



**SAN MARCOS
PLANNING AND ZONING
COMMISSION REGULAR
MEETING
CITY COUNCIL CHAMBERS,
630 E. HOPKINS
TUESDAY, JULY 23, 2013
6:00 P.M.**

1. Call To Order
2. Roll Call
3. **Chairperson's Opening Remarks**

***NOTE:** The Planning and Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

4. 30 Minute Citizen Comment Period

CONSENT AGENDA

THE FOLLOWING ITEMS NUMBERED 5 - 5 MAY BE ACTED UPON BY ONE MOTION. NO SEPARATE DISCUSSION OR ACTION ON ANY OF THE ITEMS IS NECESSARY UNLESS DESIRED BY A COMMISSIONER OR A CITIZEN, IN WHICH EVENT THE ITEM SHALL BE CONSIDERED IN ITS NORMAL SEQUENCE AFTER THE ITEMS NOT REQUIRING SEPARATE DISCUSSION HAVE BEEN ACTED UPON BY A SINGLE MOTION.

5. **Consider the approval of the minutes of the Regular Meeting on July 9, 2013.**

PUBLIC HEARINGS

6. **VR-13-07 (Tres Hermanas)** Hold a public hearing and consider a request by David Chiu for a variance at 2550 Hunter Road to allow a restaurant serving alcohol less than 300 feet from a public school, but not less than 200 feet from the primary entrance to the school, to seek a Conditional Use Permit [LDC 4.3.4.2(b)(3)]
7. **CUP-13-18 (Tres Hermanas)** Hold a public hearing and consider a request by David Chiu for renewal of a Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 2550 Hunter Road.
8. **CUP-13-20 (Abel Autohaus)** Hold a public hearing and consider a request by Eddie Abel and Doug Hughey, on behalf of Abel Autohaus, for a Conditional Use Permit to allow the use of Auto Dealer – Used Auto Sales in a Community Commercial (CC) zoning district at 1710 N IH 35.

NON-CONSENT AGENDA

9. Discussion and possible direction to staff regarding regulating and enforcing the point system, noise and outdoor live amplified music for Conditional Use Permits for on-site alcoholic beverage consumption.
10. Discussion and possible direction to staff regarding the boundaries for the Neighborhood Character Studies and the timing of the studies.
11. **Development Services Report**
 - a. **Update from staff on the following items:**
 1. **Major revisions to the Land Development Code;**
 2. **July 25, 2013 City Council and Planning Commission Joint Meeting;**
 3. **Impact Fee Report.**
12. Question and Answer Session with Press and Public. *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*
13. Adjournment.

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 512-393-8074 or sent by e-mail to ADArequest@sanmarcostx.gov

I certify that the attached notice and agenda of items to be considered by the Planning and Zoning Commission was removed by me from the City Hall bulletin board on the _____ day of

_____ Title: _____

Agenda Information

AGENDA CAPTION:

Chairperson's Opening Remarks

Meeting date: July 23, 2013

Department: Development Services

Funds Required:

Account Number:

Funds Available:

Account Name:

CITY COUNCIL GOAL:

BACKGROUND:

Agenda Information

AGENDA CAPTION:

Consider the approval of the minutes of the Regular Meeting on July 9, 2013.

Meeting date: July 23, 2013

Department: Development Services

Funds Required:

Account Number:

Funds Available:

Account Name:

CITY COUNCIL GOAL:

BACKGROUND:

ATTACHMENTS:

July 9, 2013 PZ minutes

**MINUTES OF THE REGULAR MEETING OF THE
SAN MARCOS PLANNING AND ZONING COMMISSION
COUNCIL CHAMBERS, CITY HALL
July 9, 2013**

1. Present

Commissioners:

Bill Taylor, Chair
Carter Morris, Vice Chair
Chris Wood
Corey Carothers
Kenneth Ehlers
Travis Kelsey
Randy Bryan
Angie Ramirez
Curtis Seebeck

City Staff:

Matthew Lewis, Development Services Director
Sam Aguierre, Assistant City Attorney
Francis Serna, Recording Secretary
John Foreman, Planning Manager
Alison Brake, Planner
Emily Koller, Planner

Call to Order and a Quorum is Present.

With a quorum present, the Regular Meeting of the San Marcos Planning & Zoning Commission was called to order by Chair Taylor at 6:00 p.m. on Tuesday July 9, 2013, in the Council Chambers, City Hall, City of San Marcos, 630 E. Hopkins, San Marcos, Texas 78666.

3. Chairperson's Opening Remarks.

Chair Taylor welcomed the audience and viewers.

NOTE: *The Planning & Zoning Commission may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Planning and Zoning Commission may also publicly discuss any item listed on the agenda for Executive Session.*

4. 30 Minute Citizen Comment Period

Diane Wassenich stated that she heard that some Planning Commission members did not understand the one page flood summary sheet she handed out to the Commission recently. She explained that the sheet took data about flood volumes from other rivers surrounding San Marcos and it compared it to the '98 flood in San Marcos. She said the figures were taken from the USGS (United States Geologic Service) gauges and rivers. Ms. Wassenich pointed out that we need to build away from 100 year flood plain and preferably from our 500 year flood plain if we want to avoid death and property damage.

Consent Agenda:

5. Consider the approval of the minutes of the Regular Meeting on June 25, 2013.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Seebeck, the Commission voted on consent to approve the minutes of the Regular Meeting on June 25, 2013 with corrections.

Public Hearings:

6. PC-13-18_03 (WB Addition) Hold a public hearing and consider a request by Kimley Horn and Associates, on behalf of Whataburger Real Estate LLC, for approval of a replat of Lot 1, Whataburger Addition and Lot 3 Quarters Addition, and associated subdivision improvement agreement establishing Lot 1, WB Addition, located near the intersection of South IH 35 and State Highway 123.

Emily Koller, Staff Planner gave an overview of the project.

Chair Taylor opened the public hearing. There were no citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Ehlers and a second by Commissioner Bryan, the Commission voted all in favor to approve PC-13-18_03 as submitted. The motion carried unanimously.

7. CUP-13-17 (Aquabrew) Hold a public hearing and consider a request by Carlos Russo, on behalf of Austin Street Tavern LLC, for a new Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 150 S. LBJ Drive.

Emily Koller, Staff Planner gave an overview of the project.

Chair Taylor opened the public hearing.

Carlos Russo, 728 Snyder Hill Drive, San Marcos said he had been working on the project for two years. He pointed out that it is an infill project. Mr. Russo stated that he has hired a new architect to create the final plans and hopes to open in a year. He wants to make sure his customers are happy as well as his neighbors. Mr. Russo proposed to mitigate the neighbors' concerns before there is an issue. Mr. Russo proposed to run decibel level tests and establish a decibel level that would not disturb his neighbors and would work for the business.

Mark Jansen, 110 E. San Antonio Street, said he walked down the property line and felt that the business is very close to his building. Mr. Jansen spoke in opposition to the request. He expressed his concerns with noise with the outdoor beer garden. He felt the music would be an annoyance all day and night. Mr. Jansen said he is opposed to the request.

John Hohn, partner and co-owner with Mark Jansen for the property at 110 E. San Antonio stated he was representing himself as well as all other owners on the western half of the 100 block of San Antonio Street. He stated that the proposed use represents the potential for an outdoor live music venue which will project to the back of his building. Mr. Hohn explained that he and Mark purchased the building 23 years ago, they spent a lot of money renovating the building and have developed a successful law business. Mr. Hohn stated that they would like to maintain the quiet status of the building. He felt that their property rights are being invaded. He said he appreciates that the Commission worked with Rooftop and reached a compromise. He asked that the Commission consider the same conditions for Aquabrew.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Ehlers and a second by Commissioner Kelsey, the Commission voted all in favor to approve CUP-13-17 with the conditions that the permit shall be effective upon issuance of the Certificate of Occupancy; and the permit shall be valid for six (6) months, provided standards are met, subject to the point system. The motion carried unanimously. Commissioner Morris recued himself.

8. **ZC-13-10 (Blacks Barbeque)** Hold a public hearing and consider a request by Kent Blacks Lockhart BBQ LLC for a Zoning Change from Light Industrial (LI) to Mixed Use (MU) for approximately .5 acres out of the J.M. Veramendi Survey Abstract 17, No. 1, located at 500 Hull Street.

9. **ZC-13-11 (Blacks Barbeque)** Hold a public hearing and consider a request by Kent Blacks Lockhart BBQ LLC for a Zoning Change from Heavy Industrial (HI) to Mixed Use (MU) for approximately .12 acres out of the J.M. Veramendi Survey Abstract 17, No. 1, located at 520 Hull Street.

Emily Koller, Staff Planner gave an overview of the project

Chair Taylor opened the public hearing for items ZC-13-10 and ZC-13-11.

Rudy Rodriguez, 533 Hull Street and said he is concerned about the location of the parking lot area. He stated that his neighbor, Ms. Vasquez who lives adjacent to the property would like a privacy fence installed to eliminate lights from shining towards her property. Mr. Rodriguez also pointed out that he is also concerned with cars parking on the street. He explained that there are a lot of children in the area. He said he is in support of the request.

Kent Black, Austin, Texas introduced his wife, Candy Black, son, Barrett Black, and Architect Frank Gomillion. Mr. Black said that he has met with the neighbors. He said they are very excited and bringing their BBQ to San Marcos. He feels that location is excellent and really want to try to recruit staff from neighborhood. Mr. Black added that he wants to be good neighbors. He said they have been in Lockhart for 81 years and would be honored and privileged to be in San Marcos. Mr. Black stated that he does not have a problem building a privacy fence.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Wood, the Commission voted all in favor to approve ZC-13-10 and ZC-13-11 as submitted. The motion carried unanimously.

10. **CUP-13-19 (Blacks Barbeque)** Hold a public hearing and consider a request by Kent Blacks Lockhart BBQ LLC for a new Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 500 Hull Street.

Emily Koller, Staff Planner gave an overview of the project.

Chair Taylor opened the public hearing.

Rudy Rodriguez, 533 Hull Street stated he is in support of the request. He requested that trash such as beer cans and bottles remain on the premises for the safety of the neighborhood. He suggested that security be provided.

Kent Black, owner stated that they will apply for on-premise consumption and that all alcohol will remain on premise. He pointed out that they are going to be a BBQ business and that serving alcohol is the last item on their list. Mr. Black added that they have had a good record serving alcohol in Lockhart with no problems. He felt that if a security is necessary they will try and eliminate the issues prior to having security.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Carothers, the Commission voted all in favor to approve CUP-13-19 with the conditions that the permit shall be effective only upon approval by the City Council of the Petitions for Zoning Change at 500 Hull Street (ZC-13-10) and 520 Hull Street (ZC-13-11); The TABC license is provided to the City prior to issuance; The permit shall be effective upon issuance of the Certificate of Occupancy; and The permit shall be valid for one (1) year, provided standards are met, subject to the point system.

11. ZC-13-12 (1902 Medical Parkway) Hold a public hearing and consider a request by Edward Johnson, on behalf of Hays ASC Pursuit Partners, L.L.C., for a Zoning Change from Office Professional (OP) to General Commercial (GC) for Lot 5B, San Marcos MedPark Subdivision, located at 1902 Medical Parkway.

Alison Brake, Staff Planner gave an overview of the project.

Chair Taylor opened the public hearing.

Hays County Nursing Administrator stated that he is not for or against the request. He asked what the applicant has proposed.

Edward Johnson replied that they were looking at a 44-46 bed assisted living memory care facility.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Wood, the Commission voted all in favor to approve ZC-13-12 as submitted. The motion carried unanimously.

12. LDC-13-05 (Procedures for Zoning Applications) Hold a public hearing and consider a recommendation to the City Council regarding revisions to Section 1.5.1.4(g) of the Land Development Code regarding waiting periods for zoning applications that are denied.

Matthew Lewis, Director of Development Services gave an overview of the project.

Chair Taylor opened the public hearing.

Diane Wassenich stated that she wanted to reiterate the reason why the City Council is considering this request. She added that there have been cases where things have changed at the last minute, come back over and over and take a tremendous amount of staff time and leave the community concerned for years at a time. Ms. Wassenich said she completely understands that the Real Estate development community would not like to see rules enacted because the rules are for the protection of the citizens.

There were no additional citizen comments and the public hearing was closed.

MOTION: Upon a motion made by Commissioner Morris and a second by Commissioner Wood, the Commission voted six (6) for and three (3) against to deny LDC-13-05. Commissioners Ramirez, Seebeck and Taylor dissenting.

Non-Consent

13. Development Services Report

Update from staff on the following:

- a) Implementation of the Comprehensive Master Plan;
- b) Downtown Implementation;
- c) Impact Fee Report;
- d) Transportation Master Plan;
- e) July 25, 2013 City Council and Planning Commission Joint Meeting.

Staff gave a brief update.

14. Question and Answer Session with Press and Public. *This is an opportunity for the press and public to ask questions related to items on this agenda.*

Diane Wassenich asked the Assistant City Attorney or City Attorney to review the discussion regarding the wording that City Council passed down to P&Z and determine if the two references that Mr. Morris made to the projects that we all know we are talking about is appropriate for him to talk about to the Commission.

15. Adjourn.

Chair Taylor adjourned the Planning and Zoning Commission meeting at 7:37 p.m. on Tuesday, July 9, 2013.

Bill Taylor, Chair

Carter Morris, Vice Chair

Travis Kelsey, Commissioner

Kenneth Ehlers, Commissioner

Chris Wood, Commissioner

Angie Ramirez, Commissioner

Randy Bryan, Commissioner

Corey Carothers, Commissioner

Curtis Seebeck, Commissioner

ATTEST:

Francis Serna, Recording Secretary

DRAFT

Agenda Information

AGENDA CAPTION:

VR-13-07 (Tres Hermanas) Hold a public hearing and consider a request by David Chiu for a variance at 2550 Hunter Road to allow a restaurant serving alcohol less than 300 feet from a public school, but not less than 200 feet from the primary entrance to the school, to seek a Conditional Use Permit [LDC 4.3.4.2(b) (3)]

Meeting date: July 23, 2013

Department: Development Services

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

CITY COUNCIL GOAL:

Community Wellness/Encourage the Middle Class

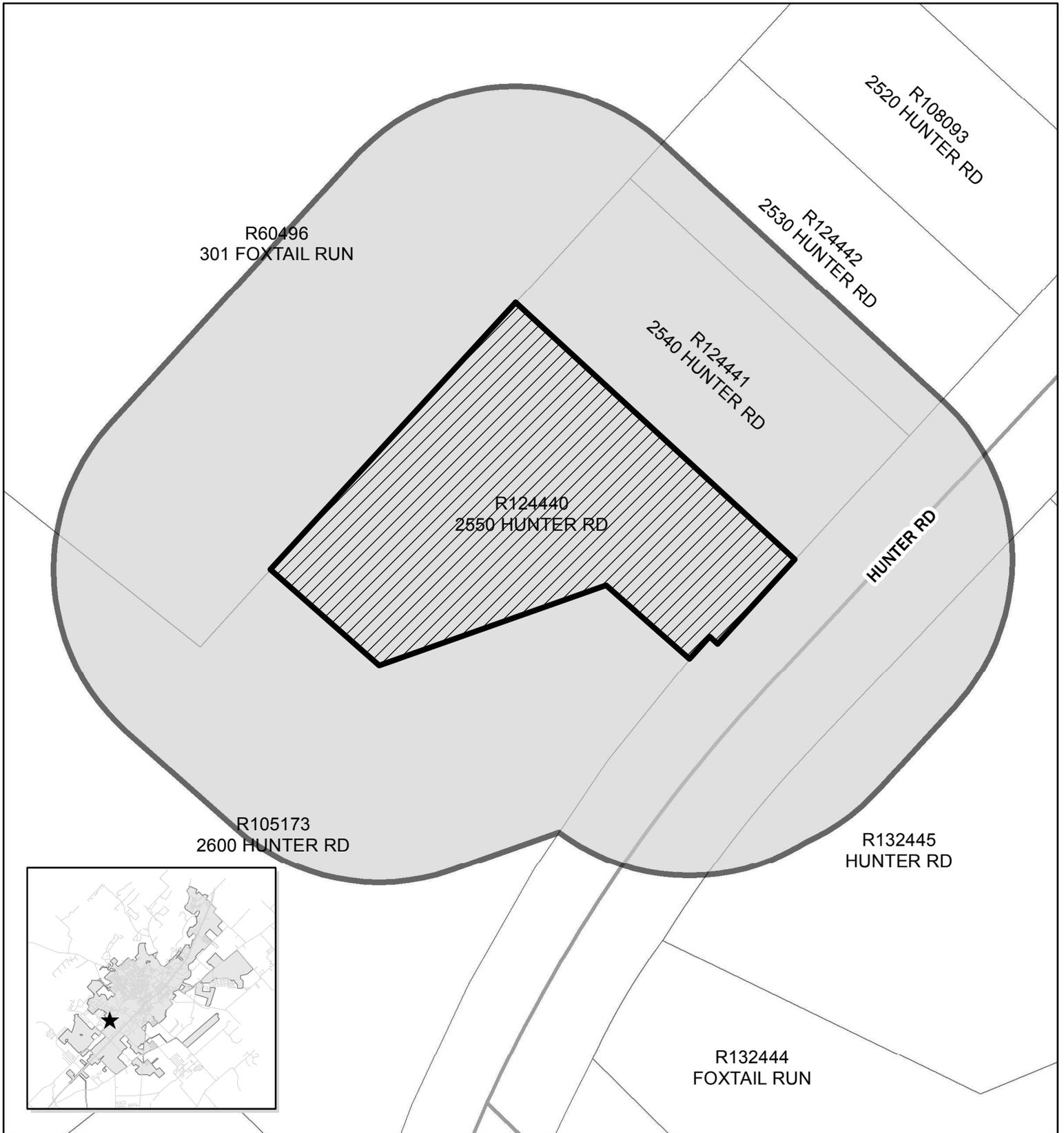
BACKGROUND:

The applicant is seeking a variance to allow renewal of an existing CUP for an alcohol-serving restaurant less than 300 feet from a public school, provided certain standards are met. The applicant received the initial variance and CUP in 2007. The CUP was renewed in 2008 and expired in 2009, causing the variance to expire. The variance and CUP have not been renewed since 2009.

San Marcos CISD officials have provided a letter stating they are not opposed to the request but wish that the following statement be included on all restaurant menus: "Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages." Staff has reviewed the request and found that it meets all criteria and eligibility requirements for a variance and recommends approval.

ATTACHMENTS:

Case Map
staff report
CISD Letter
Application



VR-13-07
Tres Hermanas
2550 Hunter Road
Map Date: 7/11/2013

-  Site Location
-  Notification Buffer (200 feet)



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

VR-13-07

Variance to Seek CUP; School Proximity

Tres Hermanas Restaurant



Applicant Information:

Applicant: David Chiu
P.O. Box 1014
San Marcos TX 78667

Property Owner: David Chiu
P.O. Box 1014
San Marcos TX 78667

Applicant Request: Request for a variance to allow a restaurant serving alcohol less than 300 feet from a public school, but not less than 200 feet from the primary entrance to the school, to seek a Conditional Use Permit [LDC 4.3.4.2(b)(3)]

Notification: Public hearing notification mailed on July 12, 2013.

Response: None to date

Subject Property:

Location: 2550 Hunter Road
Legal Description: Hunters Hill Section 1, Lot 3
Frontage On: Hunter Road
Neighborhood: No Association
Existing Zoning: Community Commercial
Preferred Scenario Designation: Area of Stability
Sector: Sector 9
Utilities: Existing
Existing Use of Property: Restaurant, loft apartments, retail/office
Proposed Use of Property: Restaurant, loft apartments, retail/office
Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	P	Public, Doris Miller Junior High School
S of Property	GC	Vacant
E of Property	CC	Vacant
W of Property	MF-24	Apartments; Mariposa

Code Requirements:

A business applying for a Conditional Use Permit to allow 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 not meet these distance requirements. 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. This request for a variance is proceeding concurrently with the CUP request. The variance will remain in effect as long as the CUP is active. If the CUP is to expire, a new variance must be obtained by the applicant. Below are the eligibility requirements for a business to seek a variance for sale of alcoholic beverages.

1. Bars and package stores are not eligible for this variance.

2. The business seeking the variance is a restaurant that agrees to limit its operation characteristics such that the restaurant will maintain its business in a manner to insure that its gross revenue from the sale of alcohol will be less than 25 percent of the total gross revenue of the business.
3. There is a distance of a least 200 feet from the primary entrance of the applicant business to the primary entrance of the church or school measured using a straight line.
4. The business seeking the variance shall comply with all aspects of the conditional use permit process.
5. All conditional use permits for the on-site alcoholic beverage consumption that include a distance variance shall be, for the life of the permit, subject to annual renewal. Variances are non-transferable and separate from the conditional use permit. Any hearing concerning a renewal will be conducted by the commission who shall have authority to grant or deny the renewal.

The Planning and Zoning Commission will make a recommendation on the variance and City Council will decide the case.

Comments from Other Departments:

Building, Police, Engineering, Fire, Environmental Health, and Code Enforcement have reported no major concerns regarding the subject property.

Planning Department Analysis:

The applicant is seeking a variance to allow renewal of an existing CUP for an alcohol-serving restaurant less than 300 feet from a public school, provided certain standards are met. The applicant received the initial variance and CUP in 2007. The CUP was renewed in 2008 and expired in 2009, causing the variance to expire. The variance and CUP have not been renewed since 2009.

Because Doris Miller Junior High shares a property line with Tres Hermanas, the applicant has received a letter from San Marcos CISD approving the restaurant to seek the variance. The letter includes a condition that the following statement be included on the restaurant menu:

Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages.

If approved, this statement must be a condition of the CUP. The applicant has agreed to restrict operational characteristics as set forth in the request to the school.

Staff has confirmed that there is a distance of approximately 820 feet from the primary entrance of Tres Hermanas to the primary entrance of Doris Miller Middle School. The request meets all other criteria and eligibility requirements for pursuit of a variance.

Staff provides this request to the Commission for your consideration and recommends approval of the Variance subject to the terms in Section 4.3.4.2(b)(3) of the Land Development Code with the following condition:

1. The following statement shall be included in the restaurant menu:

“Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages.”

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

The Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Variance. After considering public input, the Commission is charged with making a decision on the Variance. Commission approval is discretionary. However, if the Commission recommends denial of the variance, they must include findings of fact to show that the location or the restaurant:

- Is not in the best interest of the public;
- Would constitute waste or inefficient use of resources;
- Creates an undue hardship on the applicant;
- Does not serve its intended purpose;
- Is not effective or necessary; or,
- Any other reason the Commission finds after consideration of the health, safety, and welfare of the public and the equities of the situation.

Upon receipt of the Planning and Zoning Commission's recommendation, the City Council will hold a public hearing and have final authority to approve or disapprove the Commission's recommendation.

Prepared by:

Tory Carpenter

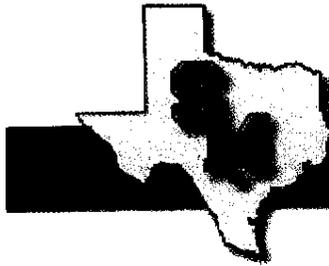
Planning Technician

July 17, 2013

Name

Title

Date



ISD
Central District

Dedicated to Education... Committed to Excellence

Superintendent's Office

Office 512-393-6767

Fax 512-393-6709

Fax Cover Sheet

To: Tory Carpenter

Date: June 11, 2013

Fax # 855-759-2843

From: Mark E. Eads

2 Pages – including cover sheet



June 10, 2013

City of San Marcos
Planning & Zoning Commission
630 East Hopkins
San Marcos, TX 78666

To Whom It May Concern:

As Superintendent of the San Marcos Consolidated Independent School District, I hereby notify the City of San Marcos that the District agrees to the proposed operations and does not oppose the granting of a variance from the distance requirements associated with Tres Hermanas Restaurant's renewal of an existing Conditional Use Permit for on-premises consumption of alcoholic beverages at 2550 Hunter Road, San Marcos, Texas.

Additionally, the District respectfully requests that the following language, or substantially identical language, be printed on Tres Hermanas Restaurant's menus:

"Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages."

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Eads".

Mark E. Eads
Superintendent of Schools

City of San Marcos
ZONING VARIANCE APPLICATION

	<u>APPLICANT</u>	<u>PROPERTY OWNER</u>
Name	<u>DAVID CHIU</u>	<u>YES</u>
Mailing Address	<u>311 Laurel Hill</u> <u>San Marcos</u>	
Daytime Phone	<u>512-557-5530</u>	
Email Address	<u>davidchiu@hotmail.com</u>	

PROPERTY DESCRIPTION:

Street: 2550 Hunter Rd. Address No: Sec. 1176

Legal Description (if platted): lot 3 Hunter Hill subdivision

Tax ID: R 108030 Section 1

Acres 1.85 acre Zoning Classification CC

Located In Floodway Edwards Aquifer Recharge Zone
 S.M. River Corridor Historic District

Existing use and improvements on subject property, including type of buildings, floor area, number of off-street parking spaces, etc., as applicable

MULTI: tenants consisting 6270 sq ft or retail and other commercial 3 restaurants and 4 loft apartments.

REQUESTED ZONING VARIANCE:

Variance to Chapter 4.3.4.2B2 of the Land Development Code which requires...

require a conditional use permit for on-premise consumption of alcohol may not be located within 300 feet of a school

Description of Proposed Variance from the Requirements of the Land Development Code:

To allow on-premise consumption of mixed beverage at a restaurant located at least 250 feet from a school section 4.3.4.2(b)(3) of the Land Development Code authorizes a variance from the above distance requirement for restaurants meeting certain eligibility requirements.

SUBMITTAL REQUIREMENTS:

\$600 Application Fee plus **\$10.00 Technology Fee**, payable to the City of San Marcos

Answer the questions on the following pages, as evidence that this request complies with the conditions required for approval of a variance (extra pages and supplemental illustrations or photographs may be used if needed or desired).

I certify the preceding information is complete and accurate, and it is understood that I or another representative should be present at all meetings concerning this application.

- I am the property owner of record, or**
- I have attached authorization to represent the owner, organization, or business in this application.**

Signature: _____ **Date:** _____

Printed Name: _____

TO BE COMPLETED BY STAFF:

Submittal Date: _____ 5 Business Days from Submittal: _____

Completeness Review By: _____ Date: _____

Contact Date for Supplemental Info: _____

Supplemental Info Received (required within 5 days of contact): _____

Application Returned to Applicant: _____

Application Accepted for Review: _____ Fee: _____

The following information is provided by the applicant and may or may not be consistent with the Development Services-Planning information contained in the staff report for this request.

1. What special circumstances or conditions affect the subject property such that strict application of the provisions of the Land Development Code would create an unnecessary hardship or inequity upon the applicant or would deprive the applicant of the reasonable and beneficial use of the property?

Have provide letter from school district

2. Do the circumstances or conditions causing the hardship similarly affect all or most of the properties in the vicinity of the subject property?

yes

3. What substantial property right would not be preserved or enjoyed if the provisions of the Land Development Code were literally enforced?

ability to serve alcohol

4. What effect, if any, would the variance have on the rights of owners or occupants of surrounding property, or on the public health, safety, or general welfare?

no

5. What effect, if any, would the variance have on the orderly subdivision of other land in the area in accordance with the provisions of the Land Development Code?

no

6. Is the hardship or inequity suffered by the applicant caused wholly or in substantial part by the property owner or applicant?

no

7. To what extent is the request for a variance based upon a desire of the owner, occupant, or applicant for increased financial gain from the property, or to reduce an existing financial hardship?

to be able to serve alcohol beverages

8. Is the degree of variance requested the minimum amount necessary to meet the needs of the applicant or property owner?

yes.

VARIANCE CRITERIA

Section 1.10.2.4 Criteria for Approval

- (a) In deciding the variance petition, the decision-maker shall apply the following criteria:
- (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
 - (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;
 - (3) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
 - (4) Granting the variance petition will not be detrimental of the public health, safety or welfare, or injurious to other property within the area;
 - (5) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
 - (6) Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapter 4 through 7 of this Land Development Code;
 - (7) The hardship or inequity suffered by petitioner is not caused wholly or in substantial part by the petitioner;
 - (8) The request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship; and
 - (9) The degree of variance requested is the minimum amount necessary to meet the needs of the proponent and to meet the conditions of this Section.

09/12

RECEIVED
JUN 07 2013



Zoning Variance Application Checklist

- A pre-application conference with staff is recommended;
- A completed application for a Zoning Variance and required fees;
- A development application prepared consistent with the requested variance.
- A detailed written statement of the reasons why the standards to be varied should not be applied to the development application identified in the petition.
- A description of the existing use and improvements of the subject property, including type(s) of building(s), floor area, and number of off-street parking spaces, as applicable.
- A description of the proposed use and related improvements/development of the subject property, including type(s) of building(s), floor area, and number of off-street parking spaces, as applicable.
- Illustrations or other documents showing the effect of the requested variance on the proposed development.
- A description of the particular physical conditions or characteristics that make the subject property unique compared to others developed in a similar manner; an explanation as to whether such particular physical conditions or characteristics were caused by the property owner or applicant.
- A description of the difficulty or unnecessary hardship that would result if the variance were not granted.
- A description of whether the amount of variance requested is the minimum necessary to meet the needs of the property owner or applicant.
- If applicable, a description of how the requested variance would affect the rights of owners or residents of surrounding property, including considerations which regard to the supply of light or air, traffic conditions, ingress/egress conditions, and property values.

I hereby certify and attest that the application is complete and all information identified above is complete and hereby submitted for review.

Signed: *David D. Allen*

Date: 6-7-13

Print Name: David D. Allen

Engineer Surveyor Architect/Planner Owner Agent: _____

Agenda Information

AGENDA CAPTION:

CUP-13-18 (Tres Hermanas) Hold a public hearing and consider a request by David Chiu for renewal of a Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 2550 Hunter Road.

Meeting date: July 23, 2013

Department: Development Services

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

CITY COUNCIL GOAL:

Community Wellness/Encourage the Middle Class

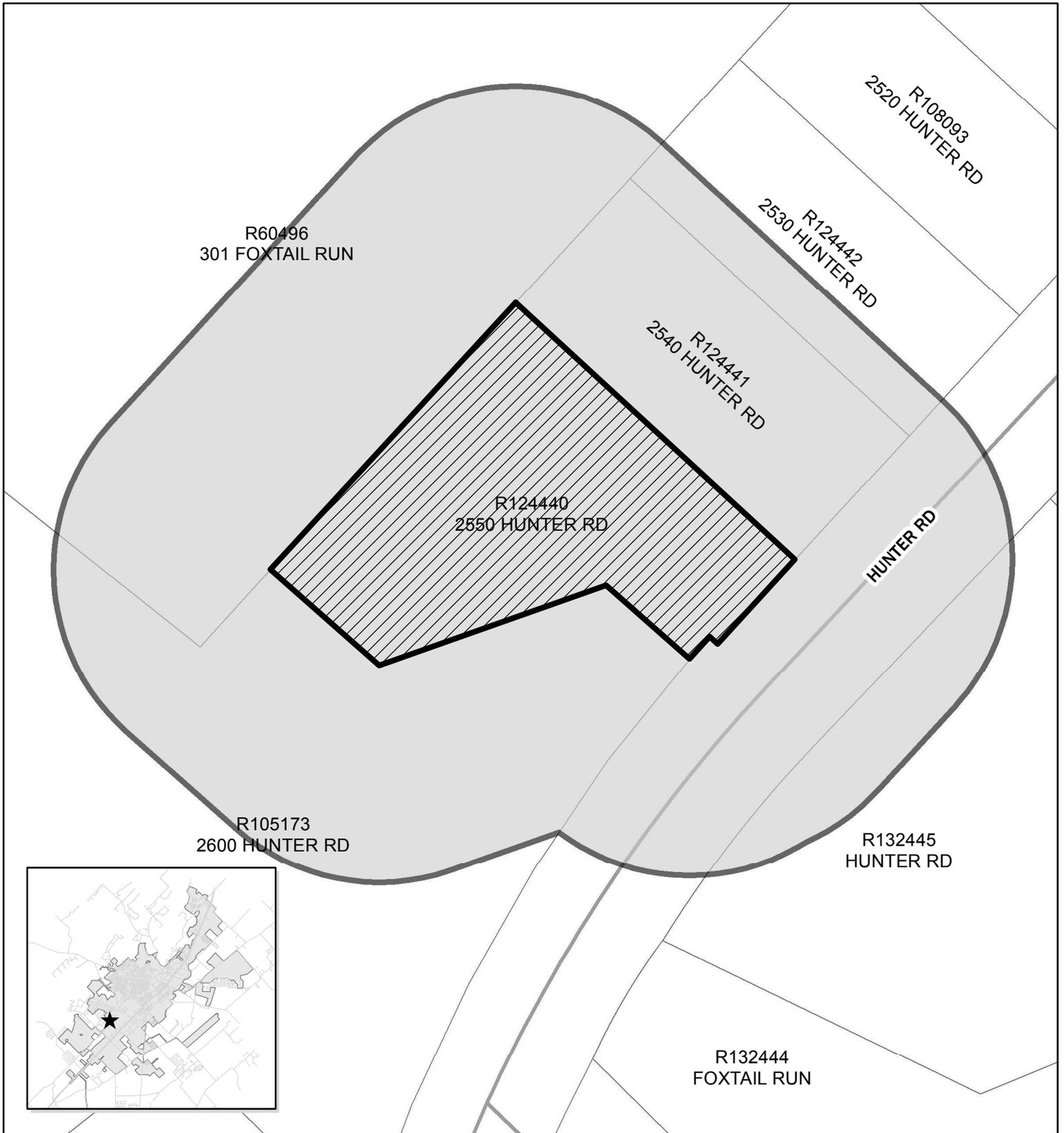
BACKGROUND:

Tres Hermanas is located in a multi-tenant building designed to contain three restaurants, retail/office lease space, and four loft apartments. In 2007, the applicant received a variance to allow the applicant to apply for a CUP for an alcohol-serving restaurant less than 300 feet from a public school, provided certain standards were met. The applicant was then granted a CUP which authorized the on-premise consumption of beer and wine for one year. The CUP was renewed for an additional year in 2008 which expired July 12, 2009. No further renewals were found. Staff sent a letter in May 2013 notifying the applicant that the CUP had expired.

Since opening in 2007 Tres Hermanas has followed the conditions of the variance including limiting the hours of operations and keeping the gross revenue from alcohol sales well under 25%. San Marcos CISD officials have provided a letter stating they are not opposed to the renewal. Staff finds the request consistent with the applicable criteria and recommends approval.

ATTACHMENTS:

Case Map
Staff Report
CUP Application
Aerial
Sales Records



CUP-13-18
Tres Hermanas
2550 Hunter Road
Map Date: 7/11/2013

-  Site Location
-  Notification Buffer (200 feet)



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-t survey and represents only the approximate relative location of property boundaries.

CUP-13-18

Conditional Use Permit

Tres Hermanas Restaurant

2550 Hunter Road



Applicant Information:

Applicant: David Chiu
P.O. Box 1014
San Marcos TX 78667

Property Owner: David Chiu
P.O. Box 1014
San Marcos TX 78667

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 July 12, 2013

Response: None to date

Subject Property:

Expiration Date: December 9, 2009

Location: 2550 Hunter Road

Legal Description: Hunters Hill Section 1, Lot 3

Frontage On: Hunter Rd

Neighborhood: None

Existing Zoning: Community Commercial

Preferred Scenario Designation: Area of Stability

Sector: Sector 9

Existing Utilities: Adequate

Existing Use of Property: Restaurant

Proposed Use of Property: Same

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	P	Public, Doris Miller Junior High School
S of Property	GC	Vacant
E of Property	CC	Vacant
W of Property	MF-24	Apartments; Mariposa

Code Requirements:

A business applying for on-premise consumption of alcohol must not be within 300 feet 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 not** 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. A variance request for this location is currently in process. 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.

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 restaurant is located in a multi-tenant building designed to contain three restaurants, retail/office lease space, and four loft apartments. In 2007, the applicant received a variance to allow the applicant to apply for a CUP for an alcohol-serving restaurant less than 300 feet from a public school, provided certain standards were met. The applicant was then granted a CUP which authorized the on-premise consumption of beer and wine for one year. The CUP was renewed for an additional year in 2008 which expired July 12, 2009. No further renewals were found. Upon the expiration of the CUP, the variance expired as well. Staff sent a letter in May 2013 notifying the applicant that the CUP had expired.

Capacity is shown as 150 fixed seats with hours of operations from 11AM to 9:30PM. A full menu is offered and the applicant states that there have been no substantial changes to the floor plan or site.

Planning Department Analysis:

As a condition of the CUP and the variance, the applicant was to submit a report showing that alcohol sales are no more than 25% of the total gross revenue of the business for the previous year. The applicant has provided this report, which shows alcohol sales as less than 15% of gross revenue. Several of the conditions recommended are from the original CUP and repeat requirements found in Section 4.3.4.2(b)(3) of the Land Development Code. This is to clarify the requirements. Also, it acknowledges the needs of the San Marcos Consolidated Independent School District, which had to consent to the variance so the applicant could seek the CUP. With the exception of the lapsed renewal, the business has complied with these conditions.

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.

However, 4.3.4.2 (b) (3) (a) (5) requires that properties operating under the variance for distance requirements be subject to annual renewals.

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. Include the statement “Due to the close proximity of a school campus, please be alert for students and drive carefully. This restaurant will accommodate, as necessary, any individual that needs transportation after consuming alcoholic beverages.” on the restaurant menus;
3. The restaurant shall operate such that gross revenue from alcohol sales will be less than 25% of total gross revenue for the business, with the restaurant submitting annual reports indicating this condition has been met;
4. The primary entrance for the restaurant shall remain at least 200 feet from the primary entrance of the school; and
5. Alcoholic beverages shall not be served earlier than 11 a.m. or later than 10 p.m.
6. The CUP shall be effective upon approval of the variance by City Council.

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. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider 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: Tory Carpenter	Planning Technician	July 10, 2013
Name	Title	Date

City of San Marcos
CONDITIONAL USE PERMIT APPLICATION
To Allow On-Premise Consumption of Alcoholic Beverages
Outside the Central Business Area

LICENSE INFORMATION
 Trade Name of Business: Tres Hermanos Restaurant
 Application is filed by:
 Individual Partnership Corporation Other: _____
 Name of Individual or Entity: DAVID CHIU Phone Number: 512-557-5530
 Mailing Address: 311 Laurel Hill San Marcos, Tx. 78666
 Email Address: David.chiu@hotmail.com
 Type of Permit Requested: Mixed Beverage Beer & Wine Other: _____

PROPERTY
 Street Address: 2550 Hunter Rd. Suit 1106 Current Zoning: Commercial
 Legal Description: Lot _____ Block _____ Subdivision _____
 Tax ID Number: R ~~_____~~
 Property Owner's Name: DAVID CHIU Phone Number: 512-557-5530
 Address: 311 Laurel Hill, S.M. 78666

BUSINESS DETAILS
 Primary Business Use: Restaurant Bar Other: _____
 Hours of Operation: 11am - 9:30pm
 Type of Entertainment Facilities: _____
 Indoor Fixed Seats Capacity: 150 Outdoor Fixed Seats: _____
 Gross Floor Area Including Outdoor Above-ground Decks: _____ Square Feet
 Number of Off-Street Parking Spaces Provided: _____
 Located more than 300 feet from church, public school, hospital, low density residential? Y N

APPLICATION FOR CITY OF SAN MARCOS CONDITIONAL USE PERMIT-TABC

CUP PERMIT HISTORY *Check all that apply*

- New request**, no existing TABC CUP Permit at this location
- Change** to existing TABC Permit. Nature of Change: _____
- Renewal**
- Change in name of license holder** of existing business at same location
- Change in name of existing business** at this location

SUBMITTAL REQUIREMENTS

- **Beer and Wine Permit: \$600 Application fee** (non-refundable)
- **Mixed Beverage Permit: \$600 Application fee** (non-refundable)
- **Change to Existing Permit/Renewal: \$300.00 fee** (non-refundable)
- **Site Plan drawn to scale**, preferably on paper no larger than 11" x 17", showing dimensions of property, locations and square footage of building(s), interior layout showing dimensions of tables, bar area, etc., number of off-street paved parking spaces, and fences buffering residential uses.
- **Copy of State TABC License Application**

I certify that this information is complete and accurate. I understand that I or a representative should be present at all meetings regarding this application.

- I am the property owner of record; or*
- I have attached authorization to represent the owner, organization, or business in this application.*


Applicant's Signature

Printed Name: DAVID CHU Date: 5-24-13

To be completed by Staff:

Meeting Date: 7/9/13 Application Deadline: 5/24/13
Accepted By: A. Brake Date: 5/24/13

09/12



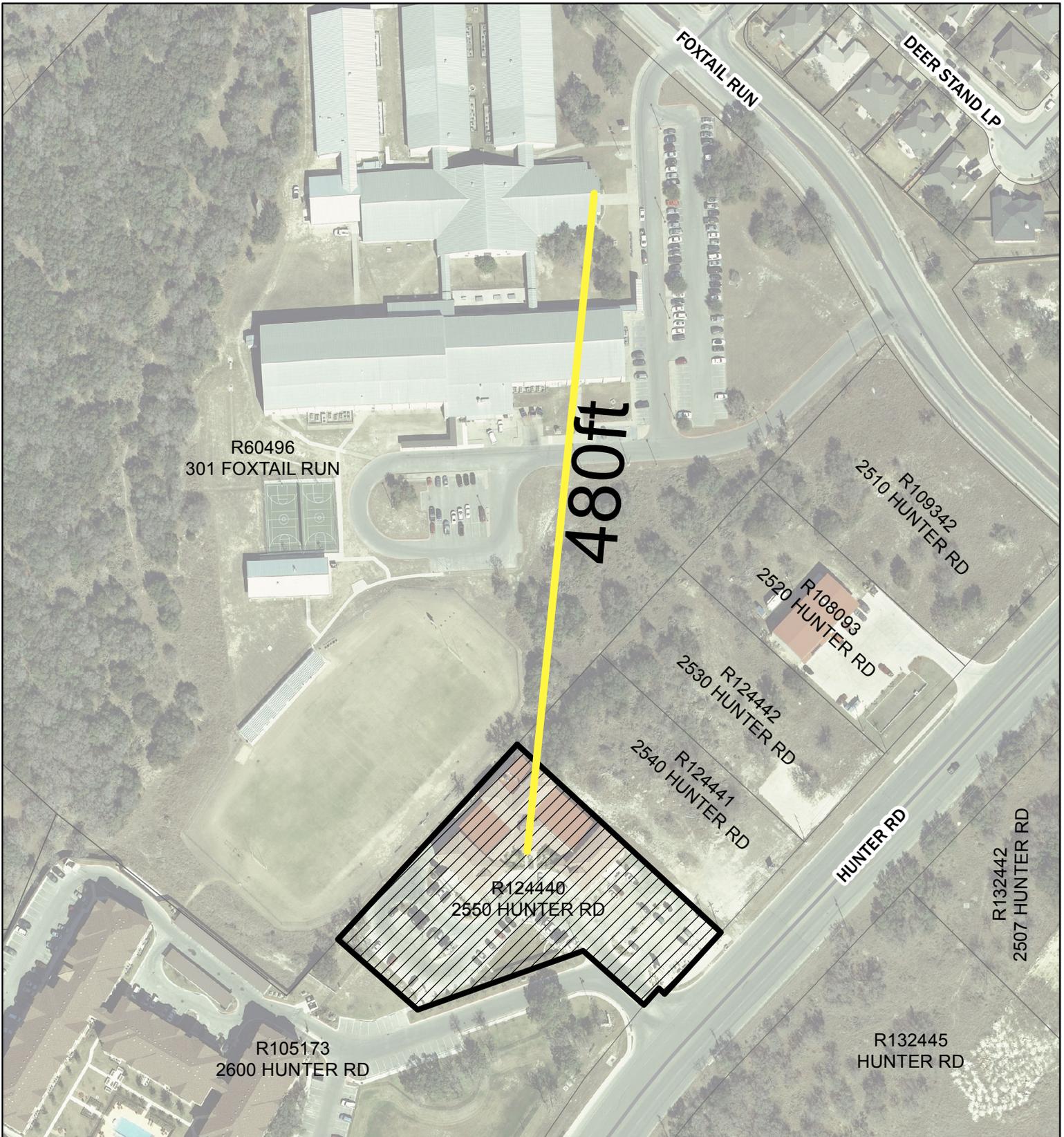
Conditional Use Permit Application Checklist To Allow On-Premise Consumption of Alcoholic Beverages Outside the Central Business Area

Provided by applicant as of date of submittal		By staff as of date of completeness review	
Completed	Required Item	Staff Verification	Staff Comments
<input type="checkbox"/>	A pre-application conference with staff is recommended	<input type="checkbox"/>	
<input type="checkbox"/>	A completed application for Conditional Use Permit and required fees. * (see note below)	<input type="checkbox"/>	
<input type="checkbox"/>	A site plan <i>drawn to scale</i> showing dimensions of property, locations and square footage of building(s), number of off-street paved parking spaces, and fences buffering residential uses. * (see note below)	<input type="checkbox"/>	
<input type="checkbox"/>	Interior layout showing all proposed seating; kitchen and bar areas; and restroom facilities	<input type="checkbox"/>	
<input type="checkbox"/>	All information and illustrations necessary to show the nature of the proposed use and its effect on surrounding properties	<input type="checkbox"/>	
<input type="checkbox"/>	Authorization to represent the property owner, if applicant is not the owner	<input type="checkbox"/>	
Any of the following pieces of information as requested by the Director of Development Services : *(see note below)			
<input type="checkbox"/>	Landscaping and/or fencing of yards and setback areas and proposed changes	<input type="checkbox"/>	
<input type="checkbox"/>	Design of ingress and egress	<input type="checkbox"/>	
<input type="checkbox"/>	Off-street loading facilities	<input type="checkbox"/>	
<input type="checkbox"/>	Height of all structures	<input type="checkbox"/>	
<input type="checkbox"/>	Proposed uses	<input type="checkbox"/>	
<input type="checkbox"/>	The location and types of all signs	<input type="checkbox"/>	
<input type="checkbox"/>	Copy of State TABC License application	<input type="checkbox"/>	
<input type="checkbox"/>	Impervious cover or drainage issues or impacts	<input type="checkbox"/>	
<input type="checkbox"/>	Menu <i>no change</i>	<input type="checkbox"/>	

* For renewals, staff may accept a written statement that no changes have been made to these items if copies are available on file.

I hereby certify and attest that the application is complete and all information above is complete and hereby submitted for review.

Signed: *David Child* Date: 5-24-13
 Print Name: DAVID CHILD
 Engineer Surveyor Architect/Planner Owner Agent: _____



Door to Door Measurement



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Tres Hermanas Cantina
 2550 Hunter Road Suite 1106
 San Marcos, TX 78666
 (512) 878-2405

2010

*** TOTAL SALES REPORT BY CATEGORY ***
 From 1/1/2010 To 12/31/2010

	SALES AMOUNT	PERCENTAGE
A La Carte	7,827.55	1.623%
American	5,675.22	1.177%
Bar	783.94	0.163%
Beer	16,167.75	3.353%
Beverages	28,810.52	5.975%
Botanas	42,216.63	8.755%
Breakfast	2,882.75	0.598%
Breakfast Tacos	1,279.74	0.265%
Catering	23,198.61	4.811%
College Deliver	9,547.95	1.980%
Dessert	2,840.06	0.589%
Ench Platter	59,948.66	12.432%
Fajitas Patters	42,726.14	8.860%
House Specials	71,467.73	14.821%
Liquor	6,132.75	1.272%
Los Ninos Menu	6,509.94	1.350%
Lunch Specials	43,568.58	9.035%
Margaritas	28,715.44	5.955%
MISC	7,342.97	1.523%
Seafood	8,094.27	1.679%
Soup N Salads	21,543.61	4.468%
Steak	8,685.21	1.801%
Steak N Seafood	1,055.96	0.219%
Taco N Chalupa	32,769.60	6.796%
wine	2,423.00	0.502%
<hr/>		
GROSS CATEGORY SALES:	482,214.60	100.000%
ORDER SURCHARGES:	0.00	
ORDER DISCOUNTS: (Less)	(2,560.67)	
CASH DISCOUNTS: (Less)	(30.75)	
CREDITS USED: (Less)	(0.00)	
Variance:	10.63	
TAX 1:	34,393.06	
<hr/>		
GROSS SALES:	\$514,026.80	

Alcohol Sales %

11.245 %

 Note: Refunds, if any, are not reflected in this report.

Tres Hermanas Cantina
 2550 Hunter Road Suite 1106
 San Marcos, TX 78666
 (512) 878-2405

*** TOTAL SALES REPORT BY CATEGORY ***
 From 1/1/2011 To 12/31/2011

	SALES AMOUNT	PERCENTAGE
A La Carte	15,048.88	3.228%
Alcoholic Bev.	3.79	0.001%
American	5,264.87	1.129%
Bar	639.97	0.137%
Beer	14,414.75	3.092%
Beverages	28,098.18	6.027%
Botanas	43,976.10	9.433%
Breakfast	368.53	0.079%
Breakfast Tacos	716.02	0.154%
Catering	34,281.89	7.354%
College Deliver	2,891.05	0.620%
Dessert	2,056.64	0.441%
Ench Platter	54,212.47	11.629%
Fajitas Patters	37,268.19	7.994%
House Specials	66,466.62	14.258%
Liquor	5,446.75	1.168%
Los Ninos Menu	5,930.35	1.272%
Lunch Specials	40,726.68	8.736%
Margaritas	30,860.85	6.620%
MISC	7,070.53	1.517%
Seafood	7,505.26	1.610%
Soup N Salads	22,917.46	4.916%
Steak	7,475.38	1.604%
Steak N Seafood	1,497.95	0.321%
Taco N Chalupa	28,410.74	6.094%
wine	2,631.25	0.564%
<hr/>		
GROSS CATEGORY SALES:	466,181.10	100.000%
ORDER SURCHARGES:	0.00	
ORDER DISCOUNTS: (Less)	(2,552.64)	
CASH DISCOUNTS: (Less)	(38.95)	
CREDITS USED: (Less)	(0.00)	
Variance:	8.97	
TAX 1:	33,127.71	
<hr/>		
GROSS SALES:	\$496,726.20	

2011
 Alcohol Sales %
 11.582%

 Note: Refunds, if any, are not reflected in this report.

Tres Hermanas Cantina
 2550 Hunter Road Suite 1106
 San Marcos, Tx 78666
 (512) 878-2405

*** TOTAL SALES REPORT BY CATEGORY ***
 From 1/1/2012 To 12/31/2012

2012
Alcohol Sales%
 12.603%

	SALES AMOUNT	PERCENTAGE
A La Carte	24,853.88	5.152%
American	11,795.27	2.445%
Bar	2,342.69	0.486%
Beer	16,169.75	3.352%
Berverages	28,099.68	5.825%
Botanas	47,782.37	9.905%
Breakfast	17.97	0.004%
Breakfast Tacos	229.72	0.048%
Catering	25,231.32	5.230%
College Deliver	1,725.62	0.358%
Dessert	2,278.79	0.472%
Ench Platter	49,600.14	10.281%
Fajitas Patters	36,559.02	7.578%
House Specials	72,267.77	14.980%
Liquor	6,743.25	1.398%
Los Ninos Menu	6,810.05	1.412%
Lunch Specials	41,726.84	8.649%
Margaritas	32,990.55	6.838%
MISC	5,270.03	1.092%
Seafood	7,220.33	1.497%
Soup N Salads	23,146.16	4.798%
Steak	8,509.20	1.764%
Steak N Seafood	3,245.64	0.673%
Taco N Chalupa	25,259.43	5.236%
wine	2,550.00	0.529%

GROSS CATEGORY SALES:	482,425.50	100.000%
ORDER SURCHARGES:	0.00	
ORDER DISCOUNTS: (Less)	(3,231.76)	
CASH DISCOUNTS: (Less)	(0.00)	
CREDITS USED: (Less)	(0.00)	
Variance:	8.38	
TAX 1:	33,878.92	
=====		
GROSS SALES:	\$513,081.00	

 Note: Refunds, if any, are not reflected in this report.

Agenda Information

AGENDA CAPTION:

CUP-13-20 (Abel Autohaus) Hold a public hearing and consider a request by Eddie Abel and Doug Hughey, on behalf of Abel Autohaus, for a Conditional Use Permit to allow the use of Auto Dealer – Used Auto Sales in a Community Commercial (CC) zoning district at 1710 N IH 35.

Meeting date: July 23, 2013

Department: Development Services - Planning

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

CITY COUNCIL GOAL:

Strengthen the Middle Class, Encourage Strong Neighborhoods, Education and Workforce

BACKGROUND:

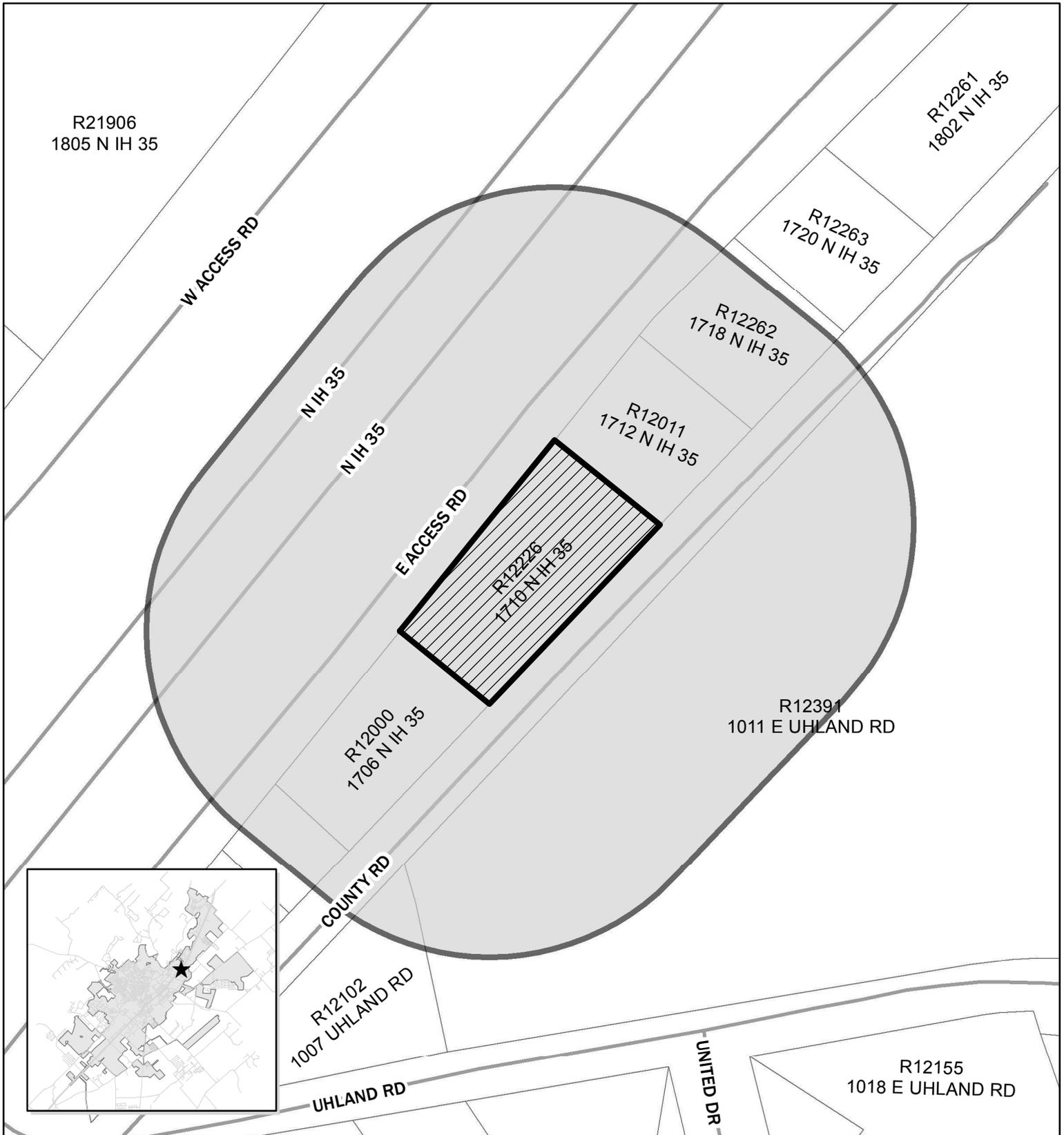
The subject property is located on the IH 35 Frontage Road and zoned Community Commercial. The use of "Auto Dealer - Used Auto Sales" requires a Conditional Use Permit in CC. The surrounding area is a mix of apartments, mobile homes and other auto uses. A CUP for the same use was approved by the Commission in December 2010 but has expired.

The applicants propose to open a smaller used car dealership with late model cars (2004-2010). They propose site improvements including new fencing, asphalt and siding for the existing vacant building. Hours of operation would be compatible with the area and traffic generation would not be considered hazardous.

Staff recommends approval of the Conditional Use Permit with conditions to ensure proposed site improvements are completed and to minimize disruption to adjacent residential areas.

ATTACHMENTS:

Case Map
Staff Report
Application



CUP-13-20
Able Autohaus
1710 N IH 35
Map Date: 7/5/2013

-  Site Location
-  Notification Buffer (200 feet)



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

**Conditional Use Permit
CUP-13-20
1710 N IH 35
Used Car Dealership**



Applicant Information:

Applicant: Eddie Abel and Doug Hughey
DBA as Abel Autohaus
PO Box 184
Corsicana, TX 75151

Property Owner: Fatemeh Mirzaei Yazdani
PO Box 1415
San Marcos TX 78667

Applicant Request: A Conditional Use Permit (CUP) to allow a used car dealership in a Community Commercial (CC) zone

Notification: Public hearing notification mailed on Friday, July 12.

Response: None as of report date.

Subject Property:

Location: 1710 N IH 35

Legal Description: Juan M Veramendi Survey, Tract 253, Acres 0.205 * Lot Pt Of 6-7 W P Donaldson Addition

Frontage On: IH 35

Neighborhood: N/A

Existing Zoning: Community Commercial

Master Plan Land Use: Area of Stability

Sector: Sector 6

Utilities: Existing

Existing Use of Property: Vacant Structure

Proposed Use of Property: Used Car Dealership

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	CC	Commercial
S of Property	CC	Apartments/Commercial
E of Property	MH	Mobile Homes
W of Property	CC/MF-18	I35 ROW and Apartments

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.

The Land Use Matrix lists "Auto Dealer – Use Auto Sales" as conditional in Community Commercial.

Case Summary

The applicants propose to open a used car dealership on the property with an inventory of 40-60 cars and trucks described as late model (2004-2010). They currently own and operate dealerships in Corsicana and Ennis, TX. If the permit is approved, site improvements will include asphalt paving for the lot itself, new siding and electrical work on the existing vacant building, a new wood privacy fence along the north, south, east property lines and repairs to the existing metal fence on the frontage.

Their hours of operation will be Monday-Friday 8:00 a.m. to 7:00 p.m. and Saturday 8:00 a.m. to 3:00 p.m.

A Conditional Use Permit allowing a used car dealership on this site was approved by the Commission on December 14, 2010. A car dealership was never opened and the permit has since expired. The conditions placed on the permit at that time are as follows:

1. *There shall be a minimum of ten parking spaces, no more than five of which may be used as display area.*
2. *No auto repair services are allowed on site*
3. *The carport may be used for detailing and cleaning of vehicles only*
4. *Property may not be used as a tow yard, vehicle storage, or impoundment*
5. *On site fencing shall be repaired*
6. *Facility shall be landscaped in the front of the property and adjacent residential uses screened*

Comments from Other Departments:

There were no comments from Police, Fire or Health.

Planning Department Analysis:

The subject property is zoned Community Commercial and is located in an Area of Stability on the Preferred Scenario. Auto related uses are common along the IH 35 corridor. Community Commercial allows by right similar uses including General Vehicular Sales and Service, Auto Supply Store, Auto Muffler Shop, Auto Tire Repairs, and Full Service Car Wash. The proposed use is similar to those currently allowed by the zoning district and is appropriate for the location along the I35 Frontage Road.

The business hours are compatible with surrounding uses and traffic generation from the use is not considered to be disruptive or hazardous in this area.

The site is in poor condition and the stated improvements will enhance the visual appearance. Conditions should be considered to ensure the stated landscape and fencing improvements are completed upon approval of the permit. Landscaping requirements in Section 6.1.1.4 of the Land Development Code will not be required for existing structures and parking areas if the improvements do not meet the 50% replacement cost threshold. New lighting should be limited in height due to the adjacent residential. The Commission may wish to apply other conditions from the previous CUP as well.

Staff provides this request to the Commission for your consideration and recommends approval of the Conditional Use Permit with the following conditions:

1. **On-site fencing shall be repaired or replaced if beyond repair;**

2. The entire property shall be landscaped in accordance with Section 6.1.1.4. - Required Landscape Area Standards;
3. New lighting shall be 15 feet in height or less; and,
4. Property may not be used as a tow yard, vehicle storage, or impoundment.

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

The 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 Master Plan;
- 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; and
- 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:

Emily Koller	Planner	July 13, 2013
Name	Title	Date

09/12

RECEIVED
MAY 31 2013
BY: Tom C

• Withdrew 6-4.
• Reapplied 6-10.
-TC.

CUP-13 - 20

**City of San Marcos
CONDITIONAL USE PERMIT APPLICATION - GENERAL**

	<u>APPLICANT</u>	<u>PROPERTY OWNER</u>
Name:	<u>Eddie Abel / Doug Hughey</u>	_____
Mailing Address:	<u>DBA ABEL AUTOMANS</u>	_____
	<u>PO BOX 184 Corsicana TX 75151</u>	_____
Telephone No.:	<u>903-654-7740 / 512-644-8909</u>	_____
E-mail address:	<u>corsicanaeast@sbglobal.net</u>	_____

Property Address: 1710 N IH 35 NORTH
 Legal Description (if platted): Lot _____ Block _____ Subdivision _____
 Tax ID Number: R _____ Zoning District: _____

PROPOSED USE
 Brief description of Proposed Use (attach separate page if needed): used car lot.
Monday - Friday 8am - 7pm
Saturday - 8 - 3pm

I certify that the information in this application is complete and accurate. I understand that I or another representative should be present at all meetings concerning this application.

I am the property owner of record; or
 I have attached authorization to represent the owner, organization, or business in this application.

Signature of Applicant: [Signature] Date: 5/28/13

To be completed by Staff:
 Meeting Date: _____ Application Deadline: _____
 Accepted by: _____ Date: _____

Land Development Code: Conditional Use Permit

Purpose, Applicability, Exceptions and Effect

Purpose. The purpose of a Conditional Use Permit is to allow the establishment of uses which may be suitable only in certain locations in a zoning district or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are those uses which are generally compatible with the permitted land uses in a given zoning district, but which require individual review of their proposed location, design and configuration, and the imposition of conditions in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses enumerated as conditional uses in a particular zoning district, or those nonconforming uses which are damaged or destroyed, and which are permitted to be reestablished under this Land Development Code, shall be authorized as conditional uses.

Effect. Approval of a Conditional Use Permit authorizes the use or development of the property in accordance with the conditions of the permit. Approval of a Conditional Use Permit shall be deemed to authorize only the particular use for which the permit is issued and shall apply only to the property for which the permit is issued (i.e., it is not personal to the applicant), except for uses authorized under Section 4.3.4.2 or Section 4.3.4.3 of this Code. No conditionally permitted use shall be enlarged, extended, increased in intensity or relocated unless an application is made for a new Conditional Use Permit in accordance with the procedures set forth in this section. Initiation or development of the use shall not be authorized until the applicant has secured all the permits and approvals required by this Land Development Code.

Processing of Application and Decision

Hearing and Notification. The Director shall schedule a public hearing before the Planning and Zoning Commission on the application for a Conditional Use Permit, and shall cause personal notice to be given in accordance with the LDC.

Commission Decision. The Planning and Zoning Commission shall be the initial decision maker, subject to appeal to the City Council, on whether to approve, approve with conditions or modifications, or deny the permit. The Planning and Zoning Commission may also recommend whether any requested variations from the standards in the zoning district regulations should be granted by the Zoning Board of Adjustments.

Criteria for Approval

Factors. When considering an application for a Conditional Use Permit, the Planning and Zoning Commission shall evaluate the impact of the proposed conditional use on and its compatibility with surrounding properties and residential areas to ensure the appropriateness of the use at the particular location, and shall consider the extent to which:

- (1) The proposed use at the specified location is consistent with the policies embodied in the adopted Master Plan;
- (2) The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;
- (3) 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;

(4) 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;

(5) 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;

(6) The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and

(7) 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. The Planning and Zoning Commission may require such modifications in the proposed use and attach such conditions to the Conditional Use Permit as the Planning and Zoning Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the spirit and intent of this section. Conditions and modifications may include but are not limited to limitation of building size or height, increased open space, limitations on impervious surfaces, enhanced loading and parking requirements, additional landscaping, curbing, sidewalk, vehicular access and parking improvements, placement or orientation of buildings and entryways, buffer yards, landscaping and screening, signage restrictions and design, maintenance of buildings and outdoor areas, duration of the permit and hours of operation.

Expiration and Revocation

Time of Expiration. A Conditional Use Permit shall expire if:

(1) A building permit, if any, for the use has not been approved within one year of the date of approval of the permit;

(2) The building permit subsequently expires;

(3) The use has been discontinued for a period exceeding six months; or

(4) A termination date attached to the permit has passed.

Revocation. The Planning and Zoning Commission may revoke any Conditional Use Permit that is in violation of any condition imposed on the use in accordance with the procedures of Article 3, Division 7 of this Chapter 1.

Appeals

The applicant or other interested person may appeal the decision of the Planning and Zoning Commission to grant or deny a permit to the City Council in accordance with Article 10, Division 1, of this Chapter 1. The Council shall apply the criteria in Section 1.5.7.5 in deciding whether the Commission's action should be upheld, modified or reversed. A three-fourths vote of all of the members of the City Council shall be necessary to reverse a decision of the Planning and Zoning Commission to deny a permit.



Conditional Use Permit Application Checklist: GENERAL

Provided by applicant as of date of submittal		By staff as of date of completeness review	
Completed	Required Item	Staff Verification	Staff Comments
<input checked="" type="checkbox"/>	A pre-application conference with staff is recommended	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	A completed application for Conditional Use Permit and required fees	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	A site plan illustrating the location of all structures on the subject property and on adjoining properties	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Authorization to represent the property owner, if applicant is not the owner	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Application Fee \$600	<input type="checkbox"/>	
<input type="checkbox"/>	Renewal Fee \$300	<input type="checkbox"/>	
Any of the following pieces of information as requested by the Planning Director:			
<input type="checkbox"/>	Landscaping and/or fencing of yards and setback areas and proposed changes	<input type="checkbox"/>	
<input type="checkbox"/>	Design of ingress and egress	<input type="checkbox"/>	
<input type="checkbox"/>	Off-street parking and loading facilities	<input type="checkbox"/>	
<input type="checkbox"/>	Height of all structures	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Proposed uses	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	The location and types of all signs	<input type="checkbox"/>	
<input type="checkbox"/>	Hours of operation	<input type="checkbox"/>	
<input type="checkbox"/>	Impervious cover or drainage issues or impacts	<input type="checkbox"/>	
<input type="checkbox"/>	All information and illustrations necessary to show the nature and effect of the proposed variations to the standards of the zoning district	<input type="checkbox"/>	

I hereby certify and attest that the application is complete and all information above is complete and hereby submitted for review.

Signed: _____ Date: _____

Printed Name: _____

Engineer Surveyor Architect/Planner Owner Agent: _____

Agenda Information

AGENDA CAPTION:

Discussion and possible direction to staff regarding regulating and enforcing the point system, noise and outdoor live amplified music for Conditional Use Permits for on-site alcoholic beverage consumption.

Meeting date: July 23, 2013

Department: Development Services - Planning

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

CITY COUNCIL GOAL:

Community Wellness/Encourage the Middle Class

BACKGROUND:

There are several issues pertaining to Conditional Use Permits for on-premise consumption of alcohol. In particular, noise and outdoor amplified music have been the most discussed with new CUPs as well as with renewals of existing CUPs. At the last Planning and Zoning Commission meeting, staff stated that this item would be added to the agenda in order to facilitate discussion among the Commission with possible direction to staff on how to handle the identified issues.

The Council CUP Subcommittee met on July 12, 2013, to discuss the issues mentioned above as well as touching on a few others (i.e. enforcement of the point system and food establishment within the Central Business Area). The subcommittee discussed having consistent measures written into the Code to regulate music. They discussed the fact that outdoor live music could constitute live bands as well as music provided by a DJ or sound system. The subcommittee expressed a need to balance the residential use of Downtown, especially when it is called for in the new Comprehensive Plan, with the use of outdoor amplified music.

Based on discussions held, staff received direction from the subcommittee to pursue an outdoor amplified music permit as well as rewriting the point system.

ATTACHMENTS:

CBA CUPs

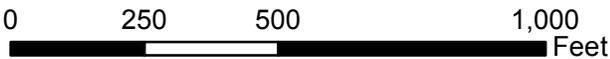
Location of On-Premise Consumption CUPs

Date: 7/16/2013



Name	Address	Type	Map Number
Showplace Cinema Grill	321 N LBJ DR	Restricted	1
Gil's Broiler	328 N LBJ DR	Restricted	2
Louie's Beer Garden	119 E HUTCHISON ST	Restricted	3
Showdown	207 E HUTCHISON ST	Unrestricted	4
Root Cellar Cafe	215 N LBJ DR	Restricted	5
The Vault	100 W HOPKINS ST	Restricted	6
Black Rabbit	127 E HOPKINS ST	Unrestricted	7
The Tap Room	129 E HOPKINS ST	Unrestricted	8
Harper's	139 E HOPKINS ST	Unrestricted	9
Bar 141	141 E HOPKINS ST	Unrestricted	10
Vodka Street Bistro	202 N LBJ DR	Restricted	11
Taxi's	200 N LBJ DR	Restricted	12
Rocky Larues	138 N LBJ DR	Unrestricted	13
Cafe On The Square	126 N LBJ DR	Unrestricted	14
Green Parrot	124 N LBJ DR	Unrestricted	15
Nephew's	100 N GUADALUPE ST	Unrestricted	16
Valentino's	110 N LBJ DR	Unrestricted	17
Rooftop on the Square	126 S GUADALUPE ST	Restricted	18
Texas Music Theater	120 E SAN ANTONIO ST	Unrestricted	19
Sean Patrick's	202 E SAN ANTONIO ST	Restricted	20
Chances R	138 S LBJ DR	Unrestricted	21
Cat's Billiards	143 S LBJ DR	Unrestricted	22
Aquabrew	150 S LBJ	Restricted	23

- Outside CBA
- ✕ Restricted
- Unrestricted
- ▭ CBA Overlay
- ▭ SmartCode Area



Agenda Information

AGENDA CAPTION:

Discussion and possible direction to staff regarding the boundaries for the Neighborhood Character Studies and the timing of the studies.

Meeting date: July 23, 2013

Department: Development Services

Funds Required: N/A

Account Number: N/A

Funds Available: N/A

Account Name: N/A

CITY COUNCIL GOAL:

Strengthen the Middle Class, Encourage Strong Neighborhoods, Education and Workforce

BACKGROUND:

Vision San Marcos: A River Runs Through Us calls for Neighborhood Character Studies to be conducted to analyze the existing character in a specific study area. The analysis will then be used to create standards to guide and govern development and redevelopment patterns. These Studies will be adopted as amendments to Vision San Marcos.

Attached is a map of proposed Study Areas.

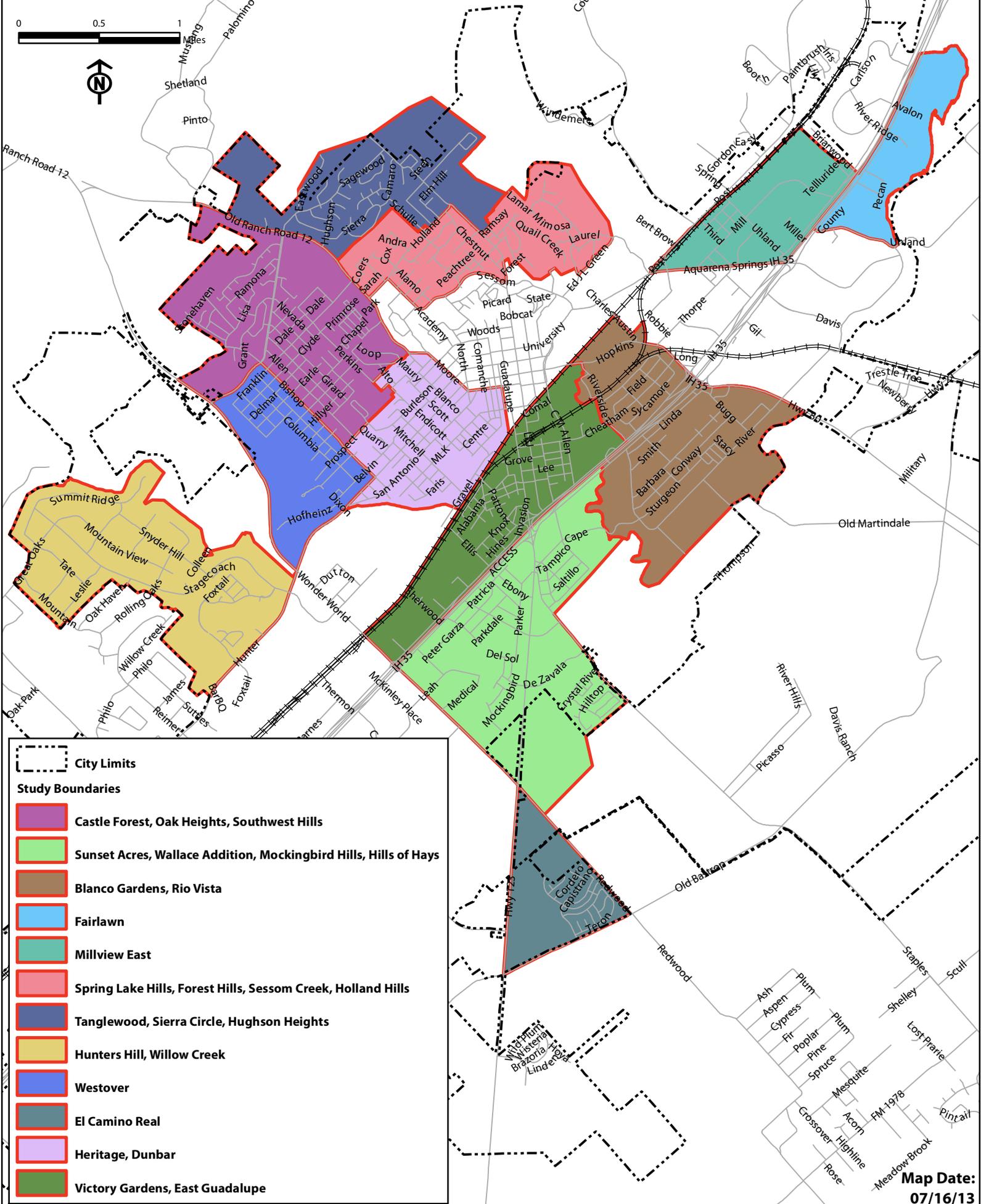
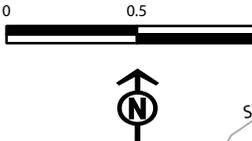
Staff is seeking guidance from the Planning and Zoning Commission on the study area boundaries.

Staff is also seeking the Commission's guidance on the order in which the studies should be conducted. Items the Commission may wish to consider are the number of Zoning Change requests in the area, location along a major thoroughfare or location near an Intensity Zone.

ATTACHMENTS:

Character Study Area Boundaries

Neighborhood Character Study Boundaries



- City Limits
- Study Boundaries**
- Castle Forest, Oak Heights, Southwest Hills
- Sunset Acres, Wallace Addition, Mockingbird Hills, Hills of Hays
- Blanco Gardens, Rio Vista
- Fairlawn
- Millview East
- Spring Lake Hills, Forest Hills, Sessom Creek, Holland Hills
- Tanglewood, Sierra Circle, Hughson Heights
- Hunters Hill, Willow Creek
- Westover
- El Camino Real
- Heritage, Dunbar
- Victory Gardens, East Guadalupe

Map Date:
07/16/13

Agenda Information

AGENDA CAPTION:

Development Services Report

a. Update from staff on the following items:

- 1. Major revisions to the Land Development Code;**
- 2 . July 25, 2013 City Council and Planning Commission Joint Meeting;**
- 3. Impact Fee Report.**

Meeting date: July 23, 2013

Department: Development Services

Funds Required:

Account Number:

Funds Available:

Account Name:

CITY COUNCIL GOAL:

BACKGROUND: