 5.1.5.5)
Consistent	Inconsistent	Neutral	
		<u>X</u>	The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive plan.
		<u>N/A</u>	The proposed use is consistent with any adopted neighborhood character study for the area. <b><i>Studies were not complete at the time of this request</i></b>
<u>X</u>			The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations.  <b><i>The proposed use is consistent with the general intent of the zoning district. General Commercial zoning allows retail and service type uses by right and allows businesses that sell alcohol for on-premise consumption through the Conditional Use Permit process. The property has previously operated as a restaurant with the sale of alcohol (Los Cucos, Rumors).</i></b>
		<u>X</u>	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.  <b><i>The location had previously been operated as a restaurant with alcohol sales, however, the current applicant has received noise complaints. If the Commission chooses to approve the request, conditions regarding outdoor live or amplified music should be considered.</i></b>
<u>X</u>			The proposed use does not generate pedestrian and vehicular traffic which shall be hazardous or conflict with the existing and anticipated traffic in the neighborhood.  <b><i>Sidewalks exist along both sides of West Avenue and Aquarena Springs Drive. There is a pedestrian crossing at Aquarena Springs Drive and Thorpe Lane, approximately 360 feet from the property.</i></b>
		<u>X</u>	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.  <b><i>The use is not incorporating adjustments or control devices to reduce or eliminate traffic. The business is located on Aquarena Springs Drive, which is a Major Arterial road and is designed to carry heavy vehicular traffic.</i></b>

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Evaluation			Criteria for Approval (Sec. 2.8.3.4 & 5.1.5.5)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<p>The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.</p> <p><b><i>The applicant is not proposing any new additional improvements to the site. Existing features such as parking lot landscaping and screening help to minimize adverse effects on adjacent properties.</i></b></p>
	<u>X</u>		<p>The proposed use meets the standards for the applicable 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.</p> <p><b><i>The proposed use has not met the use standards for the applicable district. Where the on-premise consumption of alcohol is a conditional use, the San Marcos Development Code requires the establishment to hold a valid Conditional Use Permit and requires the establishment be in compliance with all conditions of such permit. The establishment has not met this use standard.</i></b></p>
<u>X</u>			<p>The proposed use is not within 300 ft. of a detached single family residence located in a zoning district that only permits detached single family residences.</p>
<u>X</u>			<p>The proposed use is not within 300 ft. of a church, public or private school, or public hospital as outlined in section 5.1.5.5.</p>
<u>X</u>			<p>The proposed use is not within 1,000 ft. of a public or private school as outlined within section 5.1.5.5(E)(3).</p>